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SARAH BRAASCH *v.* FREEDOM OF INFORMATION COMMISSION ET AL.
(AC 45024)

Prescott, Moll and Suarez, Js.

Syllabus

Pursuant to statute (§ 1-216), 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 and, 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.

Pursuant further to a provision (§ 1-210 (b)) of the Freedom of Information Act (§ 1-200 et seq.), nothing in the act shall be construed to require disclosure of records of law enforcement agencies not otherwise available to the public, if the disclosure of such records would result in the disclosure of uncorroborated allegations subject to destruction pursuant to § 1-216.

The plaintiff appealed to this court from the judgment of the trial court dismissing her administrative appeal from the final decision of the defendant Freedom of Information Commission, in which the commission determined that body camera recordings created by the defendant university police department were exempt from disclosure pursuant to § 1-210 (b) (3) (H). Invoking the Freedom of Information Act, the plaintiff submitted a request with the department chief to be provided with a copy of body camera recordings that were generated when department police responded to her residence hall at the university after she called the department's nonemergency line, reporting that a third party, whom the plaintiff did not know, was sleeping in a common room, and that the third party may have been sleeping in the room to provoke the plaintiff. The department, construing the plaintiff's allegations as possible criminal activity, dispatched police officers to the scene. The officers conducted an investigation, which was recorded on the body cameras, in which they interviewed the plaintiff and the third party. After the investigation, the department concluded that the plaintiff's allegations were unfounded. The defendant assistant chief of the department denied the plaintiff's request for the recordings on the ground that they were created in connection with an uncorroborated allegation of a crime. The commission concluded that the department and the assistant chief properly denied the plaintiff's request because the recordings were exempt from disclosure. The trial court rendered judgment dismissing the appeal and granting a motion to seal the body camera recordings filed by the department and the assistant chief. *Held*:

1. The trial court properly concluded that the body camera recordings were exempt from disclosure under § 1-210:

   a. The plaintiff could not prevail on her claim that, in applying § 1-210 (b) (3) (H), the commission erroneously found that she had made uncorroborated allegations of criminal activity to the department because she neither stated a belief that criminal conduct had occurred nor subjectively intended to initiate an investigation into possible criminal conduct: the proper inquiry was whether the records sought to be disclosed were compiled in connection with the detection or investigation of a crime, and the plaintiff failed to demonstrate that the commissioner's findings that the department construed the facts that the plaintiff provided as allegations of possible criminal activity and that the police officers investigated whether a crime had occurred were not supported by substantial evidence and were objectively unreasonable; moreover, the plaintiff's subjective intent in calling the nonemergency line did not restrict the department's response to her representations; accordingly, the body camera recordings were generated during the officers' investigation into whether a crime had occurred.

   b. The plaintiff's claim that the commission improperly determined that § 1-210 (b) (3) (H) applied even though the video recordings had been

made available to D, a dean of the university, was unavailing: the plaintiff did not demonstrate that the department, by making the recordings available to D, thereby made the records available to the "public" under § 1-210 (b) (3), rather, the department made the recordings available only to D for what it believed was a limited educational purpose relating to whether a disciplinary proceeding should be initiated against the plaintiff, D was bound by the restrictions on disclosure imposed by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g et seq.), and, thus, substantial evidence supported the commission's finding that the recordings were not otherwise made available to the public; moreover, the fact that the department made the recordings available to D and not to her did not violate her right to equal protection because she was not similarly situated to D, as the release of the recordings to D was made for what the department believed to be a limited administrative purpose, whereas the plaintiff acknowledged her intention to publicly disseminate the recordings.

c. The commission did not arbitrarily refuse to require the department and the assistant chief to provide the plaintiff with redacted recordings omitting any discussion of criminality: substantial evidence supported the commission's finding that the police responded to the plaintiff's residence hall and generated the body camera recordings in their investigation into what they interpreted to be the plaintiff's allegation that criminal conduct possibly had occurred; moreover, the plaintiff failed to demonstrate that the disclosure of the recordings would not undermine the legislative policy underlying the exemption in § 1-210 (b) (3) (H) to shield persons from public scrutiny arising from uncorroborated allegations of criminal activity, particularly in light of the plaintiff's expressed desire to use the recordings in an attempt to sway public opinion concerning the incident.

2. The trial court properly exercised its discretion in granting the motion of the department and the assistant chief to seal the body camera recordings: the commission and the trial court reviewed the recordings in camera to determine whether § 1-210 (b) (3) (H) applied and, having fully litigated and upheld the commission's determination that the exemption applied, the court properly granted the motion to seal to protect the integrity of its judgment and to shield the third party from any possible negative effects of disclosure of the recordings.

Argued September 14, 2022—officially released April 4, 2023

Procedural History

Appeal from the decision of the named defendant determining that certain body camera recordings were exempt from disclosure, brought to the Superior Court in the judicial district of New Britain and tried to the court, *Cordani*, *J.*; judgment dismissing the appeal and granting the motion to seal certain body camera recordings filed by the defendant Yale University Police Department et al., from which the plaintiff appealed to this court. *Affirmed.*

Jay M. Wolman, with whom, on the brief, was *Marc J. Randazza*, pro hac vice, for the appellant (plaintiff).

