Since 1975
FOI
It's Your Right to Know

FREEDOM OF INFORMATION

Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

James Torlai,
Complainant(s)

against

Chief, Police Department, City of New Britain; Police Department, City of New Britain; and City of New Britain,
Respondent(s)

Notice of Rescheduled Commission Meeting

Docket #FIC 2016-0443

March 28, 2017

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, April 12, 2017 at 2:00 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2:00 p.m.** on **Wednesday, April 26, 2017.**

Any brief, memorandum of law or request for additional time, as referenced in the March 22, 2017 Transmittal of Proposed Final Decision, must be received by the Commission on or before April 13, 2017.

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: James Torlai
Attorney Joseph Skelly, Jr.

2017-03-28/FIC# 2016-0443/ReschedTrans/wrbp/MS/VDH/LFS

Since 1975
FREEDOM OF INFORMATION
It's Your Right to Know

Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

James Torlai,
Complainant(s)
against

Chief, Police Department, City of New Britain; Police Department, City of New Britain; and City of New Britain,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0443

March 22, 2017

Transmittal of Proposed Final Decision Dated March 22, 2017

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision dated March 22, 2017, prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, April 12, 2017.** At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission *on or before March 31, 2017.* Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed *on or before March 31, 2017.* **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed *on or before March 31, 2017* and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: James Torlai
Attorney Joseph Skelly, Jr.

2017-03-22/FIC# 2016-0443/Trans/wrbp/MS/VDH/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Second Report of
Hearing Officer

James Torlai,

Complainant

against

Docket #FIC 2016-0443

Chief, Police Department, City of
New Britain; Police Department,
City of New Britain, and
City of New Britain,

Respondents

March 22, 2017

The above-captioned matter was heard as a contested case on August 31, 2016, 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 May 21, 2016, the complainant requested that the respondents provide him with copies of records related to the arrest of Henry Arroyo in January of 2016, as follows:

A. The complete name and address of the person arrested;
B. The race of the person arrested;
C. The date, time and location of the arrest;
D. A list of all charges;
E. Any arrest warrant application and any related documents such as affidavits;
F. The official arrest, incident or similar report;
G. A copy of any and all test results related to the arrest;
H. Any reports your agency maintains that document or depict the arrest or custody of the persons [sic] arrested;

I. Any video and audio recording of the arrest and detention of the person arrested;
J. Any other records your agency maintains that document or depict the arrest or detention of the persons [sic] arrested;
K. A complete copy of any investigatory report related to the arrest;
L. A copy of your phone logs for January 18, 2016 through to and including January 24, 2016;
M. Copies of all audio recordings of all phone calls made from January 18, 2016 through to January 24, 2016 that your agency might maintain; and
N. All other records you maintain related to the arrest.

3. It is found that, by letter dated May 27, 2016, the respondents acknowledged the complainant's request, and indicated that the request was being processed.

4. By letter dated June 12, 2016 and filed June 15, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with copies of the records described in paragraph 2, above.

5. 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.

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

9. At the time of the contested case hearing, the complainant informed the hearing officer that the only matter at issue in this case was the redaction of the arrestee's residential address and cell phone number from the official police report that the respondents had disclosed to him.

10. It is found that the arrestee is a Connecticut State Police Officer who was arrested in the City of New Britain.

11. The complainant contends that the provisions of §1-215, G.S., specifically set forth both the records that must be disclosed from the time of arrest and redactions that can be made to such records.

12. Section 1-215, G.S., provides, in relevant part, as follows:

> (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. . . .
>
> (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 identity 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. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested. (Emphasis supplied).

13. In response, the respondents contend that §1-217, G.S., prohibits the respondents from disclosing the residential address.

14. Section 1-217, G.S., provides, in relevant part, as follows:

> (a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency:
>
> . . .
>
> (2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Environmental Protection;
>
> . . .
>
> (c) (1) Except as provided in subsections (a) and (d) of this section, no public agency may disclose the residential address of any person listed in subsection (a) of this section from any record described in subdivision (2) of this subsection that is requested in accordance with the provisions of said subdivision, regardless of whether such person is an employee of the public agency, provided such person has (A) submitted a written request for the nondisclosure of the person's residential address to the public agency, and (B) furnished his or her business address to the public agency. (Emphasis supplied)
>
> (2) Any public agency that receives a request for a record subject to disclosure under this chapter where

> such request (A) specifically names a person who has requested that his or her address be kept confidential under subdivision (1) of this subsection, shall make a copy of the record requested to be disclosed and shall redact the copy to remove such person's residential address prior to disclosing such record, (B) is for an existing list that is derived from a readily accessible electronic database, shall make a reasonable effort to redact the residential address of any person who has requested that his or her address be kept confidential under subdivision (1) of this subsection prior to the release of such list, or (C) is for any list that the public agency voluntarily creates in response to a request for disclosure, shall make a reasonable effort to redact the residential address of any person who has requested that his or her address be kept confidential under subdivision (1) of this subsection prior to the release of such list.
>
> (3) Except as provided in subsection (a) of this section, an agency shall not be prohibited from disclosing the residential address of any person listed in subsection (a) of this section from any record other than the records described in subparagraphs (A) to (C), inclusive, of subdivision (2) of this subsection. . . .

