

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jessica Fritz Aguiar and
Clovercrest Media Group,

Complainants

against

Docket #FIC 2019-0348

Chief, Police Department,
Town of Wallingford; Police
Department, Town of Wallingford;
and Town of Wallingford,

Respondents

July 8, 2020

The above-captioned matter was heard as a contested case on August 15, 2019, and at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. By order of the hearing officer, the matter was reopened, and another contested case hearing was held on February 3, 2020, at which time the parties appeared and offered additional evidence and testimony.

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 May 30, 2019, the complainants requested from the respondents the opportunity to inspect or copy the entire Wallingford Police Department case file number 88-9112, including but not limited to, transcripts, statements, videos, photographs, interviews, reports and notes.
3. It is found that, by letter dated May 31, 2019, the respondents denied the request, described in paragraph 2, above, citing §1-210(b)(3), G.S.
4. By email dated June 11, 2019, and filed June 12, 2019, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the requested records.
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 (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.

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

9. Section 1-210(b)(3), G.S., provides 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 said records would not be in the public interest because it would result in the disclosure of (A) 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, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault

under section 53a-70, 53a-70a, 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 53-21, or of an attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216[.]

10. It is well established that the agency “bears the burden of proving the applicability of an exemption....” See Wilson v. Freedom of Information Commission, 181 Conn. 324, 341 (1980). Testimony or affidavits concerning “the content and use of the documents... must not be couched in conclusory language or generalized allegations... but should be sufficiently detailed, without compromising the asserted right to confidentiality, to present the [FOI] [C]ommission with an informed factual basis for its decision in review under the act.” *Id.*

11. It is found that, in June 1988, Doreen Vincent, a 12-year-old girl, was reported missing from her father’s home in the town of Wallingford. The respondent police department (“department”) immediately initiated an investigation into the girl’s disappearance, and over the ensuing weeks and months, interviewed witnesses, executed search warrants and conducted searches for evidence. Despite these efforts, however, Doreen was not located, dead or alive, and as of the date of the second hearing in this matter, Doreen still had not been located, and no arrest had been made in connection with Doreen’s disappearance.

12. Over the years that followed, the respondents worked on the case sporadically. It is found that, in 2011, the respondents discovered that the case file contained Doreen’s dental records, and, hopeful that advances in technology might reveal further information regarding her whereabouts, the department sent those records to a forensic odontologist so that her teeth could be coded for entry into the National Crime Information Center (“NCIC”) and National Missing and Unidentified Persons System (“NamUs”) databases.

13. It is found that, in 2017, the state’s attorney for the judicial district of New Haven created a cold case team consisting of law enforcement personnel from the various cities and towns in that judicial district. It is found that the chief of the department committed personnel to the cold case team, and that Detective Jacques, from the department, has been assigned to work on cold cases originating from Wallingford, as well as from other cities and towns within the judicial district, on an as needed basis. It is found that Detective Jacques, and other law enforcement personnel, have been working on the investigation into Doreen’s disappearance as time permits.

14. It is found that, more recently, the respondents sought assistance with their investigation into Doreen’s disappearance from the state’s attorney’s cold case team. In early 2019, in an effort to persuade the state’s attorney’s office to provide such assistance, the department created a power point presentation summarizing the details of their investigation to date, and submitted it for review. The assistant state’s attorney, upon review, requested that the department provide further information, and the chief inferred from that request that if such information was provided, the cold case team would make available the requested assistance. It is found that the department then enlisted “highly specialized forensic assistance” and served ex parte warrants in an effort to obtain the information requested by the state’s attorney’s office. Subsequently, the respondents determined that they did not require the assistance of the cold

case team and have continued their investigation into Doreen's disappearance without such assistance. It is found that, as of the date of the second hearing in this matter, the respondents had sent several pieces of evidence to the state laboratory for testing and were awaiting the results of such testing.

15. The respondent chief testified at the first hearing in this matter that the respondents considered Doreen's disappearance to be an open, active investigation and that they are committed to finding her alive or finding her remains. It is found that, by the time of the second hearing in this matter, the investigation had been characterized by the respondents as a homicide investigation. It is also found that the respondents had identified a suspect (although not publicly), and expected to issue an arrest warrant sometime this year.

16. The hearing officer ordered the respondents to submit the records claimed to be exempt from disclosure for in camera inspection. Such records were submitted to the Commission on October 25, 2019.

17. It is found that the in camera records consist of: reports of investigation, and supplemental reports, notes, evidence reports, signed witness statements, witness lists and other documents indicating who has been interviewed, transcripts, audio and video recordings of witness interviews, transcripts of telephone conversations, search warrant applications and affidavits, lists of seized property, and information obtained from the NCIC/COLLECT¹ databases. Such records shall be referenced herein as IC 2019-0348-0001 through IC 2019-0348-1774, and IC 2019-0348-A through IC 2019-0348-V.

