

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Charles Flynn,

Complainant

against

Docket #FIC 2019-0421

Burt Rosenberg, FOI Officer,  
City of Stamford; and City of Stamford,

Respondents

September 9, 2020

The above-captioned matter was heard as a contested case on November 8, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. 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 email dated June 24, 2019, the complainant wrote to the respondent Rosenberg and requested copies of a complaint filed against himself and his family by his neighbors, whom he named, with the City of Stamford Health Department, but which he believed was now maintained by the City of Stamford Building Department. In addition, the complainant requested that the respondents provide him with any and all correspondence from the named neighbors dating back to January 1, 2007.
3. It is found that by return email dated July 1, 2019, the respondent Rosenberg advised the complainant that the Building Department complaint was related to the Health Department complaint, and that therefore, such record, including the name of the person who complained, was not subject to disclosure under the Freedom of Information Act. It is also found that the respondent Rosenberg informed the complainant that the neighbors which he named in his request were not the filers of the Building Department complaint, and that therefore, no records exist that are responsive to that part of his June 24, 2019 request. Finally, the respondent Rosenberg advised that with respect to the request for correspondence dating back to 2007, such request lacked specificity, in that it did not specify which departments within the City of Stamford should be searched and that such request was denied as a request for research.
4. It is found that by return email later on July 1, 2019, the complainant disagreed that the Building Department complaint is not responsive, contending that although it did not originate from the named neighbors, it is clearly a referral from the Health Department, and substantially the same as the complaint which he believes the neighbors filed with the Health

Department. The complainant asked the respondents to reconsider the request for the Building Department complaint.

5. It is found that, by return email also dated July 1, 2019, the respondent Rosenberg informed the complainant that the Building Department complaint was not a referral from the Health Department; and that rather it was an independent complaint made directly to the Building Department. It is further found that, subsequently, on July 1, 2019, the complainant emailed the respondent Rosenberg, regarding the earlier FOI request, and contended that he should be provided with a copy of the Building Department complaint.

6. It is found that, by email to the respondent Rosenberg, dated July 11, 2019, regarding his earlier request, the complainant contended that §1-210(b)(16), G.S., does not provide a basis to withhold the requested records. Additionally, it is found that the complainant disputed the respondents' claim that his request for all communications from his neighbors over a thirteen year period was too broad. Finally, it is found that the complainant made a new request for copies of all complaints filed with any city agency regarding his home address by any sources since January 1, 2007, as well as all relevant communications among city officials regarding all complaints to any city agency by his neighbors since January 1, 2007.

7. By letter filed July 17, 2019, the complainant appealed to this Commission, alleging that the respondent Rosenberg violated the Freedom of Information ("FOI") Act by failing to comply with the newer July 11, 2019, request for thirteen years' worth of records described in paragraph 6, above. In such letter, the complainant reiterated the history of his earlier requests, as described in paragraph 2 through 5, above. The complainant requested that the Commission impose the maximum civil penalty against the respondent Rosenberg.

8. Section 1-200(5), G.S., in relevant part, 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.

9. 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) or receive a copy of such records in accordance with the provisions of section 1-212....

10. 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....”

11. It is found that the records described in paragraph 6, above, are public records within the meaning of §§1-210(a) and 1-212(a), G.S.

12. It is found that, early on in his search for records related to his property, the complainant was erroneously informed by a city employee that he should make his requests to the respondent Rosenberg. However, it is also found that it is not the normal procedure of the City of Stamford to filter all records requests through the Office of the Corporation Counsel’s office. The Commission notes that, under the FOI Act, each public agency is individually responsible for providing access to the particular public records which it keeps on file or maintains. Lash v. Freedom of Information Commission, 116 Conn. App. 171, 187-188 (2009). It is found that the respondent Rosenberg, an attorney for the City, does not keep on file or maintain any of the requested records, within the meaning of §§1-210(a) and 1-212(a), G.S. complainant’s requests.

13. Nevertheless, it is found that, on October 17, 2019, the respondents provided the complainant with copies of 156 pages of records as requested in paragraph 6, above, including records of the Stamford Department of Public Health and its Laboratory, the Stamford Department of Environmental Inspection Services, the Connecticut Agricultural Experiment Station, the Stamford Building Department, the Stamford Police Department, an entity called Fix It Stamford, and records related to parking tickets and garbage pickup from an email account entitled City Help.

14. At the hearing in this matter, the complainant testified that there were only two issues remaining in this matter. First, the complainant contended that there must be other records which he had not been provided. However, it is found that the respondents provided the complainant with all records that are responsive to the request described in paragraph 6, above. Second, the complainant contended the respondents improperly redacted the identity of a person who contacted the city with a concern regarding the complainant’s property on one particular record. The complainant contended that he was aware of the identity of such person but nevertheless wanted to see the document in its entirety in order to prove that the respondent Rosenberg allegedly had not been candid with him during their correspondence.

15. It is found that the record at issue is a one-page document which was provided to the Commission for in camera inspection, and is hereby identified as IC-2019-0421-1. On the index to in camera records, the respondents claimed that §1-210(b)(3), G.S., provides a basis to withhold the redacted portion of the requested record.

16. Section 1-210(b)(3), G.S., exempts from mandatory disclosure:

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.

17. At hearing, the respondents claimed that two earlier Commission decisions support their position that the redacted information at issue herein is exempt as a law enforcement record. Docket # FIC 2009-094; Peter Rusciano v. Health Department, City of Stamford (July 22, 2009); Docket # FIC 1991-125; Margaret Catalano v. Middletown Department of Health (December 11, 1991). In both matters, the Commission found that the individual departments of health were law enforcement agencies based on the evidence presented at the underlying hearings. In addition, the Commission found that the respondents in those matters proved that the elements of §1-210(b)(3)(A), G.S., were met.

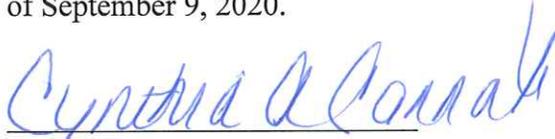
18. However, in the instant case, it is found that the respondents failed to present evidence, and therefore failed to prove, that the public agency which maintains such record is a law enforcement agency within the meaning of the §1-210(b)(3), G.S. It is also found that the respondents failed to present evidence, and therefore failed to prove, that the identity of the person detailed in such record is not otherwise known and that such person's safety would be endangered, or that such person would be subject to threat or intimidation, if their identity were made known, within the meaning of the §1-210(b)(3)(A), G.S.

19. It is concluded, therefore, that the respondents failed to prove that the identity of the complaining person detailed in IC-2019-0421-1 is permissively exempt from disclosure pursuant to §1-210(b)(3)(A), G.S. Accordingly, it is concluded that the respondents violated the FOI Act in this matter. Based upon the specific facts of this case, no civil penalties are warranted.

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

1. Forthwith, the respondents shall provide an unredacted copy of IC-2019-0421-1 to the complainant, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 9, 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 FLYNN**, 22 Soundview Drive, Stamford, CT 06902

**BURT ROSENBERG, FOI OFFICER, CITY OF STAMFORD; AND CITY OF STAMFORD**, c/o Attorney Michael S. Toma, PO Box 10152, 888 Washington Boulevard, Stamford, CT 06904



Cynthia A. Cannata  
Acting Clerk of the Commission