Kathleen K. Ross, commission counsel, with whom, on the brief, was *Colleen M. Murphy*, general counsel, for the appellee (named defendant).

Aaron S. Bayer, with whom was *Robyn E. Gallagher*, for the appellee (defendant Yale University Police Department et al.).

Opinion

SUAREZ, J. The plaintiff, Sarah Braasch, appeals from the judgment of the trial court dismissing her administrative appeal from the final decision of the Freedom of Information Commission (commission), one of three defendants in this action. The commission concluded that the other two defendants in this action, the Yale University Police Department (department) and the Assistant Chief of the Yale University Police Department (assistant chief), properly denied the plaintiff's request for a copy of certain body camera recordings that were in their custody. On appeal to this court, the plaintiff claims that the trial court improperly (1) concluded that the recordings were exempt from disclosure under General Statutes § 1-210 (b) (3) (H),[1] and (2) granted the motion of the department and the assistant chief to seal the body camera recordings. We affirm the judgment of the trial court.

The relevant procedural history is as follows. On May 23, 2019, the plaintiff, invoking the Freedom of Information Act (act), General Statutes § 1-200 et seq., submitted a written request with Ronnell Higgins, the director of public safety and chief of the department (chief), to be provided with a copy of body camera recordings that were generated on May 8, 2018, when department police officers responded to her residence hall at Yale University (university) after she had called the department's nonemergency line. On July 9, 2019, the assistant chief, Steven D. Woznyk, denied the plaintiff's request in writing on the ground that the recordings were "created in connection with an uncorroborated allegation of a crime."

On July 27, 2019, the plaintiff filed a complaint with the commission. On November 4, 2019, a contested hearing was held before a hearing officer. On September 9, 2020, the commission voted unanimously to adopt the hearing officer's report dated August 18, 2020, as the commission's final decision. The commission determined that the body camera recordings were exempt from disclosure under § 1-210 (b) (3) (H).

In its final decision, the commission found that, "at approximately 1:40 a.m. on May 8, 2018, [the plaintiff] called [university] police dispatch, identified herself as a student and resident of the Hall of Graduate Studies, and alleged that a woman, who she did not know, was sleeping in a common room. It is also found that the [plaintiff] further alleged to [the department] that this person may have been sleeping in the room to provoke the [plaintiff] as part of an ongoing conflict the [plaintiff] alleged she had with other students that reside in the same residence hall.[2] . . .

"[I]n response to the call . . . [the department] dispatched three police officers (with a supervising officer arriving later to the scene) to conduct a criminal investi-

gation of the allegation that an unauthorized person was in the residence hall trespassing and that this person was harassing the [plaintiff]. . . . [T]he [department] construed the allegations of the [plaintiff] as possible criminal activity. . . .

"[T]he [department] investigated upon arrival at the scene. . . . [T]he [department] officers separately interviewed the [plaintiff] and the accused person, recording their interviews and the scene on their body worn cameras. . . . [S]uch action in turning on the body worn cameras was consistent with [the department's] policy on body worn cameras. . . .

"[A]fter investigating the allegations of the [plaintiff], [the department] determined that the [plaintiff's] allegations were unfounded. . . . [The department] concluded that the accused person was a student and resident of the hall who was therefore authorized to be in the building and common room, and that the accused person was not harassing the [plaintiff]. . . . [The department] notified the [plaintiff] of their findings. . . .

"[T]he body camera video footage in this case was maintained by the [department] as part of the investigation file. . . . [The department] documented its investigation of a 'suspicious person/activity,' in an Incident/Investigation Report, dated May 8, 2018. The [department] referred the matter to the university to investigate whether the [plaintiff] violated any university policies, and thereafter the university provided the [plaintiff] with a copy of the report. . . .

"[T]he in camera records [that were provided to the hearing officer for review] are records of a law enforcement agency, namely the [department], which are not otherwise available to the public, and were compiled in connection with the investigation or detection of a crime, or alleged crime. . . .

"[E]ach in camera record depicts the interactions of the [plaintiff] with the [department] officers that responded to the scene and include the [plaintiff's] recitation of her allegations. . . . [T]he [department] concluded that the accused person was a student and resident of the hall and therefore was not trespassing, and that the accused person was not harassing the [plaintiff]. . . . [T]he [plaintiff's] allegations are not supported, substantiated or strengthened by the facts uncovered by the [department] in conducting their investigation. It is therefore concluded that the in camera records contain uncorroborated allegations that are subject to destruction, within the meaning of § 1-210 (b) (3) (H) and [General Statutes §] 1-216 . . . .

"[T]he in camera records are permissibly exempt from disclosure pursuant to § 1-210 (b) (3) (H) . . . . Consequently, the [department and the assistant chief] did not violate the [act] as alleged by the [plaintiff]."

(Footnote omitted.) In its decision, the commission also discussed and rejected several specific arguments advanced by the plaintiff in support of her contention that the department was obligated to disclose the body camera recordings. We will discuss the commission's additional reasoning as necessary in the context of the claims raised on appeal.

On October 19, 2020, in the Superior Court, the plaintiff commenced an administrative appeal from the commission's decision. On September 21, 2021, following a hearing, the court, *Cordani*, *J.*, dismissed the plaintiff's appeal. In its memorandum of decision, after setting forth the facts of the case consistent with those found by the commission, the court stated: "The video was compiled by the [department] in connection with its handling and investigation of the plaintiff's call. The plaintiff called a law enforcement agency and complained that there was a stranger in her dorm residence building, who the plaintiff believed had no right to be there, and who the plaintiff believed was there for the purpose of harassing the plaintiff. Clearly, in making the call, the plaintiff sought the assistance of the [department], a law enforcement agency, to investigate her problem and remedy it. The plaintiff clearly intended for and expected the [department] to dispatch officers as a result of her call. When the officers arrived, they investigated, and the plaintiff cooperated in the investigation. The plaintiff then admits to reporting to the [department] that the stranger was, in fact, harassing her. Clearly, the [department] was responding to and investigating allegations of potential criminal activity.[3] The [commission] factually found the foregoing and the record contains substantial evidence to support the finding. . . . The fact that the plaintiff believed that she was being harassed on an ongoing basis, apparently for months prior to this incident and earlier on the evening of the incident, and had reported such to the [department] previously, further supports the foregoing conclusion.[4] Accordingly, the [commission] found that the [department], in creating the video, was investigating a report of alleged criminal activity, and the record contains substantial evidence supporting the [commission's] finding in this regard.

"In this context, the statute itself, by using the link 'because,' confirms that if disclosure of a record would reveal uncorroborated allegations of a criminal nature, then disclosure of the record would not be in the public interest. The video contains two portions. An interview of the plaintiff and an interview of the stranger. Both portions contain allegations of a criminal nature from different points of view. The plaintiff's interview contains the allegations directly with the plaintiff complaining that the stranger is present where she should not be and that the stranger was harassing the plaintiff. The interview of the stranger contains the stranger's responses to the plaintiff's allegations. The purpose of

the . . . exception in § 1-210 (b) (3) (H) is to shield a person accused of criminal wrongdoing from unfair public scrutiny if the accusations are uncorroborated.[5] The . . . hearing officer factually found that the video contains uncorroborated allegations of a criminal nature, and the finding is supported by, substantial evidence in the record. . . .

"The video was subject to destruction under § 1-216 because a year had passed and the investigation was closed with an affirmative conclusion that no criminal activity had occurred. The fact that the [department] ultimately concluded that there was no criminal activity does not detract from the finding that there were criminal allegations and a criminal investigation. The foregoing occurs in all cases of uncorroborated allegations. Uncorroborated allegations always start as allegations and are determined to be uncorroborated through investigation." (Footnotes in original.)

On September 2, 2021, prior to the hearing on the administrative appeal, the department and the assistant chief filed a motion pursuant to Practice Book §§ 7-4B (b) and 11-20A, in which they sought an order sealing the body camera recordings, which they had provided to the commission for its in camera review and, thus, constituted part of the administrative record before the court. The recordings were reviewed in camera by the court. The plaintiff filed a written objection to the motion to seal. On September 20, 2021, the court held a hearing on the motion and on the merits of the appeal and, in a written decision on September 21, 2021, the court granted the motion to seal until further order of the court.

On October 8, 2021, the plaintiff filed the present appeal from the judgment of the court dismissing her appeal from the final decision of the commission, as well as the court's order of September 21, 2021, granting the motion to seal.

I

First, we address the plaintiff's claim that the court improperly concluded that the recordings were exempt from disclosure under § 1-210 (b) (3) (H). We are not persuaded.

The plaintiff raises several subclaims in connection with this claim, all of which we will address in turn after setting forth the applicable legal principles and our standard of review. "It is well established that [j]udicial review of [an administrative agency's] action is governed by the Uniform Administrative Procedure Act [General Statutes § 4-166 et seq.] . . . and the scope of that review is very restricted. . . . With regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency. . . .

"Even as to questions of law, [t]he court's ultimate

duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . Ordinarily, this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. This court is required to defer to the subordinate facts found by the commission, if there is substantial evidence to support those findings. . . . Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review. . . . The reviewing court must take into account [that there is] contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence . . . . The burden is on the [appellant] to demonstrate that the [agency's] factual conclusions were not supported by the weight of substantial evidence on the whole record." (Citations omitted; internal quotation marks omitted.) *Allco Renewable Energy Ltd.* v. *Freedom of Information Commission*, 205 Conn. App. 144, 150–52, 257 A.3d 324 (2021).

It is not in dispute that the department is a public agency within the meaning of General Statutes § 1-200 (1).[6] Section 1-210 (a) provides in relevant part: "*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] (Emphasis added.)

As our Supreme Court has observed, "[t]he exemptions contained in [various state statutes] reflect a legislative intention to balance the public's right to know what its agencies are doing, with the governmental and private needs for confidentiality. . . . [I]t is this balance of the governmental and private needs for confidentiality with the public right to know that must govern the interpretation and application of the [act]. . . . Our

construction of the [act] must be guided by the policy favoring disclosure and exceptions to disclosure must be narrowly construed. . . . [T]he burden of proving the applicability of an exemption rests upon the agency claiming it." (Citations omitted; internal quotation marks omitted.) *Commissioner of Emergency Services & Public Protection* v. *Freedom of Information Commission*, 330 Conn. 372, 383–84, 194 A.3d 759 (2018).

Section 1-210 (b) provides in relevant part: "Nothing in the Freedom of Information Act shall be construed to require disclosure of . . . (3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such 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 . . . ."

Section 1-216 provides: "Except 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."

Although the exemption at issue has not been the subject of extensive judicial interpretation, in *Bona* v. *Freedom of Information Commission*, 44 Conn. App. 622, 631, 691 A.2d 1 (1997), this court discussed the statutory exemption at issue in the present case, which was formerly codified in General Statutes (Rev. to 1997) § 1-19 (b) (3) (G). This court in *Bona* observed that the underlying legislative purpose of the exemption "was to provide protection to those individuals who are subject to uncorroborated allegations." Id.

A

In challenging the commission's application of the exemption, the plaintiff raises three interrelated arguments. First, she argues that the commission improperly based its application of § 1-210 (b) (3) (H) on an erroneous finding that she had made uncorroborated allegations of criminal activity to the department. The plaintiff argues that, regardless of the fact that the department characterized her telephone call to its nonemergency line as a complaint of possible criminal activity in the residence hall, the evidence reflects that the facts that she relayed were later corroborated by the police and that she did not allege criminal activity. According to the plaintiff, "law enforcement agencies are called for a variety of reasons, not exclusively for the purpose of

victims making criminal allegations. . . . [The department] may have responded to her call . . . thinking about any possible criminal activity, but their overzealous response does not transform the statements made by [her] into allegations of or an investigation into criminal activity."

Second, the plaintiff argues that it was improper for the commission to apply the exemption codified in § 1-210 (b) (3) (H) in the present case because the facts that she relayed to the department were corroborated by the police. The plaintiff argues that she "made statements that she unexpectedly came upon [the third party in her residence hall], purportedly asleep in the common room. [The department] offered no evidence to suggest that [the plaintiff's] statements that she came upon an unidentified individual in the common room, who may or not have been sleeping there (and, if so, impermissibly), following an evening of being bothered [in] that room by other unknown persons, did not happen. There are no nonconforming facts or evidence." The plaintiff argues that "[t]he exemption [in § 1-210 (b) (3) (H)] essentially protects individuals from being defamed by [requests made under the act] for a false report, such as when an ex-spouse falsely accuses [a] co-parent of striking [a] child or when a police officer plants narcotics at the scene of a stop. It is not intended to shield truthful reports despite the absence of a criminal conviction, such as when police make a report of a fight they observed, but exercise discretion and decline to charge the combatants."

Third, the plaintiff argues that the commission improperly applied the exemption in § 1-210 (b) (3) (H) in the present case because, contrary to the commission's findings, the evidence reflects that she did not call to report criminal activity, let alone report that the third party had engaged in criminal trespass or harassment, as the commission found. She argues that the evidence did not support a finding that she had reported an unauthorized intruder in the residence hall but merely that "she reported discomfort at the unexpected presence of an individual she did not know who, if sleeping, was doing something not permitted. It is unreasonable to think she was reporting a potential crime; intruders rarely stick around for an argument and wait for the police to arrive." Moreover, the plaintiff argues that "when [she] called [the department], there was no claim of criminal harassment . . . as there were no threats or telephonic, electronic, or written communications [between her and the third party]. That [she] may have felt harassed does not mean she was making a charge of harassment, although she felt obligated to incorrectly opine that there was *potential* criminality when [the department] falsely accused her of calling the nonemergency line for an improper purpose." (Emphasis in original.)

In its final decision, the commission addressed these arguments as follows: "The [plaintiff] . . . argues that because some of the underlying facts in this matter are not disputed, her allegations are corroborated. For example, the [plaintiff] relies on the fact that the accused was resting in the common room and such is not disputed by the [department and the assistant chief]. . . . Here, the in camera records reflect the [plaintiff's] reiteration of her uncorroborated allegations. The evidence in the record overwhelmingly supports [a finding] that the [plaintiff's] allegations of criminal activity were uncorroborated because the other person did not trespass, nor did she harass the [plaintiff] as alleged. . . .

"[The plaintiff also] argues that the [department] did not respond to a report of criminal activity and therefore the exemption set forth in § 1-210 (b) (3) (H) . . . is not applicable. The [plaintiff] relies, in part, on the fact that [she] was told to call the [department] at any time and not just to report a crime; she dialed the nonemergency dispatch number and not 911; she did not call to report a crime; and she called the police to maintain the peace. The commission . . . is guided by [the Superior Court's decision in *Bona* v. *Freedom of Information Commission*, Superior Court, judicial district of Waterbury, Docket Nos. CV-94-0123208-S, CV-94-0123411-S, (August 10, 1995) (15 Conn. L. Rptr. 149), aff'd, 44 Conn. App. 622, 691 A.2d 1 (1997)], which addressed a similar argument. There, [a] complainant argued that the report requested was not compiled in connection with the investigation of a crime because of statements made by the accuser as to what action she wished the police to take. The Superior Court wrote, 'the wishes of an alleged victim . . . are not controlling with respect to the actions to be taken by the police.' [Id., 157.] Here, the evidence demonstrates that the [department] treated the [plaintiff's] allegations as a report of criminal activity, regardless of the [plaintiff's] wish that the allegations not be treated as such. . . .

