

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Luis Salaman,

Complainant

against

Docket # FIC 2019-0115

Anthony Campbell, Chief, Police
Department, City of New Haven; Police
Department, City of New Haven; and City
of New Haven,

Respondents

February 13, 2020

The above-captioned matter was heard as a contested case on June 10, 2019, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, et. al., Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 February 1, 2019, the complainant made a request to the respondents for the following:
 - (a) "I'm requesting from police report #16-019869 on 4/22/2016
 - i. a full copy of any and all police radio transmissions calls pertaining to the incident on 4/22/2016 on case #16-019869 made by officer(s) Joseph Galvan (298), G. Monk (143), James Murcko (381), Staffieri J. (326), Sean Maher (755), Marcum J. (92), Lugs J. (67), Lyew A. (78), Ortiz, R. (420), Luis Lopez (397) (I-80)

- ii. a full copy of any and all audio logs and transmittal logs showing time and date of each and every police transmission calls that were made pertaining to the incident on 4-22-2016 on case #16-019869 made [by] any and all N.H.P.D. officer(s) having to do with this case #16-019869
 - iii. a full copy of any and all radio transmissions calls requesting for (AMR) and New Haven Fire Dept. that were made pertaining to the incident on 4-22-2016 on case #16-019869
 - iv. a full copy of any and all N.H.P.D. radio codes showing the meaning of each code.
- (b) I'm requesting from police case #16-019869 on 4/22/2016
- i. a full copy of any and all traffic camera footage for accident reconstruction investigations that may have been stored by Sargent [sic] Rose Dell pertaining to the incident on 4-22-2016 on police case #16-019869
 - ii. a full copy of any and all investigational notes, reports having to do with the accident reconstruction investigation that was done by Sargent [sic] Rose Dell pertaining to the incident on 4-22-2016 on police case #16-019869
 - iii. a full copy of any and all request or e-mails that were made to Sargent [sic] Rose Dell and other members of the N.H.P.D. requesting copies of traffic camera footage to be preserved for the prosecuting authority Lisa D'Angelo and Nichol Peco pertaining to the incident on 4-22-2016 on police case #16-019869."
 - iv. a full copy of any and all traffic camera footage for accident reconstruction investigations logs and maintenance transmittal form showing times and dates of traffic camera footage when it was viewed, copied and or deleted from its system from said dates 4-22-2016 through 5-6-2016 pertaining to police case #16-019869
 - v. I'm requesting a full copy of the N.H.P.D. traffic camera footage for accident reconstruction and other investigations systems users manual showing how the whole system works, how the database, databank, data processing works for said system and its hard drive info
 - vi. a full copy of any and all N.H.P.D. and city of New Haven Conn. Dept. policy and policies or city ordinance on the utilization of these said traffic camera footage for accident reconstruction investigations are to be used and handled by the N.H.P.D.
- (c) I'm requesting for a full copy of officer James Murcko (381) on police case police case #16-019869 from 4/22/2016 (a) a full copy of his workmen's compensation application pertaining to the incident on 4-22-2016 on case #16-019869.
- (d) I'm requesting a full copy of any and all photos of the damages to car #52, reports of any and all repairs that were done to car #52 pertaining to the incident on 4-22-

2016 on police case #16-019869

- (e) I'm requesting a full copy of any and all N.H.P.D. policies on report writing by its officers, police pursuits by its officers and the preservation of evidence
- (f) I'm requesting a full copy of any and all internal affair files on the following named officers for the N.H.P.D. of complaints that may have been filed both by civilians and or N.H.P.D. officials from the time they all started on the N.H.P.D. [until] now: Joseph Galvan (298), G. Monk (143), James Murcko (381), Staffieri J. (326), Sargent Sean Maher (755), Officer Zerella, Luis Lopez (397) (I-80)
- (g) I'm requesting for a full copy of the whole file on internal affairs file #02-16-c with any and all its attachments."

3. By letter of complaint dated February 15, 2019, the complainant appealed to the Commission, alleging that the respondents violated the FOI Act by failing to provide him with records responsive to his February 1, 2019 request. The complainant seeks for the Commission to impose civil penalties against the respondents, specifically Lieutenant Rose Dell and the respondents' custodian of records.

