

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Fred Olszewski,

Complainant

against

Docket #FIC 2018-0650

Director of Human Resources, Town of
Windsor; and Town of Windsor,

Respondents

July 24, 2019

The above-captioned matter was heard as a contested case on April 1, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. This matter was scheduled to be heard by the Commission at its regular meeting of June 26, 2019, however the report was withdrawn for further consideration and revision prior to the meeting.

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. By letter of complaint filed November 13, 2018, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his requests for certain public records.
3. It is found that the complainant and respondents are parties to a contested matter currently pending before the Connecticut Workers' Compensation Commission, WCC File No.: 100211832. It is further found that a current order issued by the Workers' Compensation Commission directs the respondents to provide the complainant's attorney with a copy of the video surveillance records in the possession of the respondents, subsequent to the complainant's deposition in that Workers' Compensation Commission matter. As of the date of the FOI hearing, the complainant had not yet been deposed. Such video surveillance records are the same records the complainant has requested in this FOI Commission case.
4. It is found that the complainant made two requests for copies of any existing electronic surveillance of the complainant gathered between October 20, 2016 and the date of each request. The first request was dated September 27, 2018 and the subsequent request was dated October 24, 2018. There was no evidence submitted that either request was acknowledged by the respondents.

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

"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.

6. 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.

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 are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. The respondents contended that the release of the video surveillance recording(s) prior to the deposition of the complainant in the Workers' Compensation Commission matter would, "limit the rights of litigants, including parties to administrative proceedings, under the laws of discovery in this state," as provided by §1-213(b)(1), G.S.

10. Section 1-213(b)(1), G.S., provides:

Nothing in the Freedom of Information Act shall be deemed in any manner to: (1) Affect the status of judicial records as they existed prior to October 1, 1975, nor to limit the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state.

11. In Chief of Police v. Freedom of Information Commission, 252 Conn. 377, 396 (2000), the court stated, "[W]e can find nothing in the legislative history...to indicate

that §1-213(b)(1), G.S., means...that the provisions of the [FOI] Act do not affect or limit discovery rights, and discovery rights do not affect or limit the provisions of the act. The two operate separately and independently.” (emphasis added)

12. Further, in the Appellate Court review of Chief, the court stated that, “§1-213(b)(1), G.S., operates as an exemption in only one direction: it cannot limit or restrict a litigant’s right to seek discovery or documents; but at the same time, it cannot be used as a source of exemption from the [FOI] Act by a litigant who seeks to resist discovery.” Chief of Police v. Freedom of Information Commission, 52 Conn.App. 12, 18 (1999) aff’d, 252 Conn 377 (2000).

13. Therefore, it is concluded that the Connecticut’s Workers’ Compensation order described in paragraph 3 above, cannot be interpreted so as to interfere with the disclosure of public records as prescribed by the FOI Act.

14. The respondents also argued that the Workers’ Compensation Commission’s authority under §31-278, G.S., to order the production of certain evidence in matters before them, triggers the Freedom of Information Act’s “unless otherwise provided by any federal law or state statute,” clause pursuant to §1-210(a), G.S.

15. Section 31-278, G.S., provides in relevant part:

Each commissioner shall, for the purposes of this chapter, have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts or other papers in relation to any matter at issue as he may find proper....

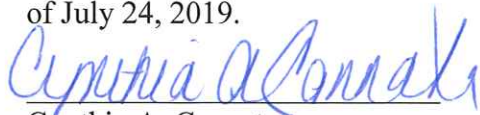
16. It is found that §31-278, G.S., sets forth the authority of the Workers’ Compensation Commissioner to order the production of evidence. It is further found that §31-278, G.S., does not provide a basis to withhold the requested records from the complainant.

17. Based on all of the foregoing, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

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

1. The respondents shall forthwith provide the requested records at no cost to the complainant.

Approved by Order of the Freedom of Information Commission at its regular meeting
of July 24, 2019.



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:

FRED OLSZEWSKI, c/o Attorney A. Patrick Alcaez, Butler Norris & Gold, 254 Prospect Avenue, Hartford, CT 06106-2041

DIRECTOR OF HUMAN RESOURCES, TOWN OF WINDSOR; AND TOWN OF WINDSOR, c/o Attorney Kevin M. Deneen, O'Malley, Deneen, Leary, Messina & Oswecki, 20 Maple Avenue, Windsor, CT 06095



Cynthia A. Cannata
Acting Clerk of the Commission