"Additionally, the [plaintiff] argues that the [department] Incident/Investigation Report shows [that] the [department] did not respond to a report of criminal activity and notes that the report does not identify [the plaintiff] as a victim, the other person as the accused or perpetrator, and concludes that the matter was not criminal in nature. However, it is not surprising that the Incident/Investigation Report, which documents the [department's] conclusion that the allegations were unfounded, does not identify a victim, perpetrator, or a crime. The conclusion that the [department] reached after its investigation does not prove that the allegations which prompted the investigation at issue were not criminal in nature." (Citations omitted.)

We note that the plaintiff's arguments primarily are directed at what she describes as the commission's findings that, when she called the police on the non-

emergency line, she alleged that the third party was engaged in criminal activity, specifically, that the third party was trespassing and harassing her. The plaintiff mischaracterizes what the commission found. The commission found that the plaintiff had alleged "that a woman, who she did not know, was sleeping in a common room" and "that this person may have been sleeping in the room to provoke the [plaintiff] . . . ." The commission then found that the department "construed the allegations of the [plaintiff] as possible criminal activity."[8] The plaintiff also challenges the commission's finding that the factual allegations that she made were uncorroborated. What the commission found, however, was that the allegations of the plaintiff, having been construed by and investigated by the department as allegations of possible criminal activity, were uncorroborated because the department determined that "the other person did not trespass, nor did she harass the [plaintiff] as alleged." The plaintiff has not demonstrated that substantial evidence does not support the commission's findings concerning what facts she alleged to the police when she called the nonemergency line, how the department construed her allegations, and the outcome of the investigation undertaken by the department.

The plaintiff argues that the exemption in § 1-210 (b) (3) (H) does not apply because she neither expressly stated a belief that criminal conduct had occurred nor subjectively intended to initiate an investigation into possible criminal conduct. This argument misses the point. The records within the purview of § 1-210 (b) (3) are "[r]ecords of law enforcement agencies not otherwise available to the public which *records were compiled in connection with the detection or investigation of crime* . . . ." (Emphasis added.) Thus, the proper inquiry is whether the records sought to be disclosed were compiled in connection with the detection or investigation of crime. The commission found that the department construed the facts that the plaintiff had provided to be allegations of possible criminal activity and that the police officers at the scene investigated whether a crime had occurred.[9] The plaintiff has not demonstrated that the commission's determinations in this regard were not supported by substantial evidence or that they were objectively unreasonable. There is no basis in law or logic for the plaintiff's claim that her subjective intent in calling the nonemergency line somehow restricted the department's response to her representations or, more specifically, that it dictated whether the department's officers, given their specialized training and experience in the field of law enforcement, would investigate whether criminal conduct had occurred. Accordingly, in determining whether the commission properly applied the exemption codified in § 1-210 (b) (3) (H), it is irrelevant to our analysis whether the plaintiff expressly alleged that criminal conduct had

possibly occurred or whether she intended to do so. The dispositive fact, which is both reasonable and supported by substantial evidence, is that the department generated the body camera recordings in its investigation of possible criminal activity.

B

Next, the plaintiff argues that the commission improperly determined that the exemption in § 1-210 (b) (3) (H) applied even though "the video records were made available to the administration of [the] [u]niversity . . . ." The plaintiff argues that "[t]he public entity [department] cannot make selective disclosures to private entity [university] administration officials, who are private citizens, while withholding them from the rest of the citizenry." The plaintiff also argues that selective disclosure of the body camera recordings to [university] administration officials amounts to "[a] denial of equal protection . . . ."

The following additional facts are relevant to this claim. The chief testified at the hearing that the body camera recordings were part of the investigative file of the May 8, 2018 incident, and that such recordings were "referred to in the investigation report" that was generated by the department. The plaintiff testified before the hearing officer that a copy of the investigation report had, in fact, been provided to her by a dean of the university in connection with a disciplinary proceeding that had been brought against her by the university. The chief testified that neither the investigation report nor the body camera recordings were available to the public. The chief testified, however, that the department had provided the investigation report to a university dean, who was not a member of the department, in connection with an investigation by the university into whether the plaintiff should be disciplined in connection with the May 8, 2018 incident. The chief testified that, "[c]onsistent with our responsibilities as a higher education public safety unit, we had to share that information with the dean . . . ." The following colloquy between the plaintiff's attorney and the chief then occurred:

"Q. If [the dean] wanted the video, could he have it?

"A. If he had to do what with?

"Q. To review for purposes of, say, disciplining a student.

"A. Yes. We would review it with him.

"Q. And, in fact, you offered [the plaintiff] an opportunity to review the video?

"A. We did, and she declined.

"Q. Understand, but if it's not subject to disclosure, why then let [the dean] and my client review it?

"A. In fact, I don't even think [the dean] reviewed

the video now that I think about it. I'm not certain, counsel."

The chief testified that, although the investigation report had been provided to the dean, the use of the report by university administration officials was limited. The chief stated that, "[i]n higher education, those police report[s] are part of the student's record. We are all trained in [the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g], and we take that very seriously. It would be irresponsible for that dean to release that police report to anyone outside of his office . . . he has to use it for the expressed purposes of administering his . . . student affairs role."

