

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Charles Cornelius,

Complainant,

against

Docket # FIC 2019-0270

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection, Division of Emergency
Management and Homeland Security; State
of Connecticut, Department of Emergency
Services and Public Protection, Division of
Emergency Management and Homeland
Security; Commissioner, State of
Connecticut, Department of Administrative
Services; and State of Connecticut,
Department of Administrative Services,

Respondents

January 8, 2020

The above-captioned matter was heard as a contested case on September 16, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Pursuant to §1-210(d), G.S., the following parties were named as additional respondents: Commissioner, State of Connecticut, Department of Administrative Services; and State of Connecticut, Department of Administrative Services.

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)(A), G.S.
2. By letter filed May 8, 2019, the complainant appealed to this Commission, alleging that the respondent Department of Emergency Services and Public Protection, Division of Emergency Management and Homeland Security (“DEMHS”) violated the Freedom of Information (“FOI”) Act by failing to comply with his March 18, 2019 records request, described in paragraph 3, below.
3. It is found that, by letter dated March 18, 2019, the complainant requested that DEMHS provide him with:

an opportunity to inspect or obtain copies of public records that show the names of all the schools that have received funding under the School Security Competitive Grant Program (SSCGP) along with the dollar amount that each school was given during each fiscal year, or 'Round', since the program was started.

("March 18th request"). The SSCGP was established by the General Assembly in 2013 to reimburse towns for certain expenses incurred in the development or improvement of school security infrastructure (e.g., installing surveillance cameras, ballistic glass, double door access, scan cards systems, panic alarms, training of school personnel).¹

4. It is found that, by letter dated April 17, 2019, DEMHS provided the complainant with a chart listing the locations of funded school facilities by town for all current rounds of the SSCGP funding as well as the funding provided to each town. DEMHS informed the complainant that they do not release the specific names of individual schools pursuant to §1-210(b)(19), G.S. According to DEMHS, "[t]his provides protection for the schools and the security improvements they have made to address and mitigate potential security gaps within their facilities."

5. It is found that, by letter dated June 20, 2019, DEMHS requested a safety risk determination from the respondent Commissioner, Department of Administrative Services ("DAS"), pursuant to §§1-210(b)(19) and 1-210(d), G.S., concerning the disclosure of the names of individual schools that receive funding under the SSCGP. In the June 20th letter, DEMHS explained that:

[w]e believe the public disclosure of the names of the individual schools would compromise the safety and security of the faculty and students attending those schools. The purpose of this grant program is to reimburse schools for equipment installation or other improvement projects used to improve the security of the school facilities. Schools must therefore identify gaps in school security, emergency preparedness and/or response planning to qualify to receive reimbursement under the grant. Given the number of casualty events at public schools throughout the country, which is increasing annually, the release of any information regarding gaps in a school's security measures exposes the faculty and students in that school to danger.... We believe the disclosure of a perceived weakness in a school's security presents a serious safety threat to the students and faculty in that facility.

6. It is found that DAS reviewed DEMHS' request for a safety risk determination, as described in paragraph 5, above, consulted with DEMHS and considered whether reasonable grounds exist to exempt the requested information. It is found that, by letter dated July 31, 2019, DAS informed DEMHS that "the public disclosure of information about a school's security weaknesses would pose a serious safety threat to the students and faculty in that facility. Such

¹ See Public Act 13-3, *An Act Concerning Gun Violence Prevention and Children's Safety*.

information would allow persons with criminal intent to target schools with gaps in their security protocol. This information presents a risk to public safety in general and to these school communities in particular.” In its July 31st letter, DAS noted that the “[s]chools applying for these grants have identified gaps in their emergency preparedness and response planning, including needs such as lighting, physical barriers, cameras, communications equipment and the like.” DAS directed DEMHS to withhold any responsive records containing information regarding the names of the schools that have received funding under the SSCGP as well as any school that has applied for such funds.

7. Section 1-200(5), G.S., defines “public records” as follows:

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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. 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, ... or (3) receive a copy of such records in accordance with section 1-212.

9. 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.”

10. It is concluded 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.

11. The complainant alleges that the respondents improperly withheld the names of the individual schools. DAS and DEMHS contended, however, that the withheld information is exempt from disclosure pursuant to §1-210(b)(19), G.S.

12. Section 1-210(b)(19), G.S., permits a public agency to withhold from disclosure the following:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records

shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency.... Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel; and
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official.

13. In addition, section 1-210(d), G.S., provides:

Whenever a public agency...receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying

with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person...

14. Further, the Connecticut Supreme Court has held that §1-210(b)(19), G.S., requires deference to DAS' assessment "unless the party seeking disclosure establishes that the determination was frivolous, patently unfounded or in bad faith." People for the Ethical Treatment of Animals, Inc. v. Freedom of Information Commission, et al., 321 Conn. 805, 819 (2016).

15. At the hearing, the complainant argued that his March 18th request was for "financial information", and noted subsection (iii) of §1-210(b)(19), G.S., which permissively exempts from disclosure of the cost and quality of certain security systems. In addition, the complainant argued that the notion that the release of the requested information poses a safety and security risk is "ridiculous" given that the SSCGP has been around for several years and enough time has lapsed to allow schools receiving funding to identify and close any security gaps.

16. At the hearing, the respondents maintained that the disclosure of the names of the individual schools could create a risk of harm to the school communities, and offered, among other evidence, the testimony of Raymond Philbrick, the Statewide Director of Security and Safety Management at DAS, and affidavit of Brenda Bergeron, a Principal Attorney at DEMHS. The respondents highlighted that the schools applying for funding under the SSCGP must provide security assessment information and identify shortcomings in their security programs that they are seeking to mitigate through such funding. They contended that the disclosure of the requested information could allow someone with criminal intent to target schools knowing that those schools had or currently have security lapses such that they require assistance from the state in the form of additional funding to improve the overall security apparatus of the school facilities.

17. It is found that DAS' determination that the disclosure would create a safety risk was not frivolous or patently unfounded and was arrived at in good faith.

18. It is found that the Commissioner of DAS has reasonable grounds to believe that disclosure of the requested information may result in a safety risk, within the meaning of §1-210(b)(19), G.S.

19. It is concluded, therefore, that the respondents did not violate the FOI Act by withholding the names of the individual schools.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 8, 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 CORNELIUS, 851 Forest Road, New Haven, CT 06515

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, DIVISION OF EMERGENCY MANAGEMENT AND HOMELAND SECURITY; STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, DIVISION OF EMERGENCY MANAGEMENT AND HOMELAND SECURITY, c/o Attorney Cynthia Isales, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457; **COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES**, c/o Attorney Michael Barrera, Department of Administrative Services, 450 Columbus Avenue, Suite 1501, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission