

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Kent Johnson,

Complainant

against

Docket # FIC 2022-0046

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

Respondents

November 16, 2022

The above-captioned matter was heard as a contested case on July 1, 2022, at which time the complainant and the respondents appeared, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

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 January 3, 2022, the complainant requested from the respondents copies of:
  - (a) All documents and recordings from the Sally Port at the Torrington Police Department [“TPD”] from December 17, 2019, while Kent Johnson was present in the Sally Port;
  - (b) All documents and recordings from the Sergeant’s Desk while Kent Johnson was present in the morning of December 17, 2019;
  - (c) The Rules and Regulations Manual in effect on December 17, 2019;
  - (d) Copies of all citizen complaints against the TPD or any member of the TPD from and their dispositions since July 15, 2019;
  - (e) Copies of all citizen complaints against the TPD or any member of the TPD before July 15, 2019; [and]
  - (f) Documents which describe the policy in effect . . . before the change in July of 2019 for citizens to file complaints against the [TPD] and how they are handled by TPD

employees. (“January 3<sup>rd</sup> request”).

3. It is found that, by email dated January 3, 2022, the respondents acknowledged receipt of the January 3<sup>rd</sup> request.

4. By letter of complaint filed January 31, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the records, described in paragraph 2, above.

5. Section 1-200(5), G.S., provides that:

“[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, videotaped, 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 “[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 found that the requested records, to the extent that they are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing, the respondents argued that the present appeal was barred by res judicata because the January 3<sup>rd</sup> request was substantively identical to a previous request that the complainant made in Kent Johnson v. Chief, Police Department, City of Torrington, et al., Docket #FIC 2020-0389 (January 26, 2022). The respondents further contended that they had provided the complainant with all responsive records to the previous request, and that therefore, there were no additional responsive records to the January 3<sup>rd</sup> request.

10. In Kent Johnson v. Chief, Police Department, City of Torrington, et al., Docket #FIC 2020-0389 (January 26, 2022), the complainant requested that the respondents provide him with copies of the following records:

- (a) dash camera recordings relating to the incidents that occurred on East Main Street in Torrington on December 17, 2019 (the “incidents”);
- (b) all radio dispatch recordings and other radio communications relating to the incidents;
- (c) reports and “all records” relating to the incidents;
- (d) disciplinary, investigatory, administrative actions taken by the police chief relating to a citizen complaint filed on July 13, 2020;
- (e) all citizen complaints filed against Officer Quarles and Officer Deloy for the past 10 years;
- (f) the complete file and transcripts of hearings relating to citizen complaints filed against Officer Quarles and Officer Deloy; and
- (g) the policy and procedure manual in effect at the time of the incidents.

The complainant also requested that the respondents provide him with an explanation of how the respondent police department tracks citizen complaints.

11. “Under the doctrine of res judicata, a final judgment . . . is an absolute bar to a subsequent action, between the same parties . . . *upon the same claim.*” (Emphasis added.) *Weiss v. Weiss*, 297 Conn. 446, 472 (2010). Because the two requests, on their face, are not the same, the claims necessarily are not the same, and therefore, the doctrine of res judicata does not apply.

12. With regard to the request, described in paragraph 2(a), above, the respondents testified, and it is found, that they may maintain one potentially responsive record, specifically, body camera footage; however, it is found that the respondents did not search for such footage. Accordingly, it is found that the respondents failed to prove that they provided the complainant with all records responsive to such request.

13. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the request, described in paragraph 2(a), above.

14. With regard to the request, described in paragraph 2(b), above, it is found that the respondents do not have a “Sergeant’s Desk.” It is further found that the respondents do not maintain any records responsive to such request.

15. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the request, described in paragraph 2(b), above.

16. With regard to the request, described in paragraph 2(c), above, it is found that the respondents maintain a rules and regulations manual (“manual”), consisting of hundreds of pages of policies and procedures that govern the respondent department. It is further found that the entire manual, except the records identified in paragraph 18, is responsive to the complainant’s request.

17. Pursuant to an order of the hearing officer, the respondents submitted all portions of the manual claimed to be exempt from disclosure, along with an in camera index, to the Commission for in camera inspection. Such records are hereinafter referred to as IC-2022-0046-01 through IC-2022-0046-96.<sup>1</sup>

18. Preliminarily, after careful in camera inspection, it is found that IC-2022-0046-47 through IC-2022-0046-71 are not responsive to the request, and therefore, shall not be further addressed herein.

19. The respondents claimed that IC-2022-0046-01 through IC-2022-0046-11 are exempt from disclosure pursuant to §1-210(b)(20), G.S.

20. Section 1-210(b)(20), G.S., provides that disclosure is not required of:

[r]ecords of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system.

21. It is found, after careful in camera inspection, that IC-2022-0046-01 through IC-2022-0046-11 contain procedures not otherwise available to the public. It is further found that the disclosure of such records would compromise the security of an information technology system, and therefore, are exempt from disclosure pursuant to §1-210(b)(20), G.S.

22. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding IC-2022-0046-01 through IC-2022-0046-11 from the complainant.

23. The respondents further claimed that IC-2022-0046-12 through IC-2022-0046-46 and IC-2022-0046-72 through IC-2022-0046-96 are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

24. Section 1-210(b)(3)(E), 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 . . . investigatory techniques not otherwise known to the general public . . .

