

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Charles Wright,

Complainant

against

Docket #FIC 2019-0141

Chief, Police Department,
Town of Hamden; Police Department,
Town of Hamden; Director, Public Library,
Town of Hamden; Public Library,
Town of Hamden; and Town of Hamden

Respondents

February 26, 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. At the contested case hearing in this matter, the parties agreed that the case caption should be corrected to reflect the accurate respondents. Such correction is set forth above.

A Report of Hearing Officer was issued on December 5, 2019. The Commission considered such report at its regular meeting of January 8, 2020. At such time, the Commission remanded the matter to the hearing officer for further consideration. By order of the Commission, the hearing officer conducted a remanded hearing on February 5, 2020 regarding the existence of security camera footage at issue in this matter, as well as any claimed exemptions.

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 e-mail dated February 18, 2019, the complainant made a request to the respondents for a copy of (1) public library security camera footage and (2) police body camera footage, each pertaining to an incident that occurred on September 5, 2018 in which the complainant's daughter was alleged to have been assaulted by a juvenile in a bathroom at the public library.
3. It is found that, by letter dated February 25, 2019, the police department respondents, through counsel, notified the complainant that they maintained the requested records, but denied

the complainant's request for records, claiming that the records are "confidential and/or erased juvenile record(s)" pursuant to §§46b-124 and 46b-133a, G.S., and that the records are also permissibly exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

4. By email dated and filed March 8, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request, as described in paragraph 2, above.

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

"[p]ublic 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.

6. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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 . . . (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 "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. At the June 10, 2019 hearing in this matter, the complainant withdrew his request for a copy of the police body camera video. Therefore, the only issue pending before the Commission is whether the respondents violated the FOI Act by withholding the public library security camera footage (hereinafter "the requested record").

9. It is found that the police department respondents maintain a copy of the requested record; accordingly, it is concluded that such record is a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

10. On January 23, 2020, the Commission issued an Order to Show Cause for the remanded hearing, which notified the parties that the hearing officer "...has been designated hearing officer for the purpose of this appeal and will hold a remanded hearing regarding the existence of security camera footage at issue in this matter, as well as any claimed exemptions, at the following date, time and place...." Nevertheless, at the remanded hearing

conducted on February 5, 2020, the respondents declined to present a witness or evidence to prove whether the public library respondents also maintain a copy of the requested record. Consequently, the Commission draws a negative inference from this failure to offer evidence. It is found that the public library respondents also maintain a copy of the requested record.

11. At the hearings in this matter, the respondents claimed that the requested records are exempt from disclosure pursuant to §§46b-124 and 46b-124a, G.S.; §§46b-133a and 46b-146, G.S.; and §1-210(b)(3)(F), G.S. The respondents further represented that the reference in the February 25, 2019 letter, described in paragraph 3, above, to “§1-210(b)(3)(E)” was in error and that they intended to claim the exemption at §1-210(b)(3)(F), G.S. The respondents further contended that each of these statutory provisions precludes both the police department and the public library from providing the complainant with a copy of the requested record.

12. Immediately following the February 5, 2020 hearing, the police department respondents submitted a copy of the requested record to the Commission for an in-camera inspection, which copy has been identified as IC-2019-0141-1.

13. Section 1-210(b)(3), G.S., provides, in relevant part, that disclosure is not required 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 ... (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes....

14. It is found that the requested record maintained by the public library respondents is not a record of a law enforcement agency, within the meaning of §1-210(b)(3), G.S. Accordingly, such exemption does not provide a basis for the public library respondents to withhold such record from the complainant.

15. With respect to the police department respondents, it is found that the requested record is a record of a law enforcement agency not otherwise available to the public. It is also found that, at the time of the complainant’s request, an arrest had been made, and that the arrestee was a juvenile. It is therefore found that the requested record constitutes an arrest record of a juvenile, which includes investigatory files concerning the arrest of a juvenile.

16. With respect to whether the requested record was “compiled in connection with the detection or investigation of crime,” the Superior Court has held that the statute “...by its express terms, refers to the purpose for which the records were originally “compiled,” not the purpose for which they were subsequently used by law enforcement agencies...” Chief of Police, Town of Windham v. Freedom of Information Commission, CV-99-0497252S (January 12, 2001); Chief of Police, Town of Windham v. Freedom of Information Commission, 68 Conn. App. 488 (2002)

(appeal of decision dismissed as moot on other grounds). The respondents failed to prove that the requested record, a library security recording, was originally compiled in the connection with the detection or investigation of crime, within the meaning of §1-210(b)(3), G.S. Accordingly, it is concluded that §1-210(b)(3), G.S., does not provide a basis for the police department respondents to withhold the requested record from the complainant.

