

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Mark Daricek,

Complainant

against

Docket # FIC 2019-0228

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and
Public Protection,

Respondents

October 23, 2019

The above-captioned matter was heard as a contested case hearing on June 18, 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, on or about January 11, 2019, the complainant made an in-person request for records to the respondents. It is further found that, by email dated January 11, 2019, the complainant renewed his request for the following records:

IA complaints made and filed on 2/8/18 against [M]ajor Davis, LT Cooke,
and Sgt Devine;

[R]eport by Detective Kendrick assigned to him 10/3/18;

IA investigation by LT Loughman filed 11/13/17 sent to me on 2/19/18;

IA complaint against [S]gt Davine received 11/26/17;

IA complaint against Colonel Battle filed 9/3/18.

3. It is found that by email dated January 11, 2019, the respondents acknowledged the complainant's request and notified him that it was forwarded to the Internal Affairs department.

4. It is found that by email dated March 25, 2019, the complainant renewed his request to the respondents for records by forwarding his January 11, 2019 email and writing, in relevant part, "I am most specifically looking for all information by the major crime squads re-investigation of my case. That should include any recordings made during interviews."

5. By email filed April 17, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act. The complainant forwarded with his appeal to the Commission the January 11 and March 25, 2019 email communications to the respondents, writing that he had not heard from the respondents in response to his March 25, 2019 email.

6. Section 1-200(5), G.S., defines "public records or files" as follows:

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, ...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:

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 records requested by the complainant, to the extent they are maintained, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that, by email dated May 8, 2019, the complainant contacted the respondents again, seeking confirmation that the respondents continued to work on his request. It is found that, by emails dated May 13 and May 16, 2019, the respondents communicated with the complainant that responsive records were under review and provided an expected timeline for disclosure of the records.

11. It is found that, on or about May 20, 2019, the respondents provided the complainant with records responsive to his request. It is further found that the respondents notified the complainant that certain records were redacted pursuant to §1-210(b)(3)(A), G.S., §1-210(b)(3)(B); and §1-210(b)(3)(C), G.S..

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

Nothing in the Freedom of Information Act shall be construed to require disclosure 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 (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, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a 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, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216;

13. At the hearing, the complainant testified that he filed complaints with the State Police alleging misconduct. He further testified that he was dissatisfied with the outcome of the State Police internal affairs investigations following the complaints, and filed FOI Act requests to obtain records about the investigations.

14. The complainant further testified that, while he received “quite a bit of records” from the respondents, he did not receive an audio recording of an interview he believed existed between an individual named Robert Dahm and State Police Trooper Kendrick.

15. At the hearing, the respondents contended that they do not maintain any audio recording of an interview involving Mr. Dahm.

16. Attorney Alison Rau of the respondents’ Legal Affairs Unit testified about the respondents’ interpretation of the complainant’s request, and the scope of the search. The respondents understood that the complainant sought records pertaining to internal affairs

investigations and that, therefore, it was appropriate to send the request to the Internal Affairs Unit to conduct a search for responsive records. It is found that the respondents' understanding of the complainant's FOI request was reasonable.

17. Attorney Rau testified that she received from the Internal Affairs Unit several records, including two compact discs containing audio recordings, but that no audio recording was provided containing an interview with Mr. Dahm. Attorney Rau further testified that, based upon her review of the records and communication with Trooper Kendrick, she confirmed that no audio recording of Mr. Dahm's interview exists.

18. It is found that the respondents do not maintain any record responsive to the complainant's request for an audio recording of an interview between Mr. Dahm and Trooper Kendrick.

19. Upon hearing the testimony of Attorney Rau during the respondents' case in chief, the complainant stated his objection to the respondents' redactions to the signed witness statements, as referred to in the May 20, 2019 letter to the complainant. In response, the respondents maintained their claimed exemption pursuant to §1-210(b)(3)(C), G.S.

20. On July 17, 2019, the hearing officer issued an Order to Submit Records for In Camera Inspection, ordering the respondents to produce to the Commission unredacted copies of the signed witness statements as referred to in the respondents' May 20, 2019 letter to the complainant.

21. The in camera records have been marked by the Commission and are hereinafter identified as IC-2019-0228-01-10¹. On the in camera index, the respondents claim that the in camera records are signed witness statements exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

22. On August 26, 2019, the hearing officer ordered the respondents to provide the Commission with a copy of the records referenced in the respondents' May 20, 2019 letter to the complainant, and an affidavit from an individual with the requisite knowledge to answer questions about the signed witness statements. The records have been marked as respondents' after filed exhibits 3 and 4.

23. Upon careful review of the in camera records and other evidence, it is found that the in camera records are signed witness statements compiled in connection with the respondents' criminal investigation into allegations of a disturbance, which resulted in an arrest. It is further found that the respondents later considered the aforementioned signed witness statements as part of internal affairs investigations that were prompted by the complainant's allegations of misconduct.

24. It is found that the in camera records are records of a law enforcement agency that are not otherwise available to the public which records were compiled in connection with the

¹ The Commission notes that while respondents produced 10 pages of in camera records, IC-2019-0228-06 through IC-2019-0228-10 are duplicate of IC-2019-0228-01 through IC-2019-0228-01-05.

detection or investigation of crime. It is further found that the disclosure of said records would not be in the public interest because it would result in the disclosure of signed statements of witnesses.

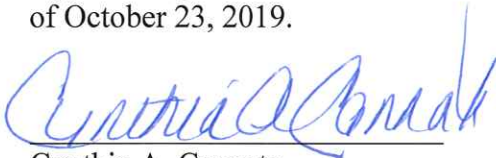
25. Consequently, the in camera records are permissibly exempt from mandatory disclosure pursuant to §1-210(b)(3)(C), G.S.

26. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 23, 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:

MARK DARICEK, 74R Dunn Hill Road, Durham, CT 06422

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o
Attorney Jay DonFrancisco, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission