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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Sarah Braasch

Complainant(s)

against

Assistant Chief, Yale University Police Department;  
and Yale University Police Department

Respondent(s)

Notice of Meeting

Docket #FIC 2019-0450

August 20, 2020

## Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room at **2:00 p.m. on Wednesday, September 9, 2020.**

At the meeting you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE August 28, 2020.** Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

**NOTICE: Due to public health concerns surrounding the COVID-19 pandemic as well as the Governor's reopening guidelines, the September 9, 2020 meeting will be conducted telephonically. Further guidance is included regarding the dial-in procedure to follow in the event that you wish to attend, or to present oral argument at, the September 9, 2020 meeting.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 28, 2020.** PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed ***ON OR BEFORE August 28, 2020*** and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

/s/ Wendy R.B. Paradis  
Wendy R.B. Paradis  
Acting Clerk of the Commission

Notice to: Attorney Jay M. Wolman  
Attorney Aaron S. Bayer and  
Attorney Robyn Gallagher

FIC# 2019-0450/ITRA/DLM//KKR/WRBP/8/20/20

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Sarah Braasch

Complainant(s)

Against

Docket # 2019-0450

Assistant Chief, Yale University Police  
Department; and Yale University Police  
Department

Respondent(s)

August 20, 2020

## NOTICE OF DIAL IN INFORMATION

Due to public health concerns surrounding the Covid 19 pandemic, the Commission Meeting of September 9, 2020 will be conducted telephonically at 2:00 p.m.

Should you wish to attend the meeting telephonically, please dial in at 1:50 p.m.

+1 860-840-2075

Conference ID: 167 928 297#

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Sarah Braasch,

Complainant

against

Docket #FIC 2019-0450

Assistant Chief, Yale University Police  
Department; and Yale University Police  
Department,

Respondents

August 18, 2020

The above-captioned matter was heard as a contested case on November 4, 2019, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that by email dated May 23, 2019, the complainant made a request to the respondent Yale University Police Department (“YUPD”) for “the Yale Campus Police Body Camera Footage of [the complainant] from May 8, 2018.” It is found that by email dated May 23, 2019, the respondents acknowledged receipt of the complainant’s request.
3. It is found that by email dated July 7, 2019, the complainant contacted the respondents and renewed her request for the body camera footage identified in paragraph 2, above.
4. It is found that by email dated July 9, 2019, the respondents denied the complainant’s request, writing: “As a matter of policy, and consistent with state law, the YPD does not release information created in connection with an uncorroborated allegation of a crime. . . .”
5. By email of complaint dated July 27, 2019 and filed July 29, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her request for records identified in paragraph 2, above.
6. Section 1-200(5), G.S., defines “public records or files” as:

any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. Section 1-210(a), G.S., provides, in relevant part, that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

9. It is found that the requested records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S., and that copies of such records must be provided in accordance with §§1-210(a), and 1-212(a), G.S., unless the records are exempt from disclosure.

10. At the hearing in this matter, the respondents contended that the responsive records are exempt from mandatory disclosure by virtue of §1-210(b)(3)(H), G.S., because such records contain uncorroborated allegations of criminal activity. The complainant challenged the respondents' reliance on the exemption contained in §1-210(b)(3)(H), G.S.

11. Section 1-210(b)(3), G.S., provides that disclosure is not required of:

[r]ecords of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216.

12. Section 1-216, G.S., provides:

Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency

one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

13. The Commission interprets the term “corroborate” as “to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence,” “to state facts tending to produce confidence in the truth of a statement made by another,” and “to give increased support to; make more sure or evidence.” Rachel Gottlieb and The Hartford Courant v. State of Connecticut, Department of Public Safety, Division of State Police, Docket #FIC 1994-291. There, the Commission found that the requested reports “contain similar accounts relayed to the respondent by different interviewees concerning the allegations under investigation.” The Commission found that “the requested reports contain allegations which were corroborated.”

14. Immediately following the hearing, the hearing officer ordered the respondents to submit the body camera video footage described in paragraph 2, above, for an in camera inspection. The respondents submitted three videos via thumb drive. Such records are hereinafter described as IC-2019-0450-1 (Gabriel Sanchez\_201805080154), IC-2019-0450-2 (Gabriel Sanchez\_201805080215), and IC-2019-0450-3 (Michael Dominique\_201805080217).

15. It is found that, at approximately 1:40 am on May 8, 2018, the complainant called Yale University police dispatch, identified herself as a student and resident of the Hall of Graduate Studies, and alleged that a woman, who she did not know, was sleeping in a common room. It is also found that the complainant further alleged to the YUPD that this person may have been sleeping in the room to provoke the complainant as part of an ongoing conflict the complainant alleged she had with other students that reside in the same residence hall.<sup>1</sup>

16. It is found that, in response to the call identified in paragraph 15, above, YUPD dispatched three police officers (with a supervising officer arriving later to the scene) to conduct a criminal investigation of the allegations that an unauthorized person was in the residence hall trespassing and that this person was harassing the complainant. It is found that the YUPD construed the allegations of the complainant as possible criminal activity.

