

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by
Christoper Peak and New Haven Independent,

FINAL DECISION

Complainants

against

Docket #FIC 2019-0465

Office of Corporation Counsel, City of
New Haven; and City of New Haven,

Respondents

September 23, 2020

The above-captioned matter was heard as a contested case on November 4, 2019, at which time the complainants and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The respondents submitted a copy of the records at issue for an in camera inspection.

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. By letter of complaint filed August 1, 2019, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with their request for certain public records.
3. It is found that the complainants emailed a July 31, 2019 request to the respondents for “any subpoenas that the city’s corporation counsel has reviewed since January 1, 2018.”
4. It is found that the respondents provided a heavily redacted copy of the only subpoena responsive to the complainants’ request.
5. It is found that the grand jury subpoena provided was issued by the United States Attorney’s Office for the District of Connecticut.
6. 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.

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 concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. The respondents contend that the redacted portions of the provided records are exempt from disclosure pursuant to §1-210(b)(3), G.S.

11. Section 1-210(b)(3), G.S., provides that disclosure is not required of:

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 such 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, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an

attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216;

12. It is found that the respondents are not a law enforcement agency within the meaning of §1-210(b)(3), G.S.

13. It is also found that the respondents failed to prove that disclosure of the redacted portions of the requested subpoena would result in the disclosure of any of the types of information specified in §1-210(b)(3)(A) through (G), G.S.

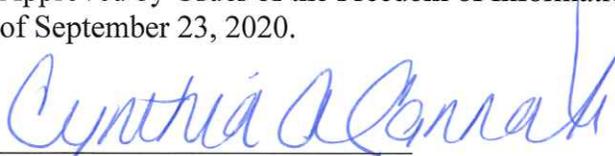
14. The Commission notes that it has previously ordered the disclosure of grand jury subpoenas in the possession of the agencies upon which the subpoenas were served. See, for example, Docket No. FIC 2012-718, *Kevin Rennie v. Office of Legislative Management et al.*; Docket No. FIC 2008-531, *Hartford Courant et al v. Eddie A. Perez et al.*; affirmed Docket No. CV09-4020325, *Division of Criminal Justice et al. v. FOI Commission et al.*, Superior Court, J.D. of New Britain, Memorandum of Decision dated February 25, 2010 (Cohn, J.). See similarly, *Newsday v. Empire State Dev.*, 98 N.Y. 2d 539, 774 N.E.2d 1187, 746 N.Y.S.2d 855 (2002) (ordering disclosure under New York Freedom of Information Law of subpoenas duces tecum served by the New York County District Attorney's office on a state public corporation); *Better Government Association v. Blagojevich*, 386 Ill.App.3d 808, 899 N.E.2d 382, 326 Ill. Dec. 165 (2008) (ordering disclosure under Illinois Freedom of Information Act of grand jury subpoenas on a state public official).

15. It is concluded that the respondents violated the FOI Act by failing to disclose an unredacted copy of the requested grand jury subpoena.

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

1. The respondents shall forthwith provide the complainant with an unredacted copy of the requested records, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 23, 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:

CHRISTOPHER PEAK AND NEW HAVEN INDEPENDENT, 51 Elm Street,
#307, New Haven, CT 06510

**OFFICE OF THE CORPORATION COUNSEL, CITY OF NEW HAVEN; AND
CITY OF NEW HAVEN**, c/o Attorney Catherine E. LaMarr, Office of the
Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission