

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Christopher Shuckra,

Complainant

Docket # FIC 2018-0752

against

Eric Osanitsch, Chief, Police Department,
Town of Windsor Locks; Police
Department, Town of Windsor Locks;
and Town of Windsor Locks,

Respondents

November 13, 2019

The above-captioned matter was heard as a contested case on May 24, 2019, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On the hearing officer's own motion, the hearing was reopened for the purpose of taking additional evidence. Such reopened hearing was held on September 17, 2019, at which time the complainant appeared and presented additional testimony and argument on the complaint.¹ Counsel for the respondents also appeared and presented additional exhibits and argument. The respondents did not bring a witness to the September 17th hearing.²

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 letter dated November 26, 2018, the complainant requested from the respondents copies of the following:

¹ The Commission notes that, at the time of the filing of his complaint with the Commission, the complainant was incarcerated, and that, at the time of the May 24th and September 17th hearings, he was no longer incarcerated.

² On July 25, 2019, the hearing officer ordered the respondents to produce a witness at the reopened hearing to provide testimony regarding the applicability of certain claimed exemptions to the records at issue.

[a] all Windsor Locks Police Department Police Incident reports documenting the arrest of any party/person on the property at the Motel 6, 10 International Drive in Windsor Locks, Connecticut between January 1, 2016 and present day.

[b] any and all emails received from any G6 Hospitality, LLC, employee sent to the Chief of Police of the Windsor Locks Police Department (or other command level staff or sworn employee of the Windsor Locks Police Department) relative to the sharing of Motel 6 guest registration lists with law enforcement agencies (that may likely be an email or emails sent in September, 2017 or October, 2017.)

[c] any standing complaints in force concerning the Motel 6 location at 10 International Drive in Windsor Locks, Connecticut. [Emphasis in original]. (“November 26th request”).

3. It is found that by letter dated December 18, 2018, the respondents acknowledged the complainant’s November 26th request.

4. By letter of complaint received on December 28, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his November 26th request. The complainant also requested the imposition of civil penalties.³

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.

³ The complainant did not pursue such request at either of the two hearings, and acknowledged as much in a letter to the hearing officer, dated October 7, 2019. Accordingly, such request will not be further addressed herein.

7. 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.”

8. It is found that on or about May 20, 2018, the respondents provided the complainant with redacted copies of incident reports responsive to his November 26th request.

9. It is found that the respondents provided the complainant with all records responsive to his November 26th request, albeit with redactions.

10. On June 10, 2019, pursuant to an order of the hearing officer, the respondents submitted unredacted copies of the records at issue for an in camera inspection, along with an in camera Index.⁴ The respondents divided the in camera records into three categories: Records 1 through 4 (cases still pending); Records 5 through 8 (matters resulted in conviction); and Records 9 through 12 (records subject to erasure).

11. With respect to in camera Records 5 through 8, the respondents are no longer claiming that such records, or portions thereof, are exempt from disclosure. On the in camera Index, the respondents concede that certain information in such records, respectively, should not have been redacted (e.g., identity of the person arrested, identity of victim, identity of complaining party, identity of witness).⁵ It is found that the respondents failed to prove that in camera Records 5 through 8, or portions thereof, are exempt from disclosure. It is therefore concluded that the respondents violated the FOI Act by withholding such records from the complainant.

12. With respect to in camera Records 1 through 4, the respondents claim that certain information contained therein is exempt from disclosure pursuant to §1-215(a), G.S. On the in camera Index, they describe such information as: “complaining party information”; “complainant identity”; “date of birth” and “phone number” of person arrested; “witness information”; “phone number of Motel 6”; “identity of victims”; and identity of “additional party interviewed”.

13. Section 1-215, G.S., provides:

- (a) For the purposes of this section, "record of the arrest" means
- (1) the name, race and address of the person arrested, the date,

⁴ By letter dated June 7, 2019, the respondents informed the hearing officer that the in camera submission also included redacted copies of the in camera records, as well as certain documents obtained by the respondents’ counsel from the judicial website. A copy of such letter has been marked as Respondents’ Exhibit 3 (after-filed).

