

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Eugene Walker,

Complainant

against

Docket # FIC 2019-0355

John Karajanis, Chief, Police Department,
City of West Haven; Police Department,
City of West Haven; and City of West
Haven,

Respondents

April 14, 2021

The above-captioned matter was heard as a contested case on October 17, 2019, December 2, 2019, January 14, 2020, February 21, 2020, November 6, 2020, and February 23, 2021, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The respondents submitted the records at issue for an in camera inspection. The complainant, who is incarcerated, appeared at the October 17, 2019, December 2, 2019, January 14, 2020, and February 21, 2020 hearings via teleconference, pursuant to the January 2004 Memorandum of Understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al., Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.). Due to the COVID-19 pandemic and the state's response to it, the November 6, 2020 and February 23, 2021 hearings were conducted telephonically.¹

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 June 13, 2019², the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records.

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission

3. It is found that the complainant made a May 20, 2019 request to the respondents for the following records, all relating to the respondent West Haven Police Department (“WHPD”) cases 2012-040509, 2012-041209, S-2012-02633 and S-2012-02634:

- (1) “Any and all applications for an arrest warrant;
- (2) “Any and all investigation reports;
- (3) “Any and all witness statements, including police statements;
- (4) “Any and all photographs, diagrams, charts, maps and videos/films;
- (5) “Any and all email communications created and generated pertaining to the four police case numbers on the first page of this FOI request; and
- (6) “Any and all records/documents preserved and maintain[ed] pertaining to the four police case numbers on the first page of this FOI request that [were] not included in the descriptions above Request #1 through #5.”

4. It is found that the respondents provided the responsive arrest warrant application and incident report to the complainant. The identities of witnesses were redacted from the incident report.

5. Section 1-200(5), G.S., defines “public records or files” as:

[a]ny 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. . . (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 “any 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 requested records are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. The respondents contended that the additional records not provided to the complainant, which were submitted to the Commission for an in camera inspection, are exempt from disclosure pursuant to §§1-215 and 1-210(b)(1), (2) and (3), G.S.

10. Section 1-210(b)(1), G.S., provides that disclosure is not required of “[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure”

11. Section 1-210(b)(2), G.S., provides that disclosure is not required of “[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy”

12. 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 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

13. Section 1-215, G.S., provides:

(a) For the purposes of this section, "record of the arrest" means (1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law

enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) the name, address or other identifying information of any victim of 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, (3) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (4) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.

14. The Commission takes administrative notice of our Supreme Court's decision in State v. Walker, 332 Conn. 678 (2019), remanding the complainant's criminal case to the trial court for a new trial.

15. By letter dated March 16, 2020, the Office of the State's Attorney Judicial District of Ansonia-Milford represented that, in light of the ruling in State v. Walker, above, the criminal case against the complainant is a pending criminal matter. (The Office of the State's Attorney did not otherwise seek to intervene in the Commission's contested case proceedings.)

16. It is concluded that a prosecution is pending against the complainant, within the meaning of §1-215(e), G.S.

17. It is found that the respondents provided the complainant with the record of arrest as defined in §1-215(a)(1) and (2), G.S., by providing to him a copy of the official incident report, and a copy of the arrest warrant application.

18. It is found that the respondents permissibly redacted the identity of witnesses from the incident report provided to the complainant.

19. It is concluded that the remainder of the requested records, as contained in the in camera records submitted to the Commission, are permissibly exempt from disclosure pursuant to §1-215, G.S.

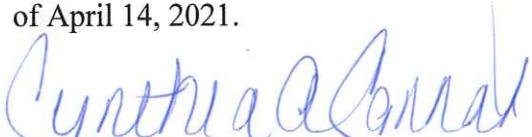
20. Given the conclusion in paragraph 19, above, it is unnecessary to address the respondents' additional claims of exemption pursuant to §§1-210(b)(1), (2) and (3), G.S.

21. It is concluded that the respondents did not violate the FOI Act as alleged.

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 April 14, 2021.



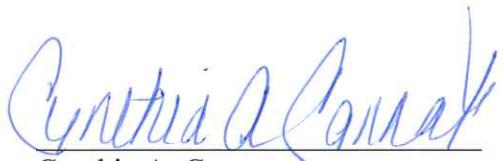
Cynthia A. Cannata
Acting Clerk of the Commission

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:

EUGENE WALKER, #298335, Corrigan-Radgowski CC, 986 Norwich-New London Tpke., Uncasville, CT 06382

JOHN KARAJANIS, CHIEF, POLICE DEPARTMENT, CITY OF WEST HAVEN; POLICE DEPARTMENT, CITY OF WEST HAVEN; AND CITY OF WEST HAVEN, c/o Attorney Lee Kennedy Tiernan, 355 Main Street, 3rd Floor, West Haven, CT 06516 and Attorney Michael A. Leone, Lynch, Traub, Keefe & Errante, P.C., 52 Trumbull Street, New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission