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SUPERIOR COURT

DOCKET NO. HHB-CV-20-6062369 2021 SEP 21: AM 11:48 SUPERIOR COURT

SARAH BRAASCH

JUDICIAL DISTRICT OF
NEW BRITAIN JUDICIAL DISTRICT
NEW BRITAIN

VS.

ADMINISTRATIVE APPEALS

FREEDOM OF INFORMATION
COMMISSION, ET AL

SEPTEMBER 21, 2021

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is an administrative appeal from a decision of the Freedom of Information Commission (FOIC). The plaintiff seeks review of the FOIC's final decision in *Sarah Braasch v. Assistant Chief, Yale University Police Department, and Yale University Police Department*, FOIC Docket 2019-0450.

FACTS AND PROCEDURAL HISTORY:

On May 23, 2019, the plaintiff, Sarah Braasch, requested, pursuant to the Freedom of Information Act (FOIA), certain body camera video footage that the Yale Police Department (YPD) had recorded on May 8, 2018 in responding to and investigating a call placed by the plaintiff (the "Video"). On July 9, 2019, the YPD denied the plaintiff's request on the ground that the Video was "created in connection with an uncorroborated allegation of a crime." On July

Electronic notice made to all counsel of record and
to Reporter of Judicial Decisions. A. Jordanopoulos et al
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27, 2019, the plaintiff filed a complaint with the FOIC alleging that the YPD's refusal to provide the Video violated FOIA. On November 4, 2019, the FOIC held a contested hearing on the plaintiff's complaint. The hearing officer issued a report dated August 18, 2020, which was considered and adopted by the FOIC at its September 9, 2020 meeting. The FOIC's final decision found that YPD's refusal to provide the plaintiff with the Video did not violate FOIA because the Video was exempt from disclosure under FOIA by General Statutes § 1-210 (b) (3) (H). The plaintiff has now administratively appealed the final FOIC decision to this court.

The Video requested by the plaintiff consists of body camera footage taken by YPD police officers when they responded to and investigated a call by the plaintiff. The following facts are undisputed. At about 1:40 am on May 8, 2018, the plaintiff called the YPD on its nonemergency line and reported that she was a Yale student and that a stranger was sleeping in a common room of the plaintiff's residence hall. The plaintiff further reported that the stranger should not be there and that the stranger may be present in the common room to harass the plaintiff. The plaintiff had previously reported being harassed to the YPD. As a result of the plaintiff's call, the YPD dispatched several officers. Upon arrival the YPD officers activated their body cameras and began to address and investigate the plaintiff's complaint by interviewing the plaintiff and the stranger. During the plaintiff's interview, the plaintiff told the YPD officer that the stranger was harassing the plaintiff. Upon investigation, the YPD concluded that the stranger was a Yale student who had a right to be in the common room and that the stranger had not harassed the plaintiff. The YPD prepared a report of the incident which concluded that no

criminal activity had occurred. The YPD later provided their report and a copy of the Video to the Yale Dean for his use in administering any administrative discipline necessary for potential violations of Yale's policies by the plaintiff.

The plaintiff is aggrieved because she has appealed a final FOIC decision which refuses to provide the plaintiff with a copy of the YPD Video that she seeks.

STANDARD OF REVIEW:

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183.¹ Judicial review of an administrative decision in an appeal under the UAPA is limited. *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). “[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency’s findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . .

¹ Section 4-183 (j) provides in relevant part: “The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings.”

Neither [the Supreme Court] nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” (Internal quotation marks omitted.) Id.

Although the courts ordinarily afford deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute’s purposes, “[c]ases that present pure questions of law . . . invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” (Internal quotation marks omitted.) *Dept. of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

ANALYSIS:

The YPD is a free-standing police department of the State of Connecticut with the authority to enforce the law and make arrests where necessary and appropriate. Accordingly YPD is a public agency subject to the provisions of FOIA. Further, the documents created by the YPD, including body camera videos, are public records which are discoverable under FOIA unless an exception applies.

General Statutes § 1-210 (a) provides in relevant part:

“Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency . . . 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.”

General Statutes § 1-212 (a) 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.”
(Emphasis added.)

Thus, FOIA makes all records kept or maintained by any public agency public records subject to inspection or copy by members of the public unless such records are exempt by federal or state law. Accordingly, there is a presumption that all public records are open unless an exemption is found in law.

Section 1-210 (b) (3) (H) provides in relevant part:

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of: . . .

(3) Records 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

Lastly, General Statutes § 1-216 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.

Since the YPD is a public agency and since the Video is a public record, in order for the Video to be exempt from disclosure under FOIA, the following conditions must be met: (i) the Video must be a record of a law enforcement agency not otherwise available to the public, (ii) the Video must have been compiled in connection with the detection or investigation of a crime, (iii) disclosure of the Video must not be in the public interest because it would result in disclosure of uncorroborated criminal allegations, and (iv) the Video must be subject to destruction under § 1-216.