17. It is found that the YUPD investigated upon arrival at the scene. It is found that the YUPD officers separately interviewed the complainant and the accused person, recording their interviews and the scene on their body-worn cameras. It is further found that such action in turning on the body-worn cameras was consistent with YUPD policy on body-worn cameras.

18. It is found that, after investigating the allegations of the complainant, YUPD determined that the complainant’s allegations were unfounded. It is found that YUPD concluded that the accused person was a student and resident of the hall who was therefore authorized to be in the building and common room, and that the accused person was not harassing the complainant. It is further found that YUPD notified the complainant of their findings.

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<sup>1</sup> The complainant testified extensively that prior incidents involving other students left her feeling unsafe, that she had advised the University and the YUPD of those incidents and her concerns, and that various University personnel and the YUPD advised that if she felt unsafe in the future, she could contact the YUPD for any reason.

19. It is found that the body camera video footage at issue in this case was maintained by the YUPD as part of the investigation file. It is further found that YUPD documented its investigation of a “suspicious person/activity,” in an Incident/Investigation Report, dated May 8, 2018.<sup>2</sup> The YUPD referred the matter to the University to investigate whether the complainant violated any University policies, and thereafter the University provided the complainant with a copy of the report.

20. It is found that the in camera records are records of a law enforcement agency, namely the YUPD, which are not otherwise available to the public, and were compiled in connection with the investigation or detection of a crime, or alleged crime.

21. The respondents contend that the in camera records contain uncorroborated allegations of criminal activity subject to destruction pursuant to §1-216, G.S. It is found that each in camera record depicts the interactions of the complainant with the YUPD officers that responded to the scene and include the complainant’s recitation of her allegations. It is found that the YUPD concluded that the accused person was a student and resident of the hall and therefore was not trespassing, and that the accused person was not harassing the complainant. It is found that the complainant’s allegations are not supported, substantiated or strengthened by the facts uncovered by the YUPD in conducting their investigation. It is therefore concluded that the in camera records contain uncorroborated allegations that are subject to destruction, within the meaning of §§1-210(b)(3)(H), and 1-216, G.S.

22. Therefore, it is concluded that the in camera records are permissibly exempt from disclosure pursuant to §1-210(b)(3)(H), G.S. Consequently, the respondents did not violate the FOI Act as alleged by the complainant.

23. During the hearing and on brief, the complainant raised several unavailing arguments in support of disclosure of the in camera records, each of which will be addressed in turn.

24. The complainant argues that the respondents should not be permitted to selectively disclose public records to certain private entities or individuals. For example, the respondents released the Incident/Investigation Report to the University, a private entity, and the University subsequently provided the report to the complainant. However, disclosure of the Incident/Investigation Report is not at issue in this appeal and therefore the Commission need not address this contention. Furthermore, the Commission has held that a public agency does not waive its right to claim an exemption under the FOI Act by virtue of a prior disclosure (except with regard to the attorney-client privilege). See e.g. Goshdigian v. Town of West Hartford, Docket #FIC 2005-112 (the Town’s use of information contained in public records does not waive the Town’s right to claim that such records are exempt from disclosure); General Electric Comp. v. Office of Attorney Gen., et al., Docket #FIC 1998-089 (waiver of an exemption by a public agency in one instance does not abrogate the claim of exemption in other instances); and Ryffel v. Town of Fairfield, et al., Docket #FIC 88-83 (prior disclosure of contract proposals

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<sup>2</sup> At the hearing, the complainant offered the Incident/Investigation Report and an enclosure letter, which the respondents objected to being admitted. Such was marked for identification purposes only as Complainant’s Exhibit D. However, upon further consideration by the hearing officer, such documents are hereby admitted into evidence.

does not waive or otherwise abrogate the exemption to disclosure under Conn. Gen. Stat. §1-210(b)(9)). There is also nothing in the FOI Act which precludes the respondents from offering the complainant, who was the subject of a University investigation, an opportunity to review the videos in the presence of a YUPD officer, while at the same time claiming that the record is exempt from disclosure under the FOI Act. Finally, to the extent the complainant alleges that the YUPD's policies permitting it to share the report with the University violates the complainant's constitutional rights, such alleged violations are outside the scope of the Commission's jurisdiction.

