

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Matthew Olson,

Complainant

against

Docket #FIC 2019-0480

Director of 911 Communications,
Police Department, City of Stamford;
Police Department, City of Stamford,
and City of Stamford,

Respondents

February 26, 2020

The above-captioned matter was heard as a contested case on December 16, 2019, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2019-0531, Matthew Olson v. Office of Legal Affairs, City of Stamford; and City of Stamford.

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 July 24, 2019, the complainant requested from the respondents the opportunity to inspect or obtain copies of records of “all communications between Stamford Police and individual[s] who made complaints about a Toyota Sienna parked on Mohawk Trail near Mill Road on or about July 24, 2019.”
3. By email dated August 7, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by denying the request, described in paragraph 2, above.
4. 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.

5. 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 inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 1-212.

6. 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.”

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

8. It is found that the respondents provided the requested records to the complainant on November 6, 2019, and that such records were redacted. At the hearing in this matter, the complainant argued that the redactions were improper, and that the redacted records were not provided to him promptly.

9. It is found that the requested records pertain to a July 24, 2019 phone call to the city’s emergency communications system by a city resident who complained about “an abandoned car” on his or her street (“caller”). It is found that the Stamford police were dispatched to investigate the complaint. In the course of the investigation, the police determined that the car was registered to the complainant. According to the complainant, the car had been parked on the street “due to emergency septic repairs under [his] driveway.”

10. It is found that the complainant was very upset both with the caller, and with the Stamford police officer who came to his house to speak with him during the investigation of the complaint. It is found that, subsequent to July 24, the complainant spoke with the respondent director on the phone, emailed him several times, and in the phone call and emails, expressed his anger toward the caller, indicated his belief that he knew the caller’s identity, and stated that he was going to take legal action against her. The respondent director testified at the hearing in this matter that the complainant’s remarks seemed threatening and retaliatory.

11. It is also found that, sometime after July 24, the complainant filed an internal affairs complaint against the Stamford police officer who investigated the caller’s complaint. It is found that the complainant sent several emails to the Stamford police lieutenant in charge of the internal affairs division (the “lieutenant”), the mayor, the police chief, and the president of the city’s Board of Representatives, and in those emails accused the officer of trespassing, argued

that the officer should be arrested, and accused the caller of abusing the emergency communications system. He also claimed that the police discriminated against him because of his ethnicity. The lieutenant testified at the hearing in this matter that the tone of the emails was angry, argumentative and accusatory, and that he felt that the complainant's conduct was "highly unusual."

12. At the hearing in this matter, the complainant admitted that he was angry and that some of his anger stemmed from an earlier incident in which he claimed that the Stamford police failed to investigate an earlier incident in which his son and a friend were robbed.

13. It is found that the records at issue consist of: the transcript of the July 24 call to the emergency communications system, the transcript of the calls between the police and dispatch (CAD notes), and an incident detail report. It is found that the caller's name, phone number and other identifying information was redacted from the records.

14. It is found that, in consultation with the city's attorney, the decision was made to redact the information, described in paragraph 13, based on the complainant's conduct, as described in paragraphs 10 and 11, and the belief that the caller would be subject to threat or intimidation by the complainant if the caller's identify was made known.

15. At the hearing in this matter, the respondents claimed that the redactions were permitted pursuant to §1-210(b)(3)(A), G.S., which states:

[n]othing 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 were compiled in connection with the detection or investigation of crime, if disclosure of such records would not be in the public interest because it would result in the disclosure of [] 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.... (Emphasis added).

16. The complainant argued at the hearing that the claimed exemption does not permit the redactions in this case because the records containing such information were not compiled in connection with the detection or investigation of *crime*.

17. The respondents did not dispute that abandonment of a vehicle for longer than 24 hours is an infraction, punishable by a fine of not less than \$85.00, and not a crime. See §14-150(a), G.S. The respondents argued that the exemption applies, however, because the call was routed to the police department, the police were dispatched to investigate the complaint, and, although the matter turned out not to be criminal in nature, at the time of the call, the matter was potentially criminal.

18. However, it is found that the records at issue were not compiled in connection with the detection or investigation of crime, and that therefore, the respondents improperly relied on §1-210(b)(3)(A), G.S., in redacting the records.

19. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) or 1-212(a), G.S., by redacting from the responsive records the name and other identifying information of the caller.

20. With respect to the timeliness of the respondents' compliance, the meaning of the word "promptly" is a fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority.

21. The advisory opinion describes some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

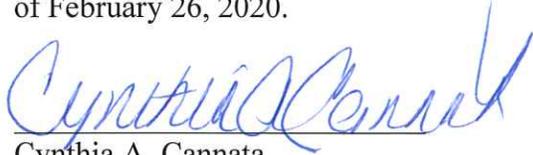
22. It is found that the respondent director forwarded the recording of the caller's complaint and the incident detail report to the city's attorney for review on July 26, 2019, two days after the complainant's request for such records. It is found that the records were important to the complainant and that the volume of records was minimal. No evidence was offered in this case regarding why it took the city's attorney more than three months to review and provide the requested records to the complainant. However, it is found that the respondent director had an obligation to follow up on the request with the city attorney's office to determine whether or not the request had been fulfilled. Therefore, it is found that the respondents violated the promptness provisions in §§1-210(a) and 1-212(a), G.S.

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 an unredacted copy of the records, described in paragraph 13, above, free of charge.

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

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:

MATTHEW OLSON, 73 Mill Road, Stamford, CT 06903

DIRECTOR OF 911 COMMUNICATIONS, POLICE DEPARTMENT, CITY OF STAMFORD; POLICE DEPARTMENT, CITY OF STAMFORD; AND CITY OF STAMFORD, c/o Burt Rosenberg, Esq., Office of Legal Affairs, 888 Washington Blvd., P.O. Box 10152, Stamford, CT 06904-2150



Cynthia A. Cannata
Acting Clerk of the Commission