18. It is found that, by letter dated February 18, 2020, the respondents informed the hearing officer that they were withdrawing their claim of exemption for certain in camera records, and that they had provided such records to the complainants. The two-page February 18, 2020 letter shall be marked as respondents' exhibit 3 (after-filed). Accordingly, the claim of exemption for the in camera records identified in the February 18, 2020 letter will not be considered herein.²

19. The respondents claimed that IC 2019-0348-0001 through IC 2019-0348-0007 are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. After careful in camera inspection, it is found that such records are records of a law enforcement agency not otherwise available to the public which were compiled in connection with the detection or investigation of crime, and that disclosure would not be in the public interest because such records are signed statements of witnesses. It is therefore found that such records are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

¹ Connecticut On-Line Law Enforcement Telecommunications.

² Those records are: IC 2019-0348-0487, IC 2019-0348-1137 through IC 2019-0348-1213, IC 2019-0348-1224 through IC 2019-0348-1377, and audio CDs IC 2019-0348-B and IC 2019-0348-J. Also, as described by the respondents in the February 18, 2020 letter, the following records, which were submitted for in camera record inspection, were provided to the complainants: Sighting Report 7-1-88 Choate School (5 pages), Cheri Knotts (Putter Drive) 10-18-90 Memo (3 pages), Sheryl Lapolt 7-8-89 Memo Re: telephone conversation (2 pages) and Newtown Human Remains Report & Article 2-7-91 (5 pages). The respondents did not provide the page numbers for these in camera records.

20. The respondents claimed that IC 2019-0348-1483 through IC 2019-0348-1711 are NCIC/COLLECT records and therefore are exempt from disclosure pursuant to §29-164f, G.S.

21. After careful in camera inspection of IC 2019-0348-1483 through 1711, it is found that such records are NCIC/COLLECT records. In Commissioner of Public Safety v. FOI Commission, 144 Conn. App. 821, 827 (2013), the Appellate Court clarified that “the NCIC database is to be used for limited purposes authorized by law, such as background checks, and that NCIC records may only be used for official purposes.” The Court concluded that §29-164f, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S. Id. at 831. Moreover, this Commission previously has held that the COLLECT system is part of the overall NCIC system and that records obtained through such system are exempt from disclosure as NCIC records. See Joseph Sastre v. Marc Montminy, Chief, Police Department, Town of Manchester, et al., Docket #FIC 2016-0535 (April 12, 2017).

22. Accordingly, it is found that the records identified in paragraph 20, above, are exempt from disclosure pursuant to §29-164f, G.S.

23. The respondents claimed that the remainder of the in camera records are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

24. Based on the credible testimony of Lieutenant Colavolpi, who is overseeing the ongoing homicide investigation, it is found that disclosure of the remainder of the in camera records would be prejudicial to their ability to obtain an arrest warrant. In support of this claim, Lt. Colavolpi testified, and it is found, that if the suspect knew the details of the investigation, such information would provide him or her with the ability to formulate a defense, tamper with evidence, or the opportunity to flee. Lt. Colavolpi testified, and it is found, that with regard to witnesses, information about the investigation should not be disclosed in order to ensure that a witness to an incident is recalling only what he or she saw at the time of such incident, and that such recollection is not tainted by what he or she might have seen in a video, read in a police report, or heard from another person. It is further found that the identities of some witnesses are not known, and that the respondents believe, based on their familiarity with the suspect, that if the suspect knew the witnesses' identities, he or she may harass or harm those witnesses. Finally, it is found that by identifying witnesses publicly, it may have a chilling effect on the witnesses' willingness to come forward.

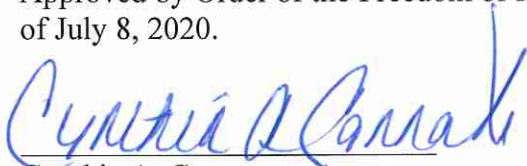
25. After careful in camera inspection, it is found that the remainder of the in camera records are records of a law enforcement agency not otherwise available to the public which were compiled in connection with the detection or investigation of crime, and that disclosure of such records would not be in the public interest because it would result in disclosure of information to be used in a prospective law enforcement action, namely, the issuance of an arrest warrant, and that such disclosure would be prejudicial to such action. Accordingly, it is found that the remainder of the in camera records are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

26. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the in camera records at issue from the complainants.

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

1. The complaint is dismissed.

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



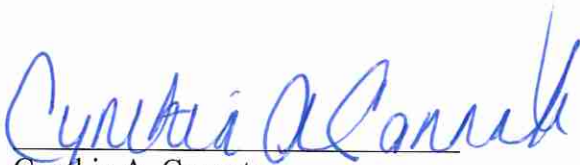
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JESSICA FRITZ AGUIAR, AND CLOVERCREST MEDIA GROUP

CHIEF, POLICE DEPARTMENT, TOWN OF WALLINGFORD; POLICE DEPARTMENT, TOWN OF WALLINGFORD; AND TOWN OF WALLINGFORD,
c/o Attorney Janis M. Small, Corporation Counsel, 45 South Main Street, Wallingford, CT 06492



Cynthia A. Cannata
Acting Clerk of the Commission