



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Robert Meehan

Complainant(s)

Notice of Meeting

against

Docket #FIC 2023-0007

Chief, Police Department, City of Stamford; Police Department, City of Stamford; City of Stamford; Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection

Respondent(s)

November 22, 2023

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 person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, December 13, 2023.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 December 8, 2023.** 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.**

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 December 8, 2023.** 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 December 8, 2023** 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/Linda Fasciano
Linda Fasciano
Acting Clerk of the Commission

Notice to: Robert Meehan
Attorney Burt Rosenberg
Attorney Kimberly Zigich

FIC# 2023-0007/ITRA/KWM/PSP/DLM/LIF/2023-11-22

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

Report of Hearing Officer

Robert Meehan,

Complainant

against

Docket # FIC 2023-0007

Chief, Police Department, City of Stamford;
Police Department, City of Stamford; City
of Stamford; Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

November 22, 2023

The above-captioned matter was heard as a contested case on July 13, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 December 28, 2022, the complainant requested that the Stamford respondents¹ provide him with a copy of “a Police Report ... dated November 4, 2022 between 3pm and 6pm [involving the complainant’s] 11 year old daughter who was in the custody of her mother, [M]”²
3. It is found that, by email dated December 28, 2022, the Stamford respondents requested that the complainant provide identification prior to complying with the request.
4. It is found that, by email dated January 3, 2023, the complainant objected to the Stamford respondents’ request that he provide identification prior to complying with his request.

¹ This decision will refer to the respondents from the City of Stamford as the “Stamford respondents,” and to the respondents from the Department of Emergency Services and Public Protection (“DESPP”) as the “DESPP respondents.”

² The complainant included M’s full name and date of birth in the request. However, as described in paragraph 29, below, M’s name and other personal identifying information are confidential pursuant to §54-86e, G.S. Accordingly, this decision omits M’s full name.

5. It is found that, by email dated January 4, 2023, the Stamford respondents denied the complainant's request, and further notified the complainant that they would be seeking a determination from the DESPP respondents whether the requested record should be withheld pursuant to §1-210(b)(19), G.S.

6. By email received and filed January 5, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the request described in paragraph 2, above.

7. Section 1-200(5), G.S., provides:

"[p]ublic records or files" means 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, videotaped, printed, photostated, photographed or recorded by any other method.

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

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

10. It is concluded that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that, by letter dated March 23, 2023, the DESPP respondents instructed the Stamford respondents not to disclose the record described in paragraph 2, above, to the complainant, because the Commissioner of DESPP ("Commissioner") had determined, pursuant to §1-210(b)(19), G.S., that disclosure of such record may result in a safety risk.

12. It is further found that, sometime thereafter, the complainant was provided with a redacted copy of the record at issue.

13. The complainant first claimed that the Stamford respondents violated the FOI Act by requiring him to provide identification as a condition to complying with his request.

14. As noted in paragraph 8, above, §§1-210(a) and 1-212(a), G.S., provide members of the public the right to receive copies of public records “promptly.” Section 1-210(a), G.S., further provides that “[a]ny agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.”

15. Both the Superior Court and the Commission have long interpreted §1-210(a), G.S., to prohibit public agencies from adopting policies that require requesters to provide identification or otherwise impose conditions on the right to access public records beyond what is provided for in the FOI Act. See, e.g., *Town of Avon v. FOI Commission*, 2020 WL 5102098, at *4 (Conn. Super. Aug. 6, 2020) (“requiring a signed receipt as a precondition to receiving copies of public records is an unreasonable impediment to the public’s right to public records”); *Kriete v. Angelini, Town Clerk, Town of Westbrook*, Docket #FIC 2009-547, ¶¶9-12 (May 26, 2010) (policy requiring requesters to identify themselves in visitor log as condition to inspecting public records violated §1-210(a), G.S.); *Kennedy v. Colchester Emergency Communications, Inc.*, Docket #FIC 2004-0264, ¶11 (June 8, 2005) (“it was improper for [respondents] to require the complainant to identify himself as a condition to permitting the complainant access to inspect the requested records”); *Smith v. Johnson, Manager of Personnel Services, State of Connecticut, Central Connecticut State University, et al.*, Docket #FIC 2000-400, ¶¶16-18 (Oct. 11, 2000) (requirement that complainant identify himself and state purpose of request “amounted to an illegal precondition or a ‘rule or regulation’ that conflicts with, diminishes and curtails the complainant’s right to inspect public records within the meaning of §1-210(a), G.S.”); *Zyko v. Langlois, Administrator, Liquor Control Commission, State of Connecticut, Department of Consumer Protection, et al.*, Docket #FIC 2000-318, ¶6 (Sep. 13, 2000) (“pursuant to §1-210(a), G.S., the respondents cannot require that the complainant complete the form as a precondition to providing him access to inspect records”).

16. The complainant testified that, in addition to asking him to provide identification in this case, the Stamford respondents repeatedly have denied other records requests based on the complainant’s refusal to provide identification or complete a form that asks for information about the requestor’s identification.

17. However, it is found that the other records requests described in paragraph 16, above, were not mentioned in the complaint, and therefore are not at issue in this case.

