

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Anne Howard,

Complainant,

Docket # FIC 2019-0165

against

Chief, Police Department,
City of Stamford; Police Department,
City of Stamford; and City of Stamford,

Respondents

December 11, 2019

The above-captioned matter was heard as a contested case on June 11, 2019, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

Subsequent to the hearing in this matter, the complainant submitted an after-filed exhibit. Such exhibit has been marked, over the objection of the respondents, as Complainant's Exhibit C; Email from Paul Romanos to Anne Howard, dated May 25, 2019 (*for identification purposes only*).

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 facsimile dated February 26, 2019, the complainant requested that the respondents provide her with records regarding the Merritt Parkway murder investigation by the Stamford Police Department from 1968-1972, also known as "The Bra Murders". The complainant specified that she wanted copies of:
 - [a] any investigative reports that were filed, along with the written confessions of Ben Miller and any psychiatric evaluations or records pertaining to Ben Miller;
 - [b] any photos; and
 - [c] police interviews with persons of interest/potential suspects, and family members and acquaintances of the five victims [Gloria

Conn, Alma Henry, Donna Roberts, Rose Ellen Pazda (aka Sissie Rush), and Gail Thompson]. (February 26th request”).

Ben Miller, who is now deceased, was found not guilty by reason of insanity and subsequently exonerated in the late 1980's.

3. It is found that the respondents provided the complainant with approximately 200 pages of records responsive to her February 26th request, albeit with redactions.

4. By facsimile received on March 20, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with copies of all records responsive to the February 26th request.

5. 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.

6. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

8. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

9. At the hearing, the complainant acknowledged that the respondents provided her with records responsive to her request, but contended that there may be additional responsive records. For example, she testified that the respondents had not provided her with records concerning two of the victims (Ms. Pazda and Ms. Thompson), as well as records pertaining to the investigation of Robert Lupinacci. Mr. Lupinacci, who is now deceased, was arrested and convicted of attempting to strangle a woman in the same location as the Merritt Parkway murders. The

complainant also challenged the redactions made to the approximately 200 pages of documents already provided to her. In addition, the complainant, when questioned by respondents' counsel, agreed to narrow the scope of her February 26th request to exclude autopsy records, photographs of the victims' bodies and a funeral parlor guest register.¹

10. At the hearing, the respondents testified that they could not locate records concerning Ms. Pazda and Ms. Thompson, but offered to conduct another search. With respect to those records that were redacted or withheld, the respondents claimed that such records are exempt from disclosure pursuant to §§1-210(b)(2) and 1-210(b)(3), G.S., respectively.

11. With respect to records pertaining to the investigation of Mr. Lupinacci as described in paragraph 9, above, it is found that the complainant's February 26th request did not include a request for such records, and therefore such records will not be further addressed herein.

12. On June 21, 2019, the respondents submitted 685 pages of unredacted documents for an in camera inspection, along with an in camera index. The in camera records were divided into three categories and have been marked as IC-2019-0165-A1 through A285, IC-2019-0165-B1 through B242, and IC-2019-0165-C1 through C158.² On the in camera index, the respondents claim that the in camera records are exempt from disclosure pursuant to §§1-210(b)(2), 1-210(b)(3)(A), 1-210(b)(3)(C), 1-210(b)(3)(E), and 19a-411, G.S., respectively.

13. Based upon a careful in camera review, it is found that the following records consist of autopsy reports, photographs of the victims and a funeral book, respectively: IC-2019-0165-A114 through A115, IC-2019-0165-B36 through B38, IC-2019-0165-B45 through B51, IC-2019-0165-B79 through B82, IC-2019-0165-B84, IC-2019-0165-B190³, IC-2019-0165-B217 through B221, IC-2019-0165-B222 through B223, IC-2019-0165-C25 through C29, and IC-2019-0165-C139 through C150. In light of the fact that the complainant narrowed her request at the June 11th hearing, such records are no longer at issue in this matter, and will not be further addressed herein.

