

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Sarah Crowley,

Complainant

against

Docket # FIC 2022-0450

Chief, Police Department, Town of
Fairfield; Police Department, Town of
Fairfield; and Town of Fairfield,

Respondents

September 13, 2023

The above-captioned matter was heard as a contested case on February 15, 2023, 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 letter dated September 22, 2022, the complainant requested that the respondents provide her with a copy of all investigation records and communications related to Fairfield Police Department Case No.: 20-7836, which concerned the respondents' investigation into the complainant's report of an alleged sexual assault on March 5, 2020.
3. It is found that, by email dated September 22, 2022, the respondents acknowledged the request, but informed the complainant that the requested records concerned uncorroborated allegations and therefore the request was denied.
4. By letter dated September 27, 2022 and filed September 29, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request.
5. At the time of the request, §1-200(5), G.S., provided:

"[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 records requested by the complainant are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing in this matter, the complainant testified, and it is found, that, on March 5, 2020, she made a 911 call to the respondent police department reporting that she had just been sexually assaulted. The complainant also provided details concerning the respondent police department’s investigation of her allegations.

10. At the hearing, the respondents argued that the responsive records are exempt from mandatory disclosure by virtue of §1-210(b)(3)(H), G.S., because such records contain uncorroborated allegations of criminal activity. In support of their argument, the respondents claimed that the State’s Attorney’s decision not to issue a warrant for the arrest of the alleged assailant is evidence that the allegations contained in such records are uncorroborated.

11. Upon order of the hearing officer, the respondents submitted copies of the records described in paragraph 2, above, for in camera inspection (hereinafter the “in camera records”). Such in camera records shall be identified as IC-2022-0450-1 though IC-2022-0450-120. Such in camera records consist of case incident reports, the recording of the 911 call by the complainant, the application for an arrest warrant, photographs, texts, and various related records.

12. 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.

13. 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.

14. Upon careful in camera inspection, it is found that the in camera records 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.

15. 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.”

16. In Gottlieb, the Commission found that “the reports contain similar accounts relayed to the respondent by different interviewees concerning the allegations under investigation. ... [and that] upon the conclusion of the investigation the respondent determined that there was probable cause that a crime had been committed.” The Commission went on to find that “the requested reports contain allegations which were corroborated.”

17. Allegations may be corroborated without rising to the level of probable cause, or proof beyond a reasonable doubt, that a crime has been committed. See Docket #FIC 2015-653, Jon Schoenhorn v. Chief, Police Department, City of Hartford; Police Department, City of Hartford; and Police Department, City of Hartford (May 25, 2016) (allegations of criminal activity were corroborated even though criminal charges were not filed); Docket #FIC 2011-372, Gregory Bishop v. Support Services Department, Police Department, City of Middletown; and Police Department, City of Middletown (April 11, 2012) (allegations corroborated even if evidence might not rise to the level of probable cause that a crime had been committed); Docket #FIC 2010-166, Daniel R. Hedges v. Chief, Police Department, Town of Madison; and Police Department, Town of Madison (February 23, 2011) (standard of probable cause and standard of lack of corroboration are different standards); Docket #FIC 2005-553, Sol Maldonado Torres v. Chief, Police Department, City of New London (May 10, 2006) (allegations were corroborated,

although the State's Attorney declined to prosecute because it would have been difficult for the State to sustain its burden of proof beyond a reasonable doubt).

18. Upon careful in camera inspection, it is found that the in camera records contain similar accounts of the underlying events, as well as information that tends to strengthen, add weight and support the complainant's allegations.

19. It is found that the in camera records do not constitute uncorroborated allegations within the meaning of §§1-210(b)(3)(H) and 1-216, G.S.

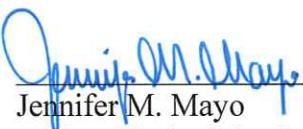
20. Accordingly, it is concluded that in camera records are not exempt from disclosure pursuant to the provisions of §§1-210(b)(3)(H) and 1-216, G.S.

21. It therefore is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose the in camera 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. Forthwith, the respondents shall provide the complainant with a copy of the responsive records described in paragraph 2 of the findings, above, free of charge.
2. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 13, 2023.



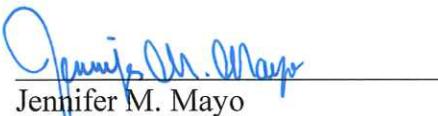
Jennifer M. Mayo
Acting Clerk of the Commission

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:

SARAH CROWLEY, 45 Jefferson Road, Unit 6-3, Branford, CT 06405

CHIEF, POLICE DEPARTMENT, TOWN OF FAIRFIELD; POLICE DEPARTMENT, TOWN OF FAIRFIELD; AND TOWN OF FAIRFIELD, c/o Attorney James T. Baldwin, Coles Baldwin Kaiser & Creager, LLC, 1 Eliot Place, 3rd Floor, Fairfield, CT 06824



Jennifer M. Mayo

Acting Clerk of the Commission