In its decision, the commission addressed this argument, as follows: "[The plaintiff] argues that the [department] should not be permitted to selectively disclose public records to certain private entities or individuals. For example, the [department] released the Incident/Investigation Report to the university, a private entity, and the university subsequently provided the report to the [plaintiff]. However, disclosure of the Incident/Investigation Report is not at issue in this appeal and, therefore, the commission need not address this contention. Furthermore, the commission has held that a public agency does not waive its right to claim an exemption under the [act] by virtue of a prior disclosure (except with regard to the attorney-client privilege). See, e.g., *Goshdigian* v. [*West Hartford*, Freedom of Information Commission, Docket No. FIC 2005-112 (September 14, 2005) p. 2] (town's use of information contained in public records does not waive town's right to claim that such records are exempt from disclosure); *General Electric* [*Co*. v. *Office of Attorney General*, Freedom of Information Commission, Docket No. FIC 1998-089 (April 28, 1998) p. 7] (waiver of exemption by public agency in one instance does not abrogate claim of exemption in other instances); *Ryffel* v. [*Fairfield*, Freedom of Information Commission, Docket No. FIC 1988-083 (June 8, 1988) p. 2] (prior disclosure of contract proposals does not waive or otherwise abrogate exemption to disclosure under § 1-210 (b) (9)). There is also nothing in the [act] which precludes the [department and the assistant chief] from offering the [plaintiff], who was the subject of a university investigation, an opportunity to review the videos in the presence of a [department] officer, while at the same time claiming that the record is exempt from disclosure under the [act]. Finally, to the extent the [plaintiff] alleges that the [department's] policies permitting it to share the report with the university violates [her] constitutional rights, such alleged violations are outside the scope of the commission's jurisdiction."

In its memorandum of decision, the court responded to the plaintiff's arguments in this regard as follows: "The plaintiff has argued that the [department's] disclo-

sure of the video to the [university] dean and their refusal to similarly disclose the video to her implicate her constitutional rights for equal protection under the law. This argument runs into several difficulties. First, the [commission] did not address this issue below because the [commission] has no authority to rule upon constitutional questions. Accordingly, in this limited administrative appeal, the court should limit itself to a review of what the [commission] actually did and/or had authority to do below. Further, the plaintiff and the [university] dean are not similarly situated. The [department] did not provide the video to the [university] dean pursuant to a . . . request [made pursuant to the act], or pursuant to [the act] at all. The [department] provided the video to the [university] dean on an administrative and limited basis to address any appropriate administrative discipline. The court notes that the plaintiff was allowed to review the video in order to defend against any discipline proposed by the [university] dean. The plaintiff's . . . request [under the act] in this matter is distinct from the foregoing." (Footnotes omitted.)

Initially, we address the plaintiff's argument that the commission improperly determined that the exemption in § 1-210 (b) (3) (H) applied, despite the fact that the recordings at issue were made available to a dean of the university.[10] As stated previously in this opinion, § 1-210 (b) (3) provides that the exemption to disclosure at issue applies to "[r]ecords of law enforcement agencies *not otherwise available to the public* . . . ." (Emphasis added.) Essentially, the plaintiff's argument is that, for purposes of § 1-210 (b) (3), the department made the recordings available to "the public" by making the recordings available to the dean. This argument requires us to interpret the word "public" in § 1-210 (b) (3).

General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." The legislature did not define the word "public" for purposes of § 1-210 (b) (3) but, "[i]n the absence of a definition of terms in the statute itself, [w]e may presume . . . that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use. . . . Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 322, 258 A.3d 1 (2021). The word "public" is defined as "exposed to general view: open," and "of or relating to people in general: universal . . . ." Merriam-Webster's Collegiate Dictionary (11th

Ed. 2014) p. 1005. The word "public" is also defined as "generally known" and "open to the view of all . . . ." Random House Webster's College Dictionary (2d Ed. 2005) p. 997.

Applying this plain meaning to the statute reflects that the legislature's reference to records not otherwise made available "to the public" in § 1-210 (b) (3) necessarily pertains to records that have not been made available to all. The plaintiff, however, has not demonstrated that the department made the recordings available to all. Instead, the plaintiff demonstrated that the department made the recordings available to only one person, a dean of the university, that the department made the recordings available to this person for what it believed was a limited educational purpose, and that the dean was bound by the restrictions on disclosure imposed by FERPA.[11] Thus, there is substantial evidence to support a finding that the recordings at issue were not otherwise made available to the public.

The plaintiff also argues that the fact that the department made the recordings available to the dean and not to her violates her right to equal protection.[12] At the outset, we disagree with the commission and the Superior Court that the commission somehow lacked "jurisdiction" to consider the plaintiff's argument in this regard. The plaintiff did not invite the commission to invalidate one or more provisions of the act on constitutional grounds but, instead, argued that construing the exemption at issue in the circumstances of this case in the manner that it did contravened her equal protection rights. We know of no reason why the commission should not have considered this argument in determining whether the exemption at issue applied in this case. The commission's refusal to consider this argument, however, is harmless because we, in our plenary review, may now consider its merits. See, e.g., *State* v. *Dyous*, 307 Conn. 299, 315, 53 A.3d 153 (2012) (reviewing courts apply plenary review to equal protection claims).

