

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Claire Howard,

Complainant

against

Docket #FIC 2023-0090

Mayor, City of Middletown;
Chief, Police Department,
City of Middletown; Police
Department, City of Middletown;
and City of Middletown,

Respondents

December 13, 2023

The above-captioned matter was heard as a contested case on September 5, 2023, at which time the complainant and the respondents appeared 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 letter dated February 15, 2023, the complainant sent the following request for copies of records to the respondent Mayor's office:
 - a. All documents related to the investigation into the use or presence of illegal narcotics on the premises of Middletown City Hall in October 2022;
 - b. A copy of any and all reports generated by Middletown Police Department personnel related to the investigation into the use or presence of illegal narcotics on the premises of Middletown City Hall in October 2022;
 - c. A copy of any audio and/or video recordings related to the investigation into the use or presence of illegal narcotics on the premises of Middletown City Hall in October 2022; and

- d. All communications related to the investigation into the use or presence of illegal narcotics on the premises of Middletown City Hall in October 2022.
3. It is found that, by letter dated February 17, 2023, the respondent Mayor's office acknowledged the complainant's request.
4. By email dated March 3, 2023 and filed March 6, 2023, the complainant appealed to this Commission, alleging that the respondent Mayor violated the Freedom of Information ("FOI") Act by failing to provide her with the requested records.
5. Section 1-200(5), G.S., provides:

"[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 concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.
9. Initially, it is found that, while the request in this matter sought Middletown Police Department records, the request was addressed to the Mayor's office. At the hearing, the complainant clarified that she had previously requested the records from the Middletown Police Department and was informed by the department that the records were in the possession of the Mayor's office. It is found that the complainant then issued a new request to the respondent Mayor for the same records. When the complainant did not receive the requested records, she filed the instant appeal with the Commission. Accordingly, because the underlying request in this matter was never sent to the Middletown Police Department, the Commission does not have

jurisdiction over the police department respondents. Accordingly, the complaint is dismissed as to these respondents as indicated in paragraph 1, of the order, below.

10. At the hearing, the remaining respondents¹ contended that the requested records were exempt from disclosure in their entirety pursuant to §1-210(b)(2), G.S., (invasion of personal privacy), and §1-210(b)(3)(H), G.S., (uncorroborated allegations of criminal activity).

11. The respondents submitted the records at issue to the Commission for *in camera* inspection. The records shall be referred to as IC-2023-0090-1 through IC-2023-0090-21.

12. The Commission notes that IC-2023-0090-16, IC-2023-0090-18, and IC-2023-0090-20 are blank pages. Accordingly, these records will not be further addressed herein.

13. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall require disclosure of “. . . personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy . . .”

14. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in *Perkins v. Freedom of Info. Comm'n*, 228 Conn. 158, 175 (1993). The claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

15. Section 1-214, G.S., provides in relevant part that:

(b)(1) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (A) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned, and (B) the collective bargaining representative, if any, of each employee concerned.

(b)(2) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files, and the agency reasonably believes that the disclosure of such records would not legally constitute an invasion of privacy, the

¹ All further references to the “respondents” refer to the Mayor of the City of Middletown and the City of Middletown.

agency shall first disclose the requested records to the person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(b)(3) Nothing in this section shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

(c) A public agency which has provided notice under subdivision (1) of subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206. Notwithstanding any provision of this subsection or subsection (b) of section 1-206 to the contrary, if an employee's collective bargaining representative files a written objection under this subsection, the employee may subsequently approve the disclosure of the records requested by submitting a written notice to the public agency.

16. It is found that the respondents reasonably believed that the records responsive to the request set forth in paragraph 2, above, were exempt from disclosure pursuant to §1-210(b)(2), G.S. It is further found that the respondents timely notified the subject of the records about the request for records in this case, and that he objected to the disclosure of the records in accordance with §1-214, G.S.

17. It is found that the responsive records constitute “personnel or medical files and similar files” within the meaning of §1-210(b)(2), G.S.

18. It is found that the respondents received reports of illegal drug use in Middletown City Hall by a city employee. It is found that the reports were investigated by the Middletown Police Department. It is found that, upon investigation, the Middletown Police Department discovered a small amount of cocaine and drug paraphernalia in a city employee’s office. It is found that, based upon the small weight of the discovered narcotic, the Middletown Police Department determined it was not necessary to pursue criminal charges, and no arrest was made.

