

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Torlai,

Complainant

against

Docket #FIC 2019-0264

Chief, Police Department, Town of
New Milford; Police Department,
Town of New Milford; and Town
of New Milford,

Respondents

July 8, 2020

The above-captioned matter was heard as a contested case on March 5, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. By motion dated March 6, 2020, and filed March 10, 2020, the complainant moved to add three exhibits to the administrative record. The respondents have not filed an objection to such motion. The Commission accepts one proffered record, a one-page copy of two CDS with labels, as complainant's after-filed Exhibit F. Section 1-21j-38, Regulations of Connecticut State Agencies. The complainant's other proffered exhibits, a two-page letter from the respondents to the Commission's ombudsman in this matter, dated May 30, 2019, and a one-page letter from the respondents to the Commission's ombudsman in this matter, dated June 24, 2019, shall be marked for identification purposes only as complainant's Exhibits G and H, respectively. Correspondence between the parties and the ombudsman are not regularly permitted into evidence, pursuant to §1-21j-29(d), Regulations of Connecticut State Agencies.

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 25, 2019, the complainant requested from the respondents information related to the arrests of a specified individual on September 14, 2018, and September 15, 2018, including: name of arrestee; address; race; date, time and place of arrests; all charges; if the arrests were by warrant, the warrant applications; if the arrests were without warrants, the official arrest, incident, or similar reports; and if a judicial authority has ordered the affidavits or reports sealed, any portions of the affidavits or reports that have not

been sealed and a report setting forth the circumstances that led to the arrests which would not violate the court order.

3. It is found that the respondents received the request, described in paragraph 2, above, on March 4, 2019. It is further found that, by letter dated March 15, 2019, the respondents acknowledged such request and informed the complainant that the records had been compiled in response to his request, and that the cost to the complainant for copies would be twelve dollars.

4. It is found that the complainant paid the respondents twelve dollars, under cover letter dated March 30, 2019, and that the respondents provided the complainant with responsive records, with redactions, on April 9, 2019. It is further found that such redactions related to a report of family violence.

5. It is found that, by letter dated April 16, 2019, the complainant wrote to the respondents, and stated that he believed some of the redactions described in paragraph 4, above, were improper. The complainant included a copy of §1-215, G.S., with his letter. It is found that, thereafter, the complainant received no further word from the respondents until after the filing of the complaint in this matter.

6. By complaint filed with the Commission on May 6, 2019, the complainant appealed to the Commission and alleged that the respondents violated the FOI Act by improperly redacting records, as described in paragraph 4, above.

7. 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.

8. 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.

9. 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.”

10. It is found that the requested records, as described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. It is found that, in November 2019 and February 2020, the respondents provided the complainant with all responsive records at issue in this matter. At the hearing on this matter, the complainant testified that he was satisfied with such records more lately provided to him, but nevertheless wished to pursue his complaint, since he believed that the respondents had improperly denied him copies of records at the time that he filed his complaint. At the hearing, the respondents explained that there had been a change in town counsel, as well as in police personnel, since the respondents' initial response to the request, as described in paragraphs 3 and 4, above, and that, upon further and fresh review, the respondents provided copies of the requested records to the complainant. However, the respondents did contend that §54-86e, provided a basis to withhold the redacted portions of described in paragraph 4, above, at the time of the initial denial.

12. Section 54-86e, G.S., provides:

The name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-70b, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53a-21, or of an attempt thereof, or family violence, as defined in section 46b-38a and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

(Emphasis added.)

13. In turn, §46b-38a, G.S., provides the following definitions:

(1) "Family violence" means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members. Verbal abuse or argument does not constitute family violence unless

there is present danger and the likelihood that physical violence will occur.

(2) "Family or household member" means any of the following persons, regardless of the age of such person: (A) Spouses or former spouses; (B) parents or their children; (C) persons related by blood or marriage; (D) persons other than those persons described in subparagraph (C) of this subdivision presently residing together or who have resided together; (E) persons who have a child in common regardless of either they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship.

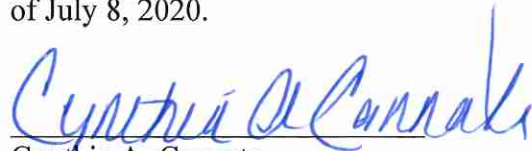
14. Recently, in Docket # FIC2018-0589, Sophie Vaughn and Westport News v. Chief, Police Department, Town of Westport, Police Department, Town of Westport, and Town of Westport (July 10, 2019), the Commission analyzed the applicability of §54-86e, G.S., in the context of arrest records, and concluded that such provision did not provide police departments with a statutory basis to withhold family violence records, at that time.¹

15. It is found that, at the time of the denial in this matter, as described in paragraphs 4 and 5, above, the law did not differ from the law as it existed at the time of the Final Decision in Docket #FIC2018-0589. Accordingly, it is concluded that, at the time of the denial in this matter, the respondents violated §1-210(a) and 1-212(a), G.S., as alleged in the complaint.

16. However, the Commission notes that, subsequent to the filing of the complaint in this matter, Public Act 19-43 was passed in the General Assembly, with an effective date of October 1, 2019. That law amended the FOI Act to allow for the withholding of records identifying the victims of family violence in law enforcement and arrest records, as set forth therein.

Based on the record concerning the above-captioned matter, no order by the Commission is hereby recommended.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 8, 2020.



Cynthia A. Cannata
Acting Clerk of the Commission

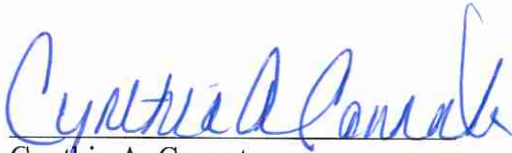
¹ The Commission will not repeat the lengthy analysis set forth in Docket # FIC2018-0589 in this matter, as there was a subsequent legislative action in 2019 which will change the ability of police departments to withhold certain family violence records, as explained in paragraph 16, above.

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

CHIEF, POLICE DEPARTMENT, TOWN OF NEW MILFORD; POLICE DEPARTMENT, TOWN OF NEW MILFORD; AND TOWN OF NEW MILFORD, c/o Attorney D. Randall DiBella, Cramer & Anderson, LLP, 51 Main Street, New Milford, CT 06776



Cynthia A. Cannata
Acting Clerk of the Commission