

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Torlai,

Complainant

against

Docket #FIC 2018-0587

James P. Wardwell, Chief, Police
Department, City of New Britain; Police
Department, City of New Britain; and
City of New Britain,

Respondents

September 25, 2019

The above-captioned matter was heard as a contested case on September 5, 2019 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 letter dated September 29, 2018, the complainant requested that the respondents provide him with a copy of the following records related to the July 3, 2018 arrest of Jacob Boucher:
 - a. Mr. Boucher's full name;
 - b. His address;
 - c. His race;
 - d. The date, time and place of the arrest;
 - e. A list of all charges;
 - f. If the arrest was made by warrant, a copy of the arrest warrant application and any related documents such as an affidavit in support of such warrant; and
 - g. A copy of the official arrest, incident or similar report.

3. It is found that, by email dated October 5, 2018, the respondents acknowledged the request, but indicated that they needed an additional week to determine how to handle their response because they had determined that the criminal court case had been sealed by the court. It is found that, by letter dated October 16, 2018, the respondents informed the complainant that, because the court file concerning Mr. Boucher had been sealed when Mr. Boucher applied for accelerated rehabilitation, his request was denied.

5. By letter dated October 17, 2019 and filed October 19, 2019, the complainant appealed to the Commission and alleged that the respondents violated the FOI Act by failing to provide him with a copy of the records described in paragraph 2, above.

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

“Public 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, printed, photostated, photographed or recorded by any other method.

7. 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.

8. 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.”

9. It is found that the requested records, as described in paragraph 2, above, are maintained or kept on file by the respondents and are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. 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, 312 Conn. 513 (2014).

11. Section 1-215, G.S., provides, in relevant part, as follows:

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

....

- (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.

12. It is found that the requested records are part of the “record of the arrest” within the meaning of §1-215(a), G.S.

13. It is found that, under cover of letter dated August 19, 2019, the respondents provided the complainant with Mr. Boucher’s full name, address, date of arrest, place of arrest, a list of charges, and a summary of the circumstances that led to his arrest.

14. It is further found that, at the September 5, 2019 contested case hearing, the respondents provided the complainant with Mr. Boucher’s race. It is found that the respondents had intended to include Mr. Boucher’s race and the time of his arrest in the August 19th letter, but inadvertently left these two pieces of information out of the letter. It is found that, at the hearing, counsel for the respondents did not know the time of Mr. Boucher’s arrest, but agreed to provide it to the complainant after the hearing.

15. The complainant contended that the respondents’ disclosure failed to meet the minimum requirements of §1-215(a), G.S., of the FOI Act because the respondents failed to disclose the arrest warrant application and the affidavit in support of such warrant. In addition, the complainant contended that the respondents’ disclosure of records thus far had not been prompt.

16. It is found that Mr. Boucher was arrested by way of a warrant.

17. It is found that, as of the date of the request in this matter, the underlying criminal court case was pending, but had been sealed by the court on or around July 10, 2018, upon Mr. Boucher’s application for accelerated rehabilitation pursuant to §54-56e(a), G.S.

18. Section 54-56e(a), G.S., provides, in relevant part that, “[t]here shall be a pretrial program for accelerated rehabilitation. . . [u]pon application by any such person for participation in the program, the court shall, but only as to the public, order the court file sealed.”

19. It is found that the sealed court file in the pending criminal matter includes the arrest warrant application and the affidavit in support of such warrant. It is found that, pursuant to the provisions §1-215(b)(3), G.S. (judicial sealing provides statutory basis to withhold arrest records), the respondents were not required to disclose these two records to the complainant.

20. Accordingly, it is concluded that the respondents did not violate the FOI Act, when they declined to disclose the arrest warrant and the application in support of such warrant to the complainant.

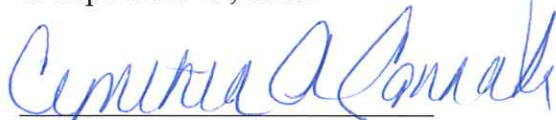
21. With regard to promptness, the Commission has previously opined that the word "promptly" in §1-210(a), G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

22. The respondents conceded at the hearing that they had not disclosed the records to the complainant in a prompt manner. Accordingly, it is concluded that the respondents violated the FOI Act in this regard.

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

1. Henceforth the respondents shall strictly comply with the promptness requirements of §§1-210(a) and 1-212(a), G.S.
2. If the respondents have not already done so, they shall forthwith provide the complainant with the time of Mr. Boucher's arrest.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 25, 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:

JAMES TORLAI, 127 Barton Street, Torrington, CT 06790

JAMES P. WARDWELL, CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN; POLICE DEPARTMENT, CITY OF NEW BRITAIN; AND CITY OF NEW BRITAIN, c/o Attorney Joseph E. Skelly, Jr., Corporation Counsel, 27 West Main Street, New Britain, CT 06051



Cynthia A. Cannata
Acting Clerk of the Commission