⁵ In addition, subsequent to the reopened hearing in this matter, the respondents provided the Commission with a copy of a letter, dated September 26, 2019, from the respondents to the complainant, stating that enclosed were unredacted copies of reports for those individuals whose arrests resulted in a conviction. A copy of the September 26th letter has been marked as Respondents’ Exhibit 5 (after-filed).

time and place of the arrest and the offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (3) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity

to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.

14. During a pending criminal prosecution, a law enforcement agency's disclosure obligations under the FOI Act are governed exclusively by §1-215, G.S. See Commissioner of Public Safety v. Freedom of Information Commission, et. al., 312 Conn. 513 (2014).

15. In addition, the language used in §1-215(b), G.S. – specifically, “[n]otwithstanding any provision of the general statutes, and except as otherwise provided in this section” – evidences that a public agency's ability to redact the “record of the arrest,” as defined by §1-215(a), G.S., is limited and strictly set forth in §1-215(b)(1) through (3), G.S.⁶ See Docket #FIC 2018-0515; James Torlai v. Joseph McNeil, Police Department, Town of Stratford; Police Department, Town of Stratford, and Town of Stratford (August 14, 2019).

16. It is found that in camera Records 1 through 4 consist of incident reports concerning pending criminal matters.

17. It is found that in camera Records 1 through 4 fall within the definition of “record of the arrest” set forth in §1-215(a), G.S., and therefore must be disclosed “from the time of such arrest,” pursuant to §1-215(b), G.S.

18. It is found that in camera Record 1 (lines 30-32) contains the identities of witnesses within the meaning of §1-215(a), G.S. It is found that such information falls within the narrowly defined categories of permissible redactions set forth in §1-215(b), G.S. Accordingly, it is concluded that the respondents did not violate the FOI Act when they withheld such witness information from the complainant.

19. With respect to the remaining information contained in Records 1 through 4 which the respondents claim is exempt from disclosure pursuant to §1-215(a), G.S., it is found that such information does not fall within any of the narrowly defined categories of permissible

⁶ During the 2019 legislative session, the Connecticut General Assembly passed Senate Bill 1105 (Public Act 19-43), *An Act Concerning the Confidentiality of Law Enforcement Records Concerning Victims of Sexual Assault and Family Violence*, effective October 1, 2019, which amended §1-215(b), G.S., to permit a public agency to redact from the “record of the arrest” the following information: “the name, address or other identifying information of any victim of sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof...”

redactions set forth in §1-215(b), G.S. Accordingly, it is concluded that the respondents violated the FOI Act when they withheld such information from the complainant.

20. With respect to in camera Record 3 (line 25) and Records 9 through 12, the respondents claim that such records have been erased pursuant to §54-142a, et. seq., and therefore may not be disclosed.

21. Section 54-142a, G.S., provides, in relevant part:

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect....

(c)(1) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolle entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased.

(2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be nolle upon motion of the arrested person and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolle cases....

(e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.....

(3) Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath....

(g) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any information or indictment containing more than one count (1) while the criminal case is pending, or (2) when the criminal case is disposed of unless and until all counts are entitled to erasure in accordance with the provisions of this section, except that when the criminal case is disposed of, electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section. Nothing in this section shall require the erasure of any information contained in the registry of protective orders established pursuant to section 51-5c. For the purposes of this subsection, "electronic record" means any police or court record or the record of any state's attorney or prosecuting attorney that is an electronic record, as defined in section 1-267, or a computer printout.

22. Section 54-142c, G.S., further provides, in relevant part, as follows:

(a) The Clerk of the Court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter.

23. For purposes of §54-142c, G.S., a “criminal justice agency” is defined as including “any...government agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice.”