The YPD is a police department and accordingly the Video is a record of a law enforcement agency. Further no party has argued that the Video would be available to the public other than potentially through FOIA.¹

The Video was compiled by the YPD in connection with its handling and investigation of the plaintiff's call. The plaintiff called a law enforcement agency and complained that there was a stranger in her dorm residence building, who the

¹ The Video is part of the YPD's criminal investigative file in this matter.

plaintiff believed had no right to be there, and who the plaintiff believed was there for the purpose of harassing the plaintiff. Clearly in making the call, the plaintiff sought the assistance of the YPD, a law enforcement agency, to investigate her problem and remedy it. The plaintiff clearly intended for and expected the YPD to dispatch officers as a result of her call. When the officers arrived, they investigated and the plaintiff cooperated in the investigation. The plaintiff then admits to reporting to the YPD that the stranger was, in fact, harassing her. Clearly, the YPD was responding to and investigating allegations of potential criminal activity.² The FOIC factually found the foregoing and the record contains substantial evidence to support the finding. (See FOIC final decision, paragraph 20. See also the testimony of the plaintiff and the police chief at the FOIC hearing.). The fact that the plaintiff believed that she was being harassed on an ongoing basis, apparently for months prior to this incident and earlier on the evening of the incident, and had reported such to the YPD previously, further supports the foregoing conclusion.³

² The fact that the plaintiff now says that she subjectively did not intend to initiate a criminal investigation does not detract from the foregoing conclusion. Also, the fact that the plaintiff did not refer to statutes or all of the elements of the potential crimes of trespass and harassment, does not detract from the conclusion. It would be unusual for a citizen call seeking assistance from a police department to contain statutory citations and references to elements of a crime. The plaintiff essentially reported an unauthorized intruder in a locked dorm who the plaintiff believed was harassing the plaintiff. As a result, three police officers responded to the plaintiff's call.

³ The plaintiff apparently suspected that the stranger was one of the persons who were harassing the plaintiff over the previous months and earlier in the evening of the incident.

Accordingly, the FOIC found that the YPD, in creating the Video, was investigating a report of alleged criminal activity, and the record contains substantial evidence supporting the FOIC's finding in this regard.

In this context, the statute itself, by using the link "because", confirms that if disclosure of a record would reveal uncorroborated allegations of a criminal nature, then disclosure of the record would not be in the public interest. The Video contains two portions. An interview of the plaintiff and an interview of the stranger. Both portions contain allegations of a criminal nature from different points of view. The plaintiff's interview contains the allegations directly with the plaintiff complaining that the stranger is present where she should not be and that the stranger was harassing the plaintiff. The interview of the stranger contains the stranger's responses to the plaintiff's allegations. The purpose of the FOIA exception in § 1-210 (b) (3) (H) is to shield a person accused of criminal wrongdoing from unfair public scrutiny if the accusations are uncorroborated.⁴ The FOIC hearing officer factually found that the Video contains uncorroborated

⁴ The plaintiff asserts that some of the factual allegations were corroborated. However, the statutory exemption turns upon whether or not the accusations of criminal wrongdoing were corroborated. Here they were not, as found by the YPD and the FOIC. Further, it is clear that at least some of the critical factual allegations were uncorroborated, including the accusation that the stranger had no right to be in the residence hall and the accusation that the stranger was harassing the plaintiff.

allegations of a criminal nature, and the finding is supported by substantial evidence in the record. See the FOIC final decision at paragraph 21.

The Video was subject to destruction under § 1-216 because a year had passed and the investigation was closed with an affirmative conclusion that no criminal activity had occurred. The fact that the YPD ultimately concluded that there was no criminal activity does not detract from the finding that there were criminal allegations and a criminal investigation. The foregoing occurs in all cases of uncorroborated allegations. Uncorroborated allegations always start as allegations and are determined to be uncorroborated through investigation.

The plaintiff has argued that the YPD's disclosure of the Video to the Yale Dean and their refusal to similarly disclose the Video to her implicate her constitutional rights for equal protection under the law. This argument runs into several difficulties. First, the FOIC did not address this issue below because the FOIC has no authority to rule upon constitutional questions.⁵ Accordingly, in this limited administrative appeal, the court should limit itself to a review of what the FOIC actually did and/or had authority to do below. Further, the plaintiff and the Yale Dean are not similarly situated. The YPD did not provide the Video to the

⁵ The FOIC is an agency created by statute and has jurisdiction and authority only to the extent specifically granted by statute.

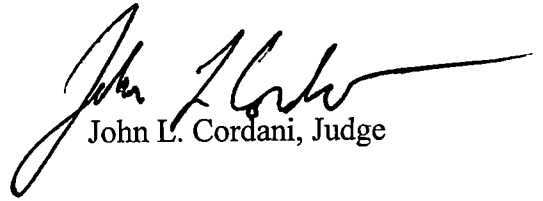
Yale Dean pursuant to a FOIA request, or pursuant to FOIA at all. The YPD provided the Video to the Yale Dean on an administrative and limited basis to address any appropriate administrative discipline. ⁶ The court notes that the plaintiff was allowed to review the Video in order to defend against any discipline proposed by the Yale Dean. The plaintiff's FOIA request in this matter is distinct from the foregoing.

In view of the foregoing the court finds that the plaintiff has failed to establish on appeal that the final FOIC decision was (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the court must respectfully affirm the final decision of the FOIC and dismiss the plaintiff's appeal.

⁶ The Family Educational Rights and Privacy Act at 12 U.S.C. §1232g places strict limits on what the Dean could do with the Video and restricted his use of the Video to legitimate educational interests, including administrative discipline.

ORDER:

The appeal is dismissed.



John L. Cordani, Judge