"The [e]qual [p]rotection [c]lause of the [f]ourteenth [a]mendment to the United States [c]onstitution is essentially a direction that all persons similarly situated should be treated alike. . . . Conversely, the equal protection clause places no restrictions on the state's authority to treat dissimilar persons in a dissimilar manner. . . . Thus, [t]o implicate the equal protection [clause] . . . it is necessary that the state statute [or statutory scheme] in question, either on its face or in practice, treat persons standing in the same relation to it differently. . . . [Consequently], the analytical predicate [of consideration of an equal protection claim] is a determination of who are the persons [purporting to be] similarly situated. . . . The similarly situated inquiry focuses on whether the [appellant is] similarly situated to another group for purposes of the challenged government action. . . . Thus, [t]his initial inquiry is

not whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Stuart* v. *Commissioner of Correction*, 266 Conn. 596, 601–602, 834 A.2d 52 (2003).

Setting aside other possible deficiencies in the plaintiff's equal protection claim, we readily conclude that the plaintiff is not similarly situated to the dean. Regardless of the fact that the dean did not seek disclosure of the recordings under the act, the chief's testimony reflects that the department made the recordings available to the dean of the university with which it was affiliated for what it believed to be a limited administrative purpose related to whether a private disciplinary proceeding should be initiated against the plaintiff by the dean. As the chief testified, the recordings were made available to the dean with a distinct expectation that, pursuant to FERPA, the dean was prohibited from making, and would not make, any disclosure of the records at issue to any other entity. The department acted under the belief that the dean was a school official with a legitimate educational interest in reviewing the recordings in the department's possession, and the limitation on disclosure codified in FERPA applied with respect to any materials made available to the dean.[13] This belief sets the dean apart from the plaintiff, who readily acknowledges her strong intention to disseminate the recordings at issue publicly.[14] Accordingly, we conclude that the plaintiff's equal protection argument is not persuasive and does not undermine the commission's application of the exemption at issue in this case.

C

Next, the plaintiff argues that the commission acted arbitrarily in refusing to require the department and the assistant chief to provide her with redacted recordings that omitted any "discussion of criminality . . . ." She argues that, "[e]ven if part of the [recordings] were exempt from disclosure, some portion should have been produced." We are not persuaded.

The commission carefully considered and rejected this contention. The commission relied on precedent of this court; *Bona* v. *Freedom of Information Commission*, supra, 44 Conn. App. 622; as well as several relevant commission decisions for the proposition that "the entirety of a record of an investigation into uncorroborated allegations [of criminal activity] is exempt from disclosure pursuant to § 1-210 (b) (3) (H)."

Here, as we have concluded, there is substantial evidence to support the commission's finding that the police responded to the plaintiff's residence hall, interviewed the plaintiff, interviewed the third party, and generated the body camera recordings during an investigation into what they interpreted to be the plaintiff's

allegation that criminal conduct possibly had occurred. As we have stated previously in this opinion, this court has recognized that the legislative policy underlying the exemption codified in § 1-210 (b) (3) (H) is to shield persons, like the third party in this case, from public scrutiny arising from uncorroborated allegations of criminal activity. The plaintiff has failed to demonstrate that the disclosure of any portion of the recordings at issue would not undermine that goal, particularly in light of her expressed desire to use any disclosure of the recordings in an attempt to draw renewed public attention to the events specifically related to the third party's presence in a university residence hall on May 8, 2018, in an attempt to sway public opinion concerning the incident. See footnote 14 of this opinion. Accordingly, the plaintiff has not demonstrated that the commission's failure to require production of the recordings with certain redactions reflected that it had acted in an arbitrary manner contrary to a general policy favoring disclosure of public records.

II

Finally, we address the plaintiff's claim that the court improperly granted the motion of the department and the assistant chief to seal the body camera recordings, which both it and the commission had reviewed in camera. We are not persuaded.

"We review a trial court's decision granting or denying a motion to seal to determine whether, in making the decision, the court abused its discretion. . . . Inherent [therefore] in the concept of judicial discretion is the idea of choice and a determination between competing considerations. . . . A court's discretion must be informed by the policies that the relevant statute is intended to advance. . . . When reviewing a trial court's exercise of the legal discretion vested in it, our review is limited to whether the trial court correctly applied the law and reasonably could have concluded as it did." (Internal quotation marks omitted.) *Doe* v. *Rackliffe*, 173 Conn. App. 389, 396, 164 A.3d 1 (2017).

In its ruling granting the motion to seal, the court observed that it had "affirmed [the] underlying [commission] final decision on appeal. Accordingly, the video in question is exempt from disclosure under [the act] pursuant to [§ 1-210 (b) (3) (H)]." The court also stated that "[t]he legislature has determined in [§] 1-210 (b) (3) (H) that disclosure of law enforcement records containing uncorroborated allegations of criminal wrongdoing would not be in the public interest. Further, [§] 1-216 provides for the destruction of such records. Accordingly, the court finds that a compelling interest in not unfairly damaging a person's reputation with uncorroborated criminal accusations overrides the public's interest in access to records containing uncorroborated criminal accusations."[15]

The plaintiff argues that the court's ruling contravenes "Connecticut's presumption in favor of public access to the court and judicial records." The plaintiff also argues that the court unduly focused on the risk of damage to the reputation of the third party who was the subject of her allegations to the department on May 8, 2018.