14. The general rule under the FOI Act is disclosure: exceptions to this rule must be narrowly construed; and the burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. New Haven v. FOI Comm'n, 205 Conn. 767, 775 (1988); Ottochian v. FOI Comm'n, 221 Conn. 393, 398 (1992). "This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why

¹ Subsequent to the hearing, by email received July 2, 2019, the complainant informed the hearing officer that she wanted to revise her records request to include "any and all autopsy reports, and any and all photographs relating to the investigation of the five murders...." The respondents objected to such request. The Commission hereby denies the complainant's request.

² The Commission notes that the in camera records contain several duplicates. In addition, some of the records are illegible, others are incomplete and there appear to be pages missing.

³ Although not identified by the respondents on the in camera index, based upon a careful in camera review of IC-2019-0165-B190, it is found that such record consists of a photograph of a victim.

an exemption applies to the materials requested.” Director, Retirement & Benefits Service v. FOI Commission, 256 Conn. 764, 773 (2001), citing New Haven, supra.

Section 1-210(b)(2), G.S.

15. With regard to the respondents’ claim that certain in camera records are exempt from disclosure pursuant to §1-210(b)(2), G.S., that statute provides that disclosure is not required of “[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.”

16. The Supreme Court set forth the test for the §1-210(b)(2), G.S., exemption in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993). Under the Perkins test, the claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, *and* second, that the disclosure of such information is highly offensive to a reasonable person.

17. The determination of whether a file is a personnel, medical or similar file requires a functional review of the documents at issue. In Connecticut Alcohol and Drug Abuse Comm’n et. al., v. Freedom of Information Comm’n et. al., 233 Conn. 28, 41 (1995), the Supreme Court expounded on the threshold test for the exemption contained in §1-210(b)(2), G.S:

Just as a ‘medical’ file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual, a ‘personnel’ file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. If a document or file contains material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is ‘similar’ to a personnel file. Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered ‘similar’ to a personnel file for the purposes of §1-210(b)(2).

18. In State of Connecticut, Department of Public Safety v. Freedom of Information, et. al., Superior Court, Docket No. HHB-CV-08-4018164-S, Judicial District of New Britain (March 3, 2009, Schuman, J.), the court ruled that medical information contained in a police report investigating a suicide is not a “medical file” within the meaning of §1-210(b)(2), G.S:

While these pages do contain some medical and prescription information about a third party, the obvious function of that

information is not to contribute to making a medical decision regarding the third party, but rather to explain the decedent's source of a means to commit suicide. Stated differently, it is apparent from reading the entire six pages that the third party, rather than providing information to a health care professional to assist in medical treatment, rendered the medical information to the police in order to assist in their investigation. The department can establish only that the file contains medical "information" but not that the file is a "medical file" under the prevailing definition. Accordingly, the commission reasonably concluded that the six pages do not constitute a medical file and therefore are not exempt from disclosure under the act.

19. Further, the Supreme Court, in Perkins, supra, construed the term "invasion of personal privacy" according to its common-law meaning and adopted the definition for invasion of privacy set forth in 3 Restatement (Second) Torts. Section §652I of the Restatement provides, in relevant part, that a claim "...for invasion of privacy can be maintained only by a living individual whose privacy is invaded." The commentary accompanying §652I provides that in the absence of statute, an action for invasion of privacy cannot be maintained after the death of the individual. See also Docket #FIC 2007-123; Jessica Crowley, et. al. v. Commissioner, State of Connecticut, Department of Public Health (August 8, 2007); Docket #FIC 1999-019; David K. Jaffe v. State of Connecticut, Connecticut Lottery Corporation, et. al. (April 28, 1999) (Disclosure of deceased employee's personnel files would not be an invasion of privacy because privacy rights terminate at death.)