4. 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.

5. 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.

6. 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."

7. It is found that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. At the hearing, the complainant contended that the respondents failed to respond to his July 2018 FOI request for records and he renewed that request as part of his February 1, 2019 request. The complainant further contended that, as of the date of his complaint to the Commission, the respondents failed to provide him with any records responsive to the February 1, 2019 request.

9. At the hearing, respondents' counsel appeared and represented to the hearing officer that no witnesses were available for the hearing, but that counsel was prepared to proceed with presenting evidence on behalf of the respondents. Counsel contended that the respondents delivered responsive records to the Department of Correction, but the complainant refused to accept the records. As an alternative, respondents' counsel forwarded the responsive records to the complainant's attorney, who agreed to accept the records. Respondents' counsel further represented that the respondents withheld one record responsive to paragraph 2.c., above, pursuant to §1-210(b)(2), G.S.

10. On July 3, 2019, respondents' counsel submitted to the hearing officer the record identified in paragraph 2.c., above, for an in camera inspection. The in camera record has been marked and is hereinafter identified as IC-2019-0115-1 through IC-2019-0115-3.

11. Despite respondents' counsel representation that the entire record was exempt from disclosure pursuant to §1-210(b)(2), G.S., the Index to Records Submitted For In Camera Inspection sets forth the following description of information claimed as exempt and corresponding exemptions:

- (a) IC-2019-0115-1 (lines 11, 12): home address of municipal police officer – exempt pursuant to §1-217(a)(2), G.S.;
- (b) IC-2019-0115-1 (line 15): category of on the job injury suffered by employee – exempt pursuant to §1-210(b)(2), G.S.;
- (c) IC-2019-0115-1 (line 18, 19, 20): description of on the job injury suffered by employee – exempt pursuant to §1-210(b)(2), G.S.; and
- (d) IC-2019-0115-2 (line 8): description of initial medical treatment – exempt pursuant to §1-210(b)(2), G.S.

The respondents did not claim any exemption for information contained in IC-2019-0115-3.

12. On August 2, 2019, the hearing officer issued an order to the respondents to submit additional evidence in the form of affidavits from Lt. Rose Dell, Lt. David Zannelli, and Tim Hatch, each of whom were specifically identified by respondents' counsel at the June 10, 2019 hearing as having knowledge of the February 1, 2019 FOI request, and notified the respondents that additional affidavits may be submitted in accordance with §1-21j-38 of the Regulations of Connecticut State Agencies.

13. On October 11, 2019, the respondents provided the following affidavits, which have been marked as Respondents' After Filed Exhibit 7: Affidavit of Lt. Zannelli; Respondents' After Filed Exhibit 8: Affidavit of Tim Hatch; Respondents' After Filed Exhibit 9: Affidavit of Lt. Maturo; and Respondents' After Filed Exhibit 10: Affidavit of Lt. Dell.

14. It is found that on or about April 29 and 30, 2019, the respondents delivered to the Department of Correction records¹ responsive to the complainant's request, with the exception of the in camera record. It is further found that the Department of Correction attempted delivery of the records to the complainant, but the complainant twice refused to accept the records.

15. The complainant testified that he refused to accept the records because the respondents did not provide the records with any enclosure or cover letter identifying the records contained therein. The complainant further contended that he refused to accept the records because he believed that by doing so he would be required to withdraw his appeal to the Commission before knowing whether the respondents fully complied with his February 1, 2019 request.

16. It is found that the Department of Correction notified the respondents that the complainant refused to accept the records. It is further found that on or about June 7, 2019, the respondents forwarded the records responsive to the February 1, 2019 FOI request to the complainant's attorney, who agreed to accept the records on behalf of the complainant. At the hearing, the complainant disputed that he authorized the respondents to send any records (other than those contained on the compact discs) to his attorney.

17. With respect to the records delivered to the Department of Correction and refused by the complainant, it is found that the respondents complied with the FOI Act when they provided the responsive records to the Department of Correction. Nothing in the FOI Act requires the respondents to create a record, even one identifying the contents of a packet of responsive records. Furthermore, the complainant presented no evidence to demonstrate that the provision of records by the respondents was contingent upon the complainant's withdrawal of his complaint in this matter, and counsel to the respondents denied this allegation.