24. It is found that the respondent police department is a criminal justice agency, within the meaning of §54-142c, G.S.

25. At the hearings, the respondents did not offer any evidence with respect to the applicability of §54-142a, et. seq., to in camera Record 3 (line 25) and Records 9 through 12. At the September 17th reopened hearing, the hearing officer ordered the respondents to submit an affidavit to the Commission, attesting as to whether such records are erased and how such determination was made. On September 27, 2019, the respondents filed an affidavit with the Commission.

26. In his affidavit, Windsor Locks Police Chief Eric Osanitsch attested as follows:

3. I am familiar with the manner in which records are kept by the Department.

4. Upon the arrest of any person in Windsor Locks the matter is referred to the Office of the State’s Attorney for prosecution.

5. Once a matter is disposed of by the State’s Attorney, whether by conviction, diversionary program, Nolle or dismissal the judicial department notifies the Police Department of the disposition of the matter. That information is then entered into our records system.

6. The Department is able to view up to date offender information based upon information provided by the judicial department.

7. I have reviewed the information of several persons arrested by the Department as follows:

a. Incident Date 1/30/18

Kurt M. All charges Nulled with erasure date of April 21, 2020 (referred to as item 9 in all previous correspondence).

b. Incident Date 6/18/16

Christopher L. All charges Nulled with erasure date of November 5, 2017 (referred to as item 10 in all previous correspondence).

c. Incident date 10/23/17

Younging Z. All charges Nulled with erasure date of May 20, 2018 (referred to as item 11 in all previous correspondence).

d. Incident Date 9/5/17

Amelia F. All charges removed except Defendant convicted of Forgery 1st Degree on May 1, 2018 (referred to as item 12 in all previous correspondence).

8. This information was provided to the Department as is customary in all such cases.⁷

27. With respect to in camera Record 3 (line 25), it is found that the respondents failed to provide any evidence as to whether such record is erased within the meaning of §54-142a, G.S. Accordingly, it is concluded that the respondents violated the FOI Act when they withheld such information from the complainant.

28. With respect to in camera Record 12, it is found that the respondents failed to prove that such record is erased within the meaning of §54-142a, G.S. Accordingly, it is concluded that the respondents violated the FOI Act when they withheld such information from the complainant.

29. With respect to in camera Record 9, it is found, based upon the evidence contained in the respondents' affidavit, that such record has yet to be erased within the meaning of §54-142a, G.S. Accordingly, it is concluded that the respondents violated the FOI Act when they withheld such record from the complainant.

30. With respect to in camera Records 10 and 11, it is found, based upon the evidence contained in the respondents' affidavit, that such records were erased within the meaning of §54-142a, G.S. Accordingly, it is concluded that in camera Records 10 and 11 are exempt from disclosure pursuant to §54-142a, G.S., and that the respondents did not violate the FOI Act when they withheld such records from the complainant.

⁷ Chief Osanitsch's affidavit, dated September 27, 2019, has been marked as Respondents' Exhibit 6 (after-filed). In addition, the Commission notes that Items 9, 10, 11 and 12, which are referenced in the affidavit, correspond to in camera Records 9, 10, 11 and 12, respectively.

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

1. The respondents shall forthwith provide the complainant with unredacted copies of the records described in paragraphs 11, 19, 25, 26 and 27 of the findings, above, free of charge.
2. 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 November 13, 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:

CHRISTOPHER SHUCKRA, P.O. Box 340025, Hartford, CT 06134-0025

ERIC OSANITSCH, CHIEF, POLICE DEPARTMENT, TOWN OF WINDSOR LOCKS; POLICE DEPARTMENT, TOWN OF WINDSOR LOCKS; AND TOWN OF WINDSOR LOCKS, c/o Attorney Carl T. Landolina, 487 Spring Street, Windsor Locks, CT 06096



Cynthia A. Cannata
Acting Clerk of the Commission