19. It is found that, following the police investigation, the respondents recommended the city employee undergo medical and substance abuse treatment and that the employee followed the respondents’ recommendations.

20. Finally, it is found that the subject employee continues to be employed by the City of Middletown.

21. Upon careful in camera inspection of the remaining records, it is found that there is no legitimate public interest in IC-2023-0090-17, IC-2023-0090-19, and IC-2023-0090-21 as such records relate to family and medical issues. It is further found that the disclosure of these records would be highly offensive to a reasonable person.

22. It is therefore concluded that the records identified in paragraph 21, above, are permissively exempt from disclosure pursuant to §1-210(b)(2), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by declining to disclose a copy of such records to the complainant.

23. It is found that IC-2023-0090-1 through IC-2023-0090-15, however, are police reports concerning the underlying incident. It is found that there is a legitimate public interest in such records as they pertain to a police investigation concerning the use and possession of illegal narcotics and drug paraphernalia on city property by a city employee. It is further found that the disclosure of such records would not be highly offensive to a reasonable person.

24. It is therefore concluded that the records identified in paragraph 23, above, are not exempt from disclosure pursuant to §1-210(b)(2), G.S.

25. The respondents next contend that IC-2023-0090-1 through IC-2023-0090-15 are exempt from disclosure pursuant to §1-210(b)(3)(H), G.S.

26. Section 1-210(b)(3)(H), G.S. provides, in relevant part, that nothing in the FOI Act shall require the disclosure 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 a crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216.

27. Section 1-216, G.S., which section is read in conjunction with §1-210(b)(3)(H), G.S., provides as follows:

[e]xcept 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.

28. It is found that IC-2023-0090-1 through IC-2023-0090-15 are records of a law enforcement agency, not otherwise available to the public, which records were compiled in connection with the detection or investigation of crime.

29. In Docket #FIC 94-291, Rachel Gottlieb and The Hartford Courant v. State of Connecticut, Department of Public Safety, Division of State Police (May 24, 1995), (hereinafter "Gottlieb"), the Commission found that Black's Law Dictionary, Sixth Edition (1990), defines "corroborate" as "to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence." Ballentines Law Dictionary, Third Edition (1969) defines corroborate as "to state facts tending to produce confidence in the truth of a statement made by another." Funk & Wagnall New Standard Dictionary of the English Language (1946) defines corroborate as "to give increased support to; make more sure or evident."

30. In Gottlieb, the Commission found that "the reports contain similar accounts relayed to the interviewees concerning allegations under investigation." The Commission went on to find that "the requested reports contain allegations which were corroborated."

31. Upon careful in camera inspection of IC-2023-0090-1 through IC-2023-0090-15, it is found that there is information within the police reports that strengthens, adds weight and/or supports the underlying criminal allegations brought forward to police and therefore such information corroborates the underlying allegations.

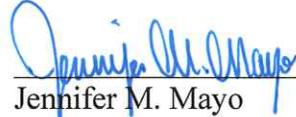
32. Accordingly, it is concluded that IC-2023-0090-1 through IC-2023-0090-15 are not exempt from disclosure pursuant to the provisions of §§1-210(b)(3)(H) and 1-216, G.S. It is

further concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by declining to disclose a copy of such records to the complainant.

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

1. As referenced in paragraph 9 of the findings, above, the complaint is hereby dismissed against the Middletown police respondents.
2. The remaining respondents shall forthwith disclose the records identified in paragraph 32 of the findings, above, to the complainant free of charge.
3. Henceforth, the remaining respondents shall 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 December 13, 2023.



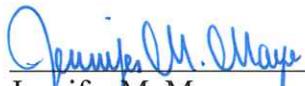
Jennifer M. Mayo
Acting Clerk of the Commission

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:

CLAIRE HOWARD, Madsen, Prestley & Parenteau, LLC, 402 Asylum Street, Hartford, CT 06103

MAYOR, CITY OF MIDDLETOWN; CITY OF MIDDLETOWN, c/o Attorney Michael J Rose, Rose Kallor, 750 Main Street, Suite 309, Hartford, CT 06103; **CHIEF, POLICE DEPARTMENT, CITY OF MIDDLETOWN; AND POLICE DEPARTMENT, CITY OF MIDDLETOWN**, 222 Main Street, Middletown, CT 06457



Jennifer M. Mayo
Acting Clerk of the Commission