25. The complainant also argues that because some of the underlying facts in this matter are not disputed, her allegations are corroborated. For example, the complainant relies on the fact that the accused was resting in the common room and such is not disputed by the respondents. The complainant relies on the FOIC's Final Decision in Amy Caron Perkins v. Chief, Police Department, City of Norwich, et al., Docket #FIC 2019-0285 (Aug. 28, 2019). However, such reliance is misplaced. There, the accused person admitted to entering and removing items from the victim's property without permission. While the police were prepared to make an arrest, they did not because the complainant did not wish to press charges. Here, the in camera records reflect the complainant's reiteration of her uncorroborated allegations. The evidence in the record overwhelmingly supports that the complainant's allegations of criminal activity were uncorroborated because the other person did not trespass, nor did she harass the complainant as alleged.

26. The complainant also argues that the respondents' contention that the in camera records contain uncorroborated allegations is undermined by the fact that the YUPD did not destroy the records in accordance with §1-216, G.S. However, Chief Higgins credibly testified that, but for the request and pending appeal, the respondents would have destroyed the in camera records. The court has already clarified that §1-210(b)(3)(H), G.S., provides an exemption for records "subject to" destruction which "indicates a future possibility of destruction." Bona v. Freedom of Info. Comm'n, No. CV94-0123208S, 1995 WL 491386, at \*17, aff'd, 44 Conn. App. 622 (1997). The fact that the respondents had not yet destroyed the in camera records before the expiration of the ninety days does not undermine their claim that the exemption is applicable to the records at issue.

27. Next, the complainant argues that the YUPD did not respond to a report of criminal activity and therefore the exemption set forth in §1-210(b)(3)(H), G.S., is not applicable. The complainant relies, in part, on the fact that the complainant was told to call the YUPD at any time and not just to report a crime; she dialed the non-emergency dispatch number and not 911; she did not call to report a crime; and she called the police to maintain the peace. The Commission, again, is guided by the court in Bona, which addressed a similar argument. There, the complainant argued that the report requested was not compiled in connection with the investigation of a crime because of statements made by the accuser as to what action she wished the police to take. The Superior Court wrote, "the wishes of an alleged victim . . . are not controlling with respect to the actions to be taken by the police." Bona, 1995 WL at \*13, aff'd, 44 Conn. App. 622 (1997). Here, the evidence demonstrates that the YUPD treated the complainant's allegations as a report of criminal activity, regardless of the complainant's wish that the allegations not be treated as such.



28. Additionally, the complainant argues that the YUPD Incident/Investigation Report shows the respondents did not respond to a report of criminal activity and notes that the report does not identify the complainant as a victim, the other person as the accused or perpetrator, and concludes that the matter was not criminal in nature. However, it is not surprising that the Incident/Investigation Report, which documents the respondents' conclusion that the allegations were unfounded, does not identify a victim, perpetrator, or a crime. The conclusion that the YUPD reached after its investigation does not prove that the allegations which prompted the investigation at issue were not criminal in nature.

29. The complainant also argues that the underlying incident has been made publicly known, and points to a public statement by Chief Higgins in the days following the investigation. The complainant argues that if the in camera records were truly exempt from disclosure, the Chief's public statement would have been improper. However, nothing in the FOI Act precludes the respondents from making a public statement about the incident while maintaining that the records at issue are permissibly exempt from disclosure.

30. Alternatively, the complainant argues that even if it is found that the in camera records contain uncorroborated allegations of criminal activity, that such uncorroborated allegations may be redacted, and redacted copies of the in camera records should be provided to the complainant. However, the appellate court in Bona concluded that the entirety of a record containing uncorroborated allegations is exempt from disclosure. Bona, 44 Conn. App. 62 (1996). Additionally, the Commission has repeatedly concluded that the entirety of a record of an investigation of uncorroborated allegations of criminal activity is exempt from disclosure pursuant to §1-210(b)(3)(H), G.S. See, e.g., Loretta Davis and Keyonna Davis v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, et al., Docket #FIC 2013-540 (June 11, 2014) ("respondents could permissibly have withheld the entire report under §1-210(b)(3)(H), G.S."); Gerald Pinto v. Chief, Police Department, Town of Stratford; and Police Department, Town of Stratford, Docket #FIC 2013-071 (September 25, 2013) (all 21 pages of investigation were exempt from disclosure under 1-210(b)(3), G.S.); Douglas O'Meara v. Legal Affairs Unit, State of Connecticut, Department of Public Safety, Docket #FIC 2009-782 (October 27, 2010) (all records, including reports, signed witness statements, and other related documents compiled during various stages of the criminal investigation exempt under §1-210(b)(3)(G), G.S.); Karen Otto v. Chief, Police Department, Town of Greenwich, Docket #FIC 2006-049 (January 10, 2007) (all 48 pages of police report exempt from disclosure under §1-210(b)(3)(G), G.S.).

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.

/s/ Danielle L. McGee  
Attorney Danielle L. McGee  
as Hearing Officer