25. This Commission has characterized “investigatory techniques not otherwise known” as “any systematic procedures or methodologies used by the department in its observation,

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<sup>1</sup>Because the respondents did not paginate the records, the hearing officer did so upon receipt.

examination or inquiries into crime that are not known to the public.” Kareem Batts v. Chief, Police Department, City of Waterbury, Docket #FIC 2006-402 (July 25, 2007).

26. It is found, after careful in camera inspection, that IC-2022-0046-12 through IC-2022-0046-46 and IC-2022-0046-72 through IC-2022-0046-96, are records of a law enforcement agency not otherwise available to the public that were compiled in connection with the detection or investigation of crime. See Jasmin Rzayeva v. Chief, Police Department, City of Hartford, Docket #FIC 2001-431 (July 10, 2002) (concluding that policies and procedures pertaining to, *inter alia*, the police’s response to bank robbery alarms and high-risk situations were exempt from disclosure under §1-210(b)(3)(E), G.S.); see also Kareem Batts v. Chief, Police Department, City of Waterbury, Docket #FIC 2006-402 (July 25, 2007) (concluding that policy and procedure pertaining to surveillance and undercover operations was exempt from disclosure under §1-210(b)(3)(E), G.S.). It is further found that such records contain investigatory techniques not otherwise known, as that phrase has been interpreted by the Commission, and are therefore exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

27. Accordingly, it is concluded, under the facts and circumstances of this case, that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding IC-2022-0046-12 through IC-2022-0046-46 and IC-2022-0046-72 through IC-2022-0046-96 from the complainant.

28. With regard to the remainder of the manual, the respondents did not claim any exemption, but rather, argued that they were not required to provide it to the complainant because his request was for the manual “in its entirety,” some of which was exempt from disclosure.<sup>2</sup>

29. It is found that the respondents were required to provide the complainant with all non-exempt records responsive to his request, described in paragraph 2(c), above. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the remainder of the manual from the complainant.

30. With regard to the requests, described in paragraphs 2(d) and 2(e), above, the respondents contended that they would be required to conduct research in order to locate responsive records and that they are not required to do so under the FOI Act.

31. Public agencies are not obligated to conduct research in order to respond to a FOI request. Wildin v. FOIC, 56 Conn. App. 683 (1999). In Wildin, our Appellate Court concluded that a records request involves research if it requires the public agency to engage in analysis or to exercise discretion to determine whether the records sought fall within the request. *Id.*, 686-87. Merely having to look in many places in order to gather responsive records, however, does not constitute research.

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<sup>2</sup>See Respondents’ Post-Hearing Brief, p. 3 (arguing that “[t]he request is for the Manual in its entirety. That is not disclosable. To be sure some of it is disclosable but not all. But as long as he asks for the whole thing, which is what he requests, our answer is ‘not disclosable’” [Emphasis in original.]).

32. It is found that the complainant specifically identified the records that he sought in the requests, described in paragraphs 2(d) and 2(e), above. It is further found that identifying records responsive to such requests would not require the respondents to engage in any analysis or to exercise their discretion, and therefore, would not require research. Accordingly, it is found that the respondents failed to prove that they provided the complainant with all records responsive to such requests.

33. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the requests, described in paragraphs 2(d) and 2(e), above.

34. With regard to the request, described in paragraph 2(f), above, it is found that the respondents provided to the complainant copies of records responsive to such request on July 7, 2022. It is found that such records are all of the responsive records that the respondents maintain.<sup>3</sup>

35. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the complainant's request, described in paragraph 2(f), above.

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

1. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall perform a diligent and thorough search for all records responsive to the complainant's requests, described in paragraphs 2(a), 2(d) and 2(e) of the findings, above, and provide an affidavit to the complainant and to the Commission detailing the nature and scope of the search. If no responsive records are located, the respondents shall so state in the affidavit. If responsive records are located, the respondents shall so state in the affidavit and immediately provide a copy of such records to the complainant, free of charge.

2. Forthwith, the respondents shall provide a copy of the manual, described in paragraph 16 of the findings, above, to the complainant, free of charge.

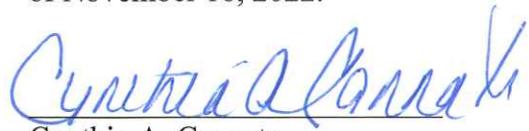
3. In complying with paragraph 2 of the Order, above, the respondents may withhold those portions determined to be exempt from disclosure, as set forth in paragraphs 18, 21 and 26 of the findings, above.

4. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

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<sup>3</sup>On July 7, 2022, the complainant informed the Commission that he reviewed the record, but that he believed that it was not the only responsive record that the respondents maintained. In response, the respondents attached an electronic copy of the record. The complainant's and the respondents' emails have been admitted into evidence and marked as Complainant's Exhibit C (after-filed): Email dated July 7, 2022; and Respondents' Exhibit 2 (after-filed): Email with attachment dated July 7, 2022.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 16, 2022.



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:

**KENT JOHNSON**, 233 East Main Street, Torrington, CT 06790

**CHIEF, POLICE DEPARTMENT, CITY OF TORRINGTON; POLICE DEPARTMENT, CITY OF TORRINGTON; AND CITY OF TORRINGTON**, c/o Attorney Victor M. Muschell, Corporation Counsel, City of Torrington, 140 Main Street, Torrington, CT 06790



Cynthia A. Cannata  
Acting Clerk of the Commission