15. It is found that the redacted police report at issue in this case is "the official arrest, incident or similar report," within the meaning of §1-215(a), G.S.

16. It is further found that the arrest in this case was effected without a warrant and that no "judicial authority has ordered . . . [the] report sealed from public inspection or disclosure, in whole or in part," within the meaning of §1-215(a)(2)(B), G.S.

17. It is therefore found that such record must be disclosed "from the time of the arrest," pursuant to §1-215(b), G.S.

18. It is further found that the language used in §1-215(b), G.S.—specifically, "[n]otwithstanding any provision of the general statutes, and except as otherwise provided in this section"—evidences that a public agency's ability to redact the "records of arrest," as defined by §1-215(a), G.S., is limited and strictly set forth in §1-215(b)(1) through (3).

19. It is found that the redactions that the respondents made in this case—that is, the redaction of the arrestee's residential address and cell phone number from the official police report—do not fall within any of the three narrowly defined categories of permissible redactions set forth in §1-215(b)(1) through (3), G.S.

20. It is further found that the police report at issue, which is the possession of the arresting agency, is not a "personnel, medical or similar file," within the meaning of §1-217(a), G.S.

21. It is further found that the cell phone number that has been redacted from the requested police report cannot be redacted pursuant to §1-217, G.S., and that the respondents failed to prove that such number is exempt from disclosure pursuant to any other provision.

22. Finally, it is found that there is no evidence in the administrative record that would tend to show that the Connecticut State Police Officer who was arrested submitted a written request for the nondisclosure of his residential address and furnished his business address to the New Britain respondents, within the meaning of §1-217(c)(1), G.S.

23. Based on the foregoing, on January 11, 2017, the hearing officer issued a proposed final decision, recommending that the Commission conclude that the respondents violated the FOI Act when they redacted the police report and also recommending that Commission order the respondents to provide the complainant with an unredacted police report.

24. However, on February 17, 2017, the respondents filed an objection to the proposed final decision, indicating that, as of November 29, 2016, the Superior Court had dismissed the criminal charges against the Connecticut State Police Officer. The respondents contended that, based on the dismissal, the official police report was now exempt from disclosure pursuant to §54-142a, G.S., as an erased criminal record.

25. On February 24, 2017, the complainant filed a brief in response to the respondents' objection. In this brief, the complainant contended, in part, that "[t]he concern that New Britain might possibly get sued is not a legitimate legal reason to withhold the information from the public." The complainant further contended that the Commission should adopt the January 11, 2017 proposed final decision, and that, thereafter, if counsel for the respondents were to provide him a written statement that the records are in fact erased, he would not pursue this matter.

26. On March 9, 2017, the hearing officer issued an order for the respondents to submit an affidavit to the Commission on or before March 17, 2017, attesting to when the requested record had been erased. On March 16, 2017, the respondents filed their affidavit with the Commission.

27. Section 54-142a, G.S., entitled "Erasure of Criminal Records," provides, in relevant part, as follows:

> (a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to

> such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. . . . (Emphasis supplied).
>
> . . . .
>
> (e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

28. Section 54-142c, G.S., further provides, in relevant part, as follows:

> (a) The clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter. (Emphasis supplied).

29. For purposes of §54-142c, G.S., a "criminal justice agency" is defined as including "any . . . government agency created by statute which is authorized by law and

engages, in fact, as it principal function in activities constituting the administration of criminal justice."

30. It is found that the respondent police department is a criminal justice agency, within the meaning of §54-142c, G.S.

31. Based upon the evidence contained in the respondents' affidavit, it is found the official police report and all other records pertaining to the underlying arrest were erased on November 29, 2016, within the meaning of §54-142a, G.S.

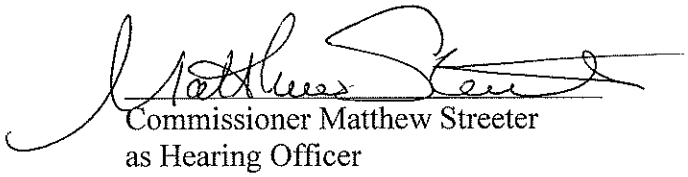
32. Accordingly, it is concluded that the entire official police report requested by the complainant is now exempt from disclosure pursuant to §54-142a, G.S.

33. It is further concluded, however, that redacted sections of the official police report were not exempt from disclosure at the time the request was made.

34. Accordingly, it is further concluded that, by not disclosing the official police report to the complainant without such redactions at the time the request was made, the respondents violate the disclosure provisions §§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. Henceforth, the respondents shall promptly comply disclosure provisions of §§1-210(a) and 1-212(a), G.S., at the time a request is made.



Commissioner Matthew Streeter
as Hearing Officer