

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Deshawn Tyson,

Complainant

against

Docket #FIC 2017-0361

Anthony Campbell, Chief, Police  
Department, City of New Haven;  
and Police Department, City of New  
Haven,

Respondents

May 23, 2018

The above-captioned matter was heard as a contested case on March 23, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The complainant, who is incarcerated, appeared 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.).

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 June 4, 2017, the complainant made a request to the respondents for a copy of certain records related to case 14-022071 which included in part: any and all video surveillance footage from the Marriott Hotel; any and all phone records, recordings and/or text messages from any alleged victims, defendants, or suspects; any and all videos or written statements made by the alleged victims, defendants, or suspects; criminal history of any party; the names of the officers involved; and certain information pertaining to a Bianca Alvarez. It is found that the complainant received no response to his request from the respondents.

3. By letter dated June 19, 2017 and filed on June 21, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with this request.

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

"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, 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.

5. Section 1-210(a), G.S., provides in relevant part that:

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) receive a copy of such records in accordance with section 1-212.

6. 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.”

7. It is concluded that the requested records, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. At the hearing on this matter, the respondents contended that the records requested by the complainant are part of the investigative file for case 14-022071 of the respondent police department compiled in connection with the investigation of a crime that resulted in the arrest of the complainant and that the prosecution of that case against him is still pending. The respondents contended that, therefore, pursuant to §1-215, G.S., of the FOI Act, the requested records are not subject to disclosure pursuant to §§1-210(a), and 1-212(a), G.S.

9. Section 1-215, G.S., provides in relevant part that:

(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 investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest...

...

(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.  
[Emphasis added]

10. In his brief, the complainant contended that §1-215(e), G.S., limits the application of §1-215(a), G.S., to those records contained in an investigative file that pertain to the person against whom there is a pending prosecution. The complainant contended that, consequently, §1-215(a), G.S., does not apply to the records pertaining to Bianca Alvarez or the officers, because there is no pending prosecution against those individuals. The complainant contended that, therefore, the records that pertain to Bianca Alvarez or the officers should be provided to him.

11. It is found, however, that the reference to "any record" found in §1-215(e), G.S., is, in this case, the investigation file and that the complainant is the subject of that record. It is found that all of the requested records are part of the investigative file of the respondent police department compiled in connection with the investigation of the crime that resulted in the arrest of the complainant, and that the prosecution of the case is still pending.

12. It is found that none of the requested records fall within the definition of "record of arrest" as set forth in §1-215(a), G.S.

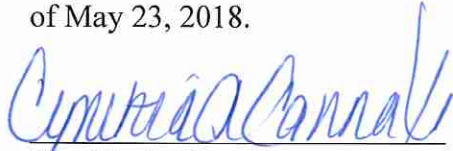
13. It is concluded, therefore, that the requested records are exempt from disclosure pursuant to §1-215(a), G.S.

14. Consequently, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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 May 23, 2018.



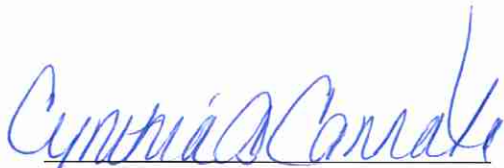
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**DESHAWN TYSON, #253494**, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

**ANTHONY CAMPBELL, CHIEF, POLICE DEPARTMENT, CITY OF NEW HAVEN; AND POLICE DEPARTMENT, CITY OF NEW HAVEN**, c/o Attorney Kathleen Foster, City of New Haven, 165 Church Street, New Haven, CT 06510



Cynthia A. Cannata  
Acting Clerk of the Commission