20. Based upon a careful review of IC-2019-0165-A9 through A14 and IC-2019-0165-A29 through A34, which are publically identified on the in camera index as "Alma Henry – Medical File", it is found that such records constitute medical files within the meaning of §1-210(b)(2), G.S. It is further found, however, that the respondents failed to prove that IC-2019-0165-A9 through A14 and IC-2019-0165-A29 through A34 do not pertain to legitimate matters of public concern, and that disclosure of such records is highly offensive to a reasonable person. Accordingly, it is found that the respondents failed to prove that the disclosure of such records would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

21. Based upon a careful review of IC-2019-0165-A52, it is found that such record constitutes a personnel or similar file within the meaning of §1-210(b)(2), G.S. It is further found, however, that the respondents failed to prove that IC-2019-0165-A52 does not pertain to a legitimate matter of public concern, and that disclosure of such record is highly offensive to a reasonable person. Accordingly, it is found that the respondents failed to prove that the disclosure of IC-2019-0165-A52 would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

22. Based upon a careful in camera review, it is found that the following records do not constitute personnel, medical or similar files, within the meaning of §1-210(b)(2), G.S.: IC-2019-0165-A26 through A28, IC-2019-0165-A81, IC-2019-0165-A82, IC-2019-0165-A96, IC-2019-0165-A118 through A119, IC-2019-0165-A129, IC-2019-0165-A142, IC-2019-0165-

A155, IC-2019-0165-A159 through A164, IC-2019-0165-A165 through A168, IC-2019-0165-A169, IC-2019-0165-A172 through A177, IC-2019-0165-A178 through A182, IC-2019-0165-A183 through A189, IC-2019-0165-A193, IC-2019-0165-A201 (lines 34-42), IC-2019-0165-A267, IC-2019-0165-A270, IC-2019-0165-A271 through A273, IC-2019-0165-A278, IC-2019-0165-A281, IC-2019-0165-B172 through B178, IC-2019-0165-B179 through B183, IC-2019-0165-C51, IC-2019-0165-C67, IC-2019-0165-C68 through C73, IC-2019-0165-C87 through C88, IC-2019-0165-C106 through C107, IC-2019-0165-C112, IC-2019-0165-C113, IC-2019-0165-C131, IC-2019-0165-C132, IC-2019-0165-C134, and IC-2019-0165-C155 through C156B. It is therefore concluded that such records are not exempt from disclosure by virtue of §1-210(b)(2), G.S.

Section 1-210(b)(3), G.S.

23. With regard to the respondents' claims that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3), G.S., such statute permits the non-disclosure of:

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 said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known...(C) signed statements of witnesses... [and]...(E) investigatory techniques not otherwise known to the general public....

24. On the in camera index, the respondents claim that the following records contain "informant identities," within the meaning of §1-210(b)(3)(A), G.S.: IC-2019-0165-A108, IC-2019-0165-A132, IC-2019-0165-B202 and IC-2019-0165-B203 through B204.

25. Based upon a careful review of the in camera records described in paragraph 24, above, it is found that such records were compiled in connection with the detection or investigation of crime. It is found, however, that the respondents failed to prove that the disclosure of such records would result in the disclosure of the identities of informants not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identities were made known. It is therefore concluded that IC-2019-0165-A108, IC-2019-0165-A132, IC-2019-0165-B202 and IC-2019-0165-B203 through B204, are not exempt from disclosure pursuant to §1-210(b)(3)(A), G.S.

26. On the in camera index, the respondents claim that the following records contain "investigative techniques" which are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.: IC-2019-0165-A130, IC-2019-0165-A134 and IC-2019-0165-B238.