18. With regard to the in camera record, §1-210(b)(2) provides, in relevant part:

Nothing in the Freedom of Information Act shall be construed to require disclosure of . . . [p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy

19. "When a claim for exemption is based upon §1-210(b)(2), G.S., the person claiming the exemption must meet a twofold burden of proof. First, the person claiming the exemption must establish that the files are personnel, medical or similar files . . . Second, the person

¹ Amongst the records provided to the Department of Correction were two compact discs. The Department of Correction withheld the compact discs, claiming a safety and security risk. The complainant had no objection to the Department withholding the compact discs, and he provided the Department of Correction with contact information to forward the compact discs to his attorney.

claiming the exemption under §1-210(b)(2) must also prove that the disclosure of the files would constitute an invasion of personal privacy.” Rocque v. Freedom of Info. Comm’n, 255 Conn. 651, 661 (2001); see Connecticut Alcohol & Drug Abuse Commission v. Freedom of Info. Comm’n, 233 Conn. 28 (1995) and Perkins v. Freedom of Information Comm’n, 228 Conn. 158 (1993). 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 disclosure of such information would be highly offensive to a reasonable person.

20. Based upon a careful inspection of the in camera record, it is found that the in camera record is a personnel, medical or similar file.

21. However, the respondents failed to prove that the information contained in IC-2019-0115-1 at lines 15, 18, 19, 20, and IC-2019-0115-2 at line 8 do not pertain to legitimate matters of public concern, as required by §1-210(b)(2), G.S.

22. The respondents also failed to prove that disclosure of the information contained in IC-2019-0115-1 at lines 15, 18, 19, 20, and IC-2019-0115-2 at line 8 would be highly offensive to a reasonable person, as required by §1-210(b)(2), G.S.

23. It is concluded that the respondents failed to prove that disclosure of the information contained in IC-2019-0115-1 at lines 15, 18, 19, 20, and IC-2019-0115-2 at line 8 would constitute an invasion of personal privacy.

24. With respect to the home address of a municipal police officer, §1-217, G.S., provides, in relevant part:

- (a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency . . . (2) [a] sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Energy and Environmental Protection . . .

25. It is found that the in camera record constitutes a personnel, medical or similar file within the meaning of §1-217(a)(2), G.S., and further that it contains the residential address of a municipal police officer. Consequently, it is concluded that §1-217(a)(2), G.S., provides a basis to withhold the information redacted in lines 11 and 12 of IC-2019-0115-1.

26. It is concluded that the respondents violated the FOI Act by withholding the in camera record and the information contained in IC-2019-0115-1 lines 15, 18, 19, 20 and IC-2019-0115-2 line 8; the respondents did not violate the FOI Act by not disclosing the residential

address of a municipal police officer.

27. With regard to the imposition of a civil penalty, §1-206(b)(2) provides, in relevant part:

[U]pon the finding that a denial of any right created by the [FOI] Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

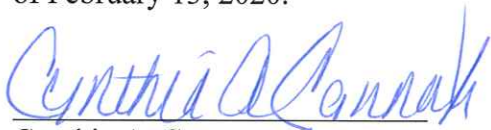
28. The record does not support a finding that any particular individual was directly responsible for denying the complainant a copy of the in camera record. The Commission, in its discretion, declines to issue a civil penalty.

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

1. Forthwith, the respondents shall provide to the complainant, free of charge, a copy of the in camera record. The respondents may, consistent with the finding in paragraph 25, above, redact the residential address of the municipal officer.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of February 13, 2020.



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:

LUIS SALAMAN, #262626, MacDougall-Walker Correctional Center, 1153 East Street South, Suffield, CT 06080

ANTHONY CAMPBELL, CHIEF, POLICE DEPARTMENT, CITY OF NEW HAVEN; CITY OF NEW HAVEN; AND POLICE DEPARTMENT, CITY OF NEW HAVEN, c/o Attorney Catherine E. LaMarr, Office of Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission