FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Rachel de Leon,

Complainant

against Docket #FIC 2019-0161

Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport,

Respondents March 11, 2020

The above-captioned matter was heard as a contested case on July 16, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. At the conclusion of the hearing, the respondents submitted the records in question for in camera review.

The first Report of Hearing Officer was issued on October 8, 2019 and was scheduled to be heard by the full Commission at their regular meeting on November 13, 2019. On November 8, 2019, the respondents moved to reopen the evidentiary portion of the matter for the purpose of submitting a deposition by Mr. Dahmeer Bradley taken on July 31, 2019. Such deposition was taken in connection with Superior Court Docket No. FBT-CV18-6079609-S. Over the objection of the complainants, the item was accepted as evidence and marked as respondents' after-filed exhibit 3. The first Report of Hearing Officer was withdrawn for consideration of the newly submitted evidence.

The second Report of Hearing Officer was issued on January 22, 2020 and was scheduled to be heard by the full Commission at their regular meeting on February 13, 2020. On January 28, 2020, the respondents moved for the second time to reopen the evidentiary portion of the matter for the purpose of admitting two additional items of evidence; an excerpt of a transcript of a police interview of N. Yovino dated December 7, 2018; and an excerpt of a transcript of a motion to suppress dated May 16, 2018 in connection with Superior Court Docket No. FBT-CV18-6079609-S. Over the objection of the complainant, the items were accepted as evidence and marked as respondents' after-filed exhibits 4 and 5, respectively. The second Report of Hearing Officer was withdrawn for consideration of the newly submitted evidence.

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. On August 7, 2018, the complainant made a request for records through the respondents' on-line portal. The complainant requested to inspect the following records from detective case file #16D-1343:

a. Video interview at police department of Nikki Yovino on October 18, 2016.
b. Video interview at police department of Sarah Ayoub on October 18, 2016.
c. Video interview at police department of Joanna Del Viscio on October 21, 2016.
d. Audio interview of Johnna DelViscio on December 1, 2016.
e. Audio interview of Alto Locks on December 1, 2016.
f. Cell phone video taken by Dhameer Bradley on October 15, 2016 in bathroom at 870 Lakeside Drive.

3. It is found that the respondents acknowledged the complainant's request on August 7, 2018.

4. It is found that on February 19, 2019, the respondents denied the complainant's request stating that the records sought were exempt from disclosure under §§1-210(b)(3)(A), 1-210(b)(3)(G) and 1-210(b)(3)(H), G.S.

5. By email filed on March 19, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by wrongfully denying her access to the requested records.

6. Section 1-200(5), G.S., defines "public records or files" as follows:

> 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.

7. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

8. 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."

9. It is found 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.

10. It is found that the requested records were originally created or seized by the respondents as part of an investigation into an alleged sexual assault. However, as the investigation continued, the alleged sexual assault victim admitted that she was not truthful in her original reporting of the incident. Police then utilized the statements made by the alleged victim and other witnesses to establish probable cause to arrest the alleged victim for the crime of falsely reporting an incident in the second degree. The victim, turned suspect, was ultimately convicted and sentenced to prison for that crime.

11. Sections 1-210(b)(3)(A), 1-210(b)(3)(G) and 1-210(b)(3)(H) G.S., state that:

> (b) Nothing in the Freedom of Information Act shall be construed to require disclosure of ... (3) Records 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, ... (G) the name and address of the victim of ... voyeurism under section 53a-189a ...or (H) uncorroborated allegations subject to destruction pursuant to section 1-216.

12. Section 1-216, G.S., states that:

> Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

13. At the hearing on this matter, the respondents withdrew their claim that any of the records requested were exempt from release pursuant to §1-210(b)(3)(A), G.S. The respondents cited public availability of the arrest warrant application associated with the underlying criminal case as the reason for withdrawing this specific claim of exemption.

14. The respondents were ordered to provide all of the records responsive to the complainant's request to the Commission for in camera review. Immediately following the hearing on this matter the respondents complied with the order and submitted the records for in camera review. The in camera records are identified as IC 2019-0161-001 through IC 2019-0161-006.

15. It is found that the in camera records consist of the records described in paragraph 2, above, and 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 a crime.

16. The respondents argued that IC 2019-0161-001 through IC 2019-0161-006 are exempt from disclosure pursuant to §1-210(b)(3)(H), G.S., because they contain uncorroborated allegations of sexual assault which are subject to destruction in accordance with §1-216, G.S.

17. It is found that IC 2019-0161-001 through IC 2019-0161-006 constitute evidence of the crime of falsely reporting an incident in the second degree in violation of §53a-180c, G.S., a crime for which a suspect was arrested, convicted and incarcerated. The incident that was found to be falsely reported was a sexual assault. In order for such records to be deemed uncorroborated allegations of criminal activity and thus exempt from disclosure under the Act, such records must be *subject to destruction* pursuant to §1-216, G.S. The respondents failed to produce any witnesses to testify as to whether such allegations were subject to destruction. Additionally, it is found that the allegations of sexual assault, as well as the identities of the individuals accused in that matter, have been reported by news organizations and such information has been published in publicly available documents. In Bona v. Freedom of Information Commission, 44 Conn.App. 622 (1997), the court wrote, "We agree with the trial court that it would be an "illogical interpretation" to provide for the destruction of uncorroborated records after they had already been made public." Accordingly, it is found that IC 2019-0161-001 through IC 2019-0161-006 are not exempt from disclosure as uncorroborated allegations of criminal activity pursuant to §1-210(b)(3)(H), G.S., as contended by the respondents.

18. In their post-hearing brief, the respondents also argued that IC 2019-0161-002 through IC 2019-0161-005, are exempt from disclosure as signed statements of witnesses pursuant to §1-210(b)(3)(C), G.S.

19. Section 1-210(b)(3)(C), G.S. states that:

> (b) Nothing in the Freedom of Information Act shall be construed to require disclosure of ... (3) Records 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 ...(C) signed statements of witnesses.

20. It is found that IC 2019-0161-002 through IC 2019-0161-005 are video and audio recordings of witnesses being interviewed by police, not signed statements of witnesses and therefore not exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. See, Sedensky v. Freedom of Information Commission, No. HHBCV136022849S, 2013 WL 6698055, at *17 (Conn. Super. Ct. Nov. 26, 2013).

21. With regard to IC 2019-0161-006, the cell phone video, the respondents argued that such record constitutes voyeuristic material as defined by §53a-189a, G.S., and that dissemination of such material is prohibited pursuant to §53a-189b, G.S.

22. Section 53a-189a states:

> (a) A person is guilty of voyeurism when, (1) with malice, such person knowingly photographs, films, videotapes or otherwise records the image of another person (A) without the knowledge and consent of such other person, (B) while such other person is not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy, (2) with intent to arouse or satisfy the sexual desire of such person or any other person, such person knowingly photographs, films, videotapes or otherwise records the image of another person (A) without the knowledge and consent of such other person, (B) while such other person is not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy, (3) with the intent to arouse or satisfy the sexual desire of such person, commits simple trespass, as provided in section 53a-110a, and observes, in other than a casual or cursory manner, another person (A) without the knowledge or consent of such other person, (B) while such other person is inside a dwelling, as defined in section 53a-100, and not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy, or (4) with intent to arouse or satisfy the sexual desire of such person or any other person, such person knowingly photographs, films, videotapes or otherwise records the genitals, pubic area or buttocks of another person or the undergarments or stockings that clothe the genitals, pubic area or buttocks of another person (A) without the knowledge and consent of such other person, and (B) while such genitals, pubic area, buttocks, undergarments or stockings are not in plain view.

23. Section 53a-189b states:

> A person is guilty of disseminating voyeuristic material when such person disseminates a photograph, film, videotape or other recorded image of another person without the consent of such other person and knowing that such photograph, film, videotape or

image was taken, made or recorded in violation of section 53a-189a.

24. Sections 53a-189a and 53a-189b, G.S., are statutes in the penal code which make criminal malicious dissemination of voyeuristic material, provided several statutory requirements are met, but which do not specifically address confidentiality of public records. See Commissioner of Emergency Services and Public Protection et al v. Freedom of Information Commission, (SC 19852) (SC19853) (Oct. 30, 2018) (discussion of statutes which qualify as those which override the requirements to provide access to public records). Moreover, it is concluded that a public agency's compliance with a lawful Commission order cannot be construed as unlawful dissemination as contemplated by §53a-189b, G.S. Accordingly, it is concluded that IC-2019-0161-006 is not exempt from mandatory disclosure pursuant to 53a-189a and 53a-189b, G.S., as the respondents contended.

25. Based upon the findings set forth herein, it is concluded that the requested records identified as IC 2019-0161-001 through IC 2019-0161-006, are not exempt from disclosure as contended by the respondents. Accordingly, it is found that the respondents violated the disclosure provisions of the FOI Act when they refused to disclose the requested records.

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

1. The respondents shall provide forthwith copies of the requested records as described in paragraph 2 above, at no cost to the complainant.

2. Henceforth, the respondents will strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 11, 2020.

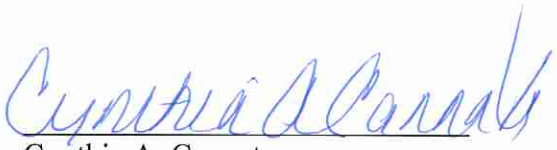
Cynthia A. Cannata
Acting Clerk of the Commission

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:

RACHEL DE LEON, c/o Attorney D. Victoria Baranetsky, 1400 65th St., Ste. 200, Emeryville, CA 94608 and Attorney Alexa Millinger, Hinckley, Allen & Snyder, LLP, 20 Church Street, Hartford, CT 06103

CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina Scalo, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission

FIC 2019-0161/FD/CAC/3/13/2020