17. Next, the respondents contend that §46b-124, G.S., entitled “Confidentiality of records of juvenile matters” provides a basis to withhold the requested record. Such statute provides, in relevant part:

- (a) “records of cases of juvenile matters” includes, but is not limited to, court records, records regarding juveniles maintained by the Court Support Services Division, records regarding juveniles maintained by an organization or agency that has contracted with the Judicial Branch to provide services to juveniles, records of law enforcement agencies including fingerprints, photographs and physical descriptions, and medical, psychological, psychiatric and social welfare studies and reports by juvenile probation officers, public or private institutions, social agencies and clinics.
- (b) All records of cases of juvenile matters, as provided in section 46b-121, except delinquency proceedings, or any part thereof . . . shall be confidential and for the use of the court in juvenile matters, and open to inspection or disclosure to any third party, including bona fide researchers commissioned by a state agency, only upon order of the Superior Court . . .

18. Section 46b-124a provides, in relevant part

- (a) Notwithstanding any provision of the general statutes concerning the confidentiality of records of cases of juvenile matters, as defined in section 46b-124, whether in a matter designated by the court for a nonjudicial disposition pursuant to section 46b-128 or otherwise, any victim of a delinquent act committed by a child shall, without a court order, have access to:
 - (1) The name and address of the child; (2) the name and address of the child's parents or guardian; (3) any charges pending against the child at the time that the victim requests such information that relate to such delinquent act; (4) information pertaining to the disposition of the matter that relates to such delinquent act; and (5) any order entered by the court pertaining to the victim, including, but not limited to, any order of no contact between the child and the victim. Any information received by a victim of a delinquent act pursuant to this subsection may be utilized by the victim in a subsequent civil action for damages related to an act of delinquency committed by

the child, but such information shall not be further disclosed except as specifically authorized by an order of the court. For the purposes of this section "victim" means a person who is the victim of a delinquent act, the legal representative of such person, a parent or guardian of such person, if such person is a minor, or a victim advocate for such person under section 54-220.

(b) Records of cases of juvenile matters, as defined in subsection (a) of section 46b-124, other than those enumerated in subsection (a) of this section, including, but not limited to, police reports, arrest warrants, search warrants and any affidavits associated with such warrants that involve the victim may be disclosed to the victim upon order of the court for good cause shown. Information disclosed to the victim pursuant to this subsection shall not be further disclosed, except as specifically authorized by an order of the court.

19. It is found that the requested record maintained by the public library respondents is not a record of a case of a juvenile matter, within the meaning of §§46b-124 and 46b-124a, G.S. Rather, it is found that the requested record maintained by the public library respondents is routine security camera footage. Accordingly, it is concluded that such statutes do not provide a basis for the public library respondents to withhold such record from the complainant.

20. The plain language of §§46b-124 and 46b-124a, G.S., requires confidentiality of records of cases of juvenile court matters. Police department records are only included if they are part of "records of cases of juvenile matters." See Glastonbury Police Dept. v. Freedom of Info. Comm'n, No. CV 970570076, 1998 WL 161238, at *3, 21 Conn. L. Rptr. 498 (March 25, 1998). The respondents failed to prove that the requested record maintained by the police department respondents was made part of a juvenile court case record. Accordingly, it is concluded that §§46b-124 and 46b-124a, G.S., do not provide a basis for the respondents to withhold the requested record from the complainant.

21. The respondents also contend that §46b-133a, G.S., provides a basis to withhold the requested records. It provides, in relevant part, "(b) Whenever a nolle prosequi has been entered as to any count of delinquency, or whenever any count of delinquency has been dismissed without prejudice, if at least thirteen months have elapsed since such nolle or dismissal without prejudice, all police and court records pertaining to such count shall be erased . . ."

22. By its terms, §46b-133a, G.S., applies to police and court records. Accordingly, it is concluded that such statute does not provide a basis for the public library respondents to withhold such record from the complainant.

23. The police department respondents failed to prove that a nolle prosequi has been entered with respect to the arrest described in paragraph 15, above, or that a count of delinquency has been dismissed without prejudice at least thirteen months beforehand. Accordingly, it is concluded that §46b-133a, G.S., does not provide the police department respondents with a basis to withhold the requested record.