18. With respect to the request at issue in this case, it is found that, although the Stamford respondents initially requested that the complainant provide identification prior to complying with his request, the respondents ultimately did not deny the complainant’s request based on his refusal to provide identification. Rather, as described in paragraphs 5 and 11, above, it is found that the respondents denied the complainant’s request because the Commissioner determined that the requested record was exempt from disclosure pursuant to §1-210(b)(19), G.S. Accordingly, it is concluded that, under the facts and circumstances of this case, the Stamford respondents did not violate the FOI Act by requesting that the complainant provide identification.³

³ Notwithstanding the conclusion reached in paragraph 18, above, the Commission reiterates that the FOI Act does not permit public agencies to implement a blanket policy requiring members of the public to provide identification as a condition to receiving copies of public records.

19. The complainant also claimed that the respondents violated the FOI Act by refusing to provide him with a complete copy of the record described in paragraph 2, above.

20. On August 24, 2023, pursuant to the order of the hearing officer, the DESPP respondents submitted an unredacted copy of the record at issue for in camera inspection. Such record will be identified as IC-2023-0007-001 through 003.

21. Section 1-210(b)(19), G.S., provides in relevant part that disclosure is not required of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined ... by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency

22. Section 1-210(d), G.S., provides in relevant part:

Whenever a [municipal] public agency ... receives a request from any person for disclosure of any records described in [§1-210(b)(19), G.S.], the public agency shall promptly notify the ... the Commissioner of Emergency Services and Public Protection ... of such request, in the manner prescribed by such commissioner, before complying with the request as required by the [FOI] Act. If the commissioner, after consultation with the chief executive officer of the applicable agency, believes the requested record is exempt from disclosure pursuant to [§1-210(b)(19), G.S.], the commissioner may direct the agency to withhold such record from such person.

23. In *People for the Ethical Treatment of Animals, Inc. v. FOI Commission*, 321 Conn. 805, 817-19 (2016), the Court held that when the Commissioner determines that disclosure of a record would constitute a safety risk under §1-210(b)(19), G.S., the Commissioner “has broad discretion to make that determination,” and the Commission “should defer to the [Commissioner’s] assessment unless the party seeking disclosure establishes that the determination was frivolous, patently unfounded or in bad faith.” The Court further explained that in making that determination, the Commissioner may “rely on the experience and professional expertise of [DESPP] employees to make a predictive judgment,” and need not “only consider evidence of previous instances in which persons were subjected to threats or

violence as the result of similar disclosures. The statute also does not require that there must be a clear safety risk to justify nondisclosure or that the safety risk must outweigh the public interest in disclosure.” *Id.* at 818.

24. Section 54-86e, G.S., provides in relevant part:

The name and address of the victim of ... family violence, as defined in section 46b-38a and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses

25. Section 46b-38a provides in relevant part:

(1) “Family violence” means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members. Verbal abuse or argument does not constitute family violence unless there is present danger and the likelihood that physical violence will occur....

(3) “Family violence crime” means a crime ... which, in addition to its other elements, contains as an element thereof an act of family violence to a family or household member. **“Family violence crime” includes any violation of section ... 53a-223 ... or 53a-223b** when the condition of release or court order is issued for an act of family violence or a family violence crime.... (Emphasis added.)

26. The DESPP respondents presented evidence that the information redacted from IC-2023-0007-001 through 003 contained M’s name, address, and other personal identifying information, and/or information from which M’s identity reasonably could be determined. The respondents testified that the Commissioner determined that disclosure of such information may result in a safety risk to M because M is a protected person under a family violence protective order, and the complainant previously had been arrested for violating the protective order.

27. It is found that IC-2023-0007-002 lines 1-5 contain M’s name, address, and other identifying information.

28. It is found that, as of the date of the request, M was a protected person under a protective order issued pursuant to §46c-38c, G.S.⁴ It is further found that, as of the date of the request, there were charges pending against the complainant for violation of §53a-223, G.S., based on the complainant's alleged violation of such protective order.

29. Based on the foregoing, it is found that M was a "victim of ... family violence" within the meaning of §54-86e, G.S. It is therefore concluded that IC-2023-0007-002 lines 1-5 are mandatorily exempt from disclosure pursuant to §54-86e, G.S., and the Commission need not address whether such records are exempt from disclosure pursuant to §1-210(b)(19), G.S.

30. It is further found that IC-2023-0007-003 lines 6 through 9 contain information from which M's identity could be determined in conjunction with other unredacted information contained in the report. It is found that the Commissioner's determination that disclosure of records containing such information may result in a safety risk to M was not frivolous, patently unfounded, or in bad faith. It is therefore concluded that IC-2023-0007-003 lines 6 through 9 are exempt from disclosure pursuant to §1-210(b)(19), G.S.

31. Based on the foregoing, it is concluded that the respondents did not violate the FOI Act by refusing to provide the complainant with an unredacted copy of IC-2023-0007-001 through 003.

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

1. The complaint is dismissed.

/s/ Kevin W. Munn
Attorney Kevin W. Munn
as Hearing Officer

FIC# 2023-0007/HOR/KWM/PSP/112223

⁴ Section 46b-38c(d), G.S., provides in relevant part that "[i]n all cases of family violence ... [a] judge of the Superior Court may consider and impose ... a protective order pursuant to subsection (e) of this section"