It suffices to observe that the commission and the court reviewed the recordings at issue, in camera, to determine whether the exemption in § 1-210 (b) (3) (H) applied. Having fully litigated and upheld the commission's determination that the exemption applied, the court subsequently granted the motion to seal to protect the integrity of its judgment and to thereby shield the third party from any possible negative effects of disclosure of the recordings. Simply put, it would have been contradictory for the court to permit public access to the recordings in the court file after having determined that the recordings were exempt from disclosure. Accordingly, we conclude that the court properly exercised its discretion in sealing the recordings at issue.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] General Statutes § 1-210 (b) provides in relevant part: "Nothing in the Freedom of Information Act shall be construed to require disclosure of . . . (3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such 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 . . . ."

General Statutes § 1-216 provides: "Except 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."

[2] "The [plaintiff] testified extensively that prior incidents involving other students left her feeling unsafe, that she had advised the university and the [department] of those incidents and her concerns, and that various university personnel and the [department] advised her that if she felt unsafe in the future, she could contact the [department] for any reason."

[3] "The fact that the plaintiff now says that she subjectively did not intend to initiate a criminal investigation does not detract from the foregoing conclusion. Also, the fact that the plaintiff did not refer to statutes or all of the elements of the potential crimes of trespass and harassment, does not detract from the conclusion. It would be unusual for a citizen call seeking assistance from a police department to contain statutory citations and references to elements of a crime. The plaintiff essentially reported [the presence of] an unauthorized intruder in a locked dorm who the plaintiff believed was harassing the plaintiff. As a result, three police officers responded to the plaintiff's call."

[4] "The plaintiff apparently suspected that the stranger was one of the persons who were harassing the plaintiff over the previous months and earlier in the evening of the incident."

[5] "The plaintiff asserts that some of the factual allegations were corroborated. However, the statutory exemption turns on whether or not the accusations of criminal wrongdoing were corroborated. Here, they were not, as found by the [department] and the [commission]. Further, it is clear that at least some of the critical factual allegations were uncorroborated, including the accusation that the stranger had no right to be in the residence hall and

the accusation that the stranger was harassing the plaintiff."

[6] General Statutes § 1-200 (1) provides in relevant part: " 'Public agency' or 'agency' means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof . . . ."

[7] General Statutes § 1-200 (5) defines "public records or files" as "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."

[8] The plaintiff testified before the hearing officer that, although she did not want the third party to be charged with a criminal offense, she nonetheless told one of the responding officers that the incident was a "criminal" matter.

[9] The chief testified before the hearing officer concerning how the department responded to the information that the plaintiff had provided. He stated: "[A] call to a police department on a campus at 1:40 in the morning, to say someone is in [a residence hall], no one's supposed to be in there, it is unconscionable for a police department to respond and not try to make a determination as to whether or not there was some criminal activity afoot."

[10] As our previous discussion of the evidence before the hearing officer reflects, the department made the recordings available to the dean, but there is no evidence that the recordings were actually provided to the dean.

[11] Moreover, the plaintiff, referring to "selective disclosures," suggests that the fact that the department made the recordings available to even one person, the dean, undermines as a matter of law the commission's conclusion that the exemption applied. To the extent that the plaintiff argues that the exemption in § 1-210 (b) (3) (H) cannot apply in a case in which there has been any disclosure of the records at issue, she does not cite to any persuasive authority in support of this argument, and we are unaware of any.

[12] The plaintiff refers to her equal protection rights under the state and federal constitutions. Because the plaintiff has not separately analyzed her claim under the state constitution, we confine our analysis to the federal constitution. See, e.g., *State* v. *Rivera*, 335 Conn. 720, 725 n.2, 240 A.3d 1039 (2020) ("[b]ecause the defendant has not provided an independent analysis of his state constitutional claim under *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 (1992), we consider that claim abandoned and unreviewable" (internal quotation marks omitted)).

[13] With respect to FERPA, the plaintiff argues in conclusory fashion that the court's reliance on FERPA was "a red herring" because she had a right to the records "under the law" and, thus, the university had violated FERPA by making them available for her review but not providing her with a copy of them.

[14] Consistent with her testimony before the hearing officer, before this court the plaintiff has represented that she seeks the recordings because, "[f]or years, she has wanted to show the world the truth—to show the world what she was feeling on the morning of May 8, 2018. She wants the world to see the best evidence that she is not the racist [that the university] and her detractors painted her to be, but a woman startled to find a stranger in a dark room on an otherwise isolated floor. Her contemporaneous explanation of why she called for the intervention of campus officials, recorded on the body cameras of the [department], remains wrongly shielded from public airing."

[15] We note that, in an order clarifying its sealing order, it afforded the plaintiff's attorney an opportunity to review the recordings "to the extent necessary to prosecute this matter and any appeal of this matter . . . ."