24. Section 46b-146, G.S., which is entitled "Erasure of police and court records" provides, in relevant part:

Whenever any child has been convicted as delinquent, has been adjudicated a member of a family with service needs or has signed a statement of responsibility admitting to having committed a delinquent act, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to whom the child has been committed by the court, such child, or the child's parent or guardian, may file a petition with the Superior Court [and if the court makes certain findings] the court shall order all police and court records pertaining to such child to be erased. Upon the entry of such an erasure order, all references including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency or that the child was a member of a family with service needs shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it is in the best interests of such child to do so. . . . Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency or family with service needs proceedings affecting such child. Whenever a child is dismissed as not delinquent or as not being a member of a family with service needs, all police and court records pertaining to such charge shall be ordered erased immediately, without the filing of a petition. Nothing in this section shall prohibit the court from granting a petition to erase a child's records on a showing of good cause, after a hearing, before the time when such records could be erased.

25. By its terms, §46b-146, G.S., applies to police and court records. Accordingly, it is concluded that such statute does not provide a basis for the public library respondents to withhold such record from the complainant.

26. It is concluded that the public library respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with a copy of the requested record.

27. With respect to the police department respondents, it is found that they investigated the September 5, 2018 incident which occurred at the respondent public library. It is further found that on or about October 3, 2018, the respondent police department secured a copy of the requested record on a flash drive, and placed it into evidence as part of its investigation.

28. It is found that the respondent police department received from the juvenile court an Order of Erasure, indicating that the juvenile court matter had been disposed of on December 20, 2018, and that the Court Order was signed by the court May 31, 2019. It is further found that the Order of Erasure was set forth on Form JD-JM-12 Rev. 10-15. The Commission takes administrative notice that such judicial branch form instructs Court staff to send a copy of any signed order to “all depositories of police and court records . . .” and also sets forth that, by order of the Court “all police and court records pertaining to such charge(s) are erased.”

29. Therefore, it is found that, at the time of the complainant’s February 18, 2019 request, the court had not yet entered an order of erasure. Consequently, it is found that the records were not erased pursuant to statute at the time of the request. It is concluded that §46b-146, G.S., did not provide the police department respondents with a basis to withhold the requested record at the time of denial. Therefore, it is concluded that the police department respondents violated §§1-210(a) and 1-212(a), G.S., by denying the complainant a copy of the requested record at the time of denial.

30. However, by the time of the contested case hearings on June 10, 2019 and February 18, 2020, the requested record maintained by the police department respondents, was statutorily erased. The Commission declines to order disclosure by the police department respondents of an erased record.

31. On brief, the complainant contended that respondent police department’s seizure of a public record from the public library is a violation of his rights under the FOI Act and the U.S. Constitution. The complainant further contended that his First Amendment rights should supersede the alleged perpetrator’s right to anonymity. However, the Commission will not address the complainant’s Constitutional claims, in light of the findings, above. Additionally, the complainant contended that he should have been able to question the respondents’ counsel at the hearings in this matter. However, the record establishes that the Town Attorney acted in her capacity as counsel to the respondents with respect to the respondents’ position that the requested record is exempt from disclosure, and in defending the respondents at the contested case hearings in this matter. Furthermore, the complainant could have retained counsel to subpoena the Town Attorney to appear and testify, but did not do so.

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

1. The public library respondents shall forthwith provide the complainant with a copy of the requested record, free of charge.

2. In the alternative, if the public library respondents do not maintain a copy of the requested record, within fifteen days of the issuance of the Notice of Final Decision in this matter, they shall so inform the complainant and the Commission through affidavit by a person employed by the Hamden Public Library competent to attest to the underlying facts establishing the date and circumstances of the destruction of such record.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 26, 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:

CHARLES WRIGHT, 1719 Litchfield Turnpike, Woodbridge, CT 06525

CHIEF, POLICE DEPARTMENT, TOWN OF HAMDEN; POLICE DEPARTMENT, TOWN OF HAMDEN; DIRECTOR, PUBLIC LIBRARY, TOWN OF HAMDEN; PUBLIC LIBRARY, TOWN OF HAMDEN; AND TOWN OF HAMDEN, c/o Attorney Susan Gruen, Town of Hamden, 2750 Dixwell Avenue, Hamden, CT 06518



Cynthia A. Cannata
Acting Clerk of the Commission