27. Based upon a careful review of IC-2019-0165-A130, IC-2019-0165-A134 and IC-2019-

0165-B238, it is found that such records were compiled in connection with the detection or investigation of crime. It is also found that IC-2019-0165-A130, IC-2019-0165-A134 and IC-2019-0165-B238 do not reveal any systematic procedures or methodologies used by a law enforcement agency in its observation, examination or inquiries into crime that are not known to the public. It is concluded that such records do not contain “investigatory techniques not otherwise known to the general public,” and therefore are not exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

28. On the in camera index, the respondents claim that the following records contain signed witness statements, within the meaning of §1-210(b)(3)(C), G.S.: IC-2019-0165-A6, IC-2019-0165-A24 through A25, IC-2019-0165-A43 through A44, IC-2019-0165-A100, IC-2019-0165-A123 through A124, IC-2019-0165-A190 through A191, IC-2019-0165-A192, IC-2019-0165-A238, IC-2019-0165-B8, IC-2019-0165-B9 through B10, IC-2019-0165-B57 through B59, IC-2019-0165-B66 through B69, IC-2019-0165-B72 through B73, IC-2019-0165-B77, IC-2019-0165-B88 through B91, IC-2019-0165-B93 through B94, IC-2019-0165-B122, IC-2019-0165-B130 through B131, IC-2019-0165-B139, IC-2019-0165-B148 through B151, IC-2019-0165-B163 through B164, IC-2019-0165-B168 through B169, IC-2019-0165-B191 through B192, IC-2019-0165-B198 through B200, IC-2019-0165-B213 through B214, IC-2019-0165-B215 through B216, IC-2019-0165-B234, IC-2019-0165-B235 through B236, IC-2019-0165-B240 through B241, IC-2019-0165-C18 through C19, IC-2019-0165-C30⁴, IC-2019-0165-C44, IC-2019-0165-C55 through C56, IC-2019-0165-C58 through C59, IC-2019-0165-C64, IC-2019-0165-C99, IC-2019-0165-C100, IC-2019-0165-C101, IC-2019-0165-C102, IC-2019-0165-C103, IC-2019-0165-C114, IC-2019-0165-C115, IC-2019-0165-C116 through C117, IC-2019-0165-C125 through C126, IC-2019-0165-C133, IC-2019-0165-C157 and IC-2019-0165-C158.

29. Based upon a careful review of the in camera records described in paragraph 28, above, it is found that such records consist of signed statements of witnesses, which were compiled in connection with the detection or investigation of a crime, and therefore are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

30. The respondents also claim that IC-2019-0165-B104 consists of a signed witness statement within the meaning of §1-210(b)(3)(C), G.S. It is found, however, that such witness statement is not signed, and therefore not exempt from disclosure pursuant §1-210(b)(3)(C), G.S.

31. It is concluded that, except for the in camera records described in paragraph 28, above, the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding records from the complainant.

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

1. If the respondents have not already done so, they shall, within 30 days of the notice of

⁴ Although the respondents did not claim that IC-2019-0165-C30 is exempt from disclosure, it is found, based upon a careful in camera review that such record consists of a signed witness statement within the meaning of §1-210(b)(3)(C), G.S.

final decision in this matter, undertake an additional search for the records described in paragraph 10 of the findings, above. If the respondents discover additional records that they have not provided to the complainant, they shall provide copies of such records to the complainant, free of charge. If the respondents do not locate any additional records, they shall notify the complainant in writing of the results of their search.

2. The respondents shall forthwith provide copies of the in camera records to the complainant, free of charge.

3. In complying with paragraph 2 of this order, the respondents may withhold the in camera records identified as exempt from disclosure in paragraph 28 of the findings, above.

4. Henceforth, the respondents shall strictly comply with the disclosure provisions in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 11, 2019.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

ANNE HOWARD, 385 West Hill Road, New Hartford, CT 06057

CHIEF, POLICE DEPARTMENT, CITY OF STAMFORD; POLICE DEPARTMENT, CITY OF STAMFORD; AND CITY OF STAMFORD, c/o Attorney Burt Rosenberg, PO Box 10152, Stamford, CT 06901



Cynthia A. Cannata
Acting Clerk of the Commission