

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Torlai,

Complainant

against

Docket #FIC 2018-0142

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

Respondents

September 26, 2018

The above-captioned matter was heard as a contested case on August 28, 2018, 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, on or about February 27, 2017, after an investigation, the respondent police department arrested Xavier Cruz, a Connecticut State Police Trooper, for an assault that occurred at Mr. Cruz's residence in the town of Wethersfield, Connecticut. It is found that the arrest of Mr. Cruz was by warrant. The felony charges against Mr. Cruz included second degree assault with a firearm and first degree kidnapping with a firearm.
3. It is found that, by letter dated February 11, 2018, the complainant requested from the respondents certain information related to the arrest of Xavier Cruz; specifically: the full name, address, and race of the person arrested; the date, time and place of the arrest, and a list of all the charges. In addition, the complainant requested a copy of the official arrest report, any arrest warrant or search warrant, applications for any arrest or search warrant, and any affidavit in support of such warrant(s). The complainant further requested any records that depict or describe the arrest or detention of Mr. Cruz, including paper, video, audio or photographic records.
4. It is found that, by letter dated February 16, 2018, the respondents acknowledged the request, described in paragraph 3, above, and informed the complainant that his request was being processed.

5. It is found that, by letter dated February 21, 2018, the respondents provided to the complainant some of the information he requested, but refused to disclose Mr. Cruz's home address, and further refused to disclose the incident report, arrest warrant affidavit and arrest warrant application. The respondents informed the complainant that they did not maintain any video, audio, or copies of the search warrant application submitted to the court.

6. By letter dated March 15, 2018 and filed March 19, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to disclose Mr. Cruz's home address, as well as a copy of the incident report, arrest warrant affidavit and arrest warrant application, described in paragraph 3, above.¹

7. 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, printed, photostated, photographed or recorded by any other method.

8. 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.

9. 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."

10. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

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

(a) For the purposes of this section, "record of the arrest" means (1) the name, race and address of the person

¹On May 13, 2018, the respondents provided redacted copies of the incident report, arrest warrant affidavit/application, and disclosed Mr. Cruz's home address to the complainant. At the hearing in this matter, the complainant stated that he did not wish to pursue his claim that the respondents violated the FOI Act with respect to his request for a copy of the incident report. Accordingly, such claim will not be considered herein.

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.

(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 identify of witnesses, (2) 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 (3) any information that a judicial authority has ordered to be sealed from public inspection or disclosure.... (Emphasis added).

12. Section 1-217, G.S., provides that a public agency may not disclose the residential address of certain designated categories of individuals, including sworn members of a municipal police department (1) from such public agency's personnel, medical or similar files; or (2) from certain other records provided that the individual whose residential address is included in such records has requested that his or her residential address be kept confidential.

13. It is found that, at the time of the request, described in paragraph 3, above, the criminal prosecution of Mr. Cruz was pending. At the hearing in this matter, the respondents' sole witness, Sgt. Rivera, of the respondent police department, testified that upon receipt of the complainant's request, she contacted the state's attorney's office and spoke with one of the prosecutors, whose name she did not recall. According to the witness, the prosecutor instructed her not to disclose the arrest warrant affidavit/application, or incident report to the complainant because the prosecution of Mr. Cruz was "pending." It is found that, based upon this instruction from the prosecutor, the respondents withheld such records.

14. It is found that the arrest warrant affidavit/application is part of the “record of the arrest,” as defined in §1-215(a), G.S., and that the respondents were required to disclose such record at the time the complainant requested it.

15. Although the respondents were required to disclose the entire arrest warrant affidavit/application to the complainant, it is found that such record contains the names of witnesses, which information the respondents are permitted to redact from such record, pursuant to §1-215(b), G.S.

16. The complainant also contended that the respondents improperly withheld Mr. Cruz’s home address. At the hearing in this matter, Sgt. Rivera testified that she believed she was required, under §1-217, G.S., to redact Mr. Cruz’s home address from the record of the arrest because he was a sworn member of the State Police at the time of the arrest.

17. It is found, however, that because the records requested by the complainant are not “personnel, medical or similar files” of the respondent police department, but rather, are police records related to the arrest of Mr. Cruz, and because the respondents provided no evidence that Mr. Cruz had requested that the respondents keep his home address confidential, §1-217, G.S., is inapplicable.

18. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a), 1-212(a) and 1-215, G.S., by withholding the record, described in paragraph 14, above, in its entirety, and by withholding the home address of Mr. Cruz, from 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 a copy of the record, described in paragraph 14, above, free of charge, to the complainant.

2. In complying with paragraph 1 of the order, above, the respondents may redact from such record only the names and other identifying information of witnesses.

3. Henceforth, the respondents shall strictly comply with §§1-215(b), §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 26, 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:

JAMES TORLAI, 127 Barton Street, Torrington, CT 06790

CHIEF, POLICE DEPARTMENT, TOWN OF WETHERSFIELD; POLICE DEPARTMENT, TOWN OF WETHERSFIELD; AND TOWN OF WETHERSFIELD,
c/o Attorneys John Bradley, Jr., and Nathan C. Favreau, Rome McGuigan, P. C., One State Street, Hartford, CT



Cynthia A. Cannata
Acting Clerk of the Commission