DOCKET NO. HHB-CV-22-6071773-S	:	**SUPERIOR COURT**
CHIEF, POLICE DEPARTMENT, TOWN OF GREENWICH, ET AL.	:	**JUDICIAL DISTRICT OF NEW BRITAIN**
VS.	:	**ADMINISTRATIVE APPEALS**
FREEDOM OF INFORMATION COMMISSION, ET AL.	:	**OCTOBER 28, 2022**

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is an administrative appeal of a January 12, 2022 final decision of the Freedom of Information Commission (FOIC) in the contested case of FOIC Docket No. 2020-0309 (Final Decision). The appeal is brought by the Police Department of the town of Greenwich, the Chief of Police of the town of Greenwich and the town of Greenwich (collectively referred to herein as the "plaintiffs"). The defendants in this appeal are the FOIC and Meredith Braxton (complainant), an attorney who made the Freedom of Information Act (FOIA) request at issue in this matter.

FACTS AND PROCEDURAL HISTORY:

The following facts are relevant to a decision in this appeal and are contained in the administrative record. On May 22, 2020, the complainant submitted a FOIA request on behalf of a client to the plaintiffs. The request sought the following records:

Electronic notice sent to all counsel of record.
A. Jordanpoulos clerk's office 10-28-22

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> "documents and/or data base information reflecting all changes made (i.e., text inserted, changed or deleted from the file) to the investigation file CFS No. 1600027332 (the investigation file for the complainant by Doe against Roe) and all changes made to the application for an arrest warrant in that case." Record at page 19.

The file referred to in the request was a Greenwich Police Department file concerning the police department's investigation into, and actions concerning, a particular alleged sexual assault. Along with the request, the complainant included two sets of database commands that she had obtained in a separate litigation. The Greenwich Police Department uses a database supplied by NexGen Public Safety Solutions (NexGen), a software company, to maintain and manage its police reports, warrants and warrant applications. The complainant suggested that the commands that she supplied could be used upon the police department's computer database to retrieve the requested records.

By letter dated June 16, 2020, the plaintiffs informed the complainant that the police department did not have "any information reflecting any changes which could have been made" to the specified investigation file and that NexGen had informed the police department that it could not produce the prior versions or changes requested. Record at page 23. After further communication by letter dated June 23, 2020, the plaintiffs confirmed that the requested records could not be produced and that, even if such records could be produced, they would be exempt from FOIA disclosure as preliminary drafts pursuant to General Statutes § 1-210 (b) (1).

The complainant subsequently complained to the FOIC asserting that the plaintiffs' response to her request violated FOIA. A contested case hearing was held before a FOIC hearing

officer on August 2, 2021, and November 4, 2021. At the contested case hearing, the Chief Development Officer for NexGen testified that he had provided the database commands to the complainant and that, if those commands were entered into the police department's NexGen database, the system would produce a rich text format file reflecting additions and deletions to the text of any record maintained in the database. The police department never ran the suggested database commands to discern what documents and information would actually be produced. In connection with the contested case hearing, the plaintiffs asserted that, to the extent that the requested records could be obtained using the proffered database commands, the records would be exempt from FOIA disclosure pursuant to § 1-210 (b) (1), § 1-210 (b) (3) (D) and § 1-210 (b) (20).

Two police officers also testified at the hearing, Officer Chan and Deputy Chief Berry. Officer Chan testified that the police department had a process for reviewing[1] reports and warrants before they were finalized and authorized, that producing previous versions of police reports and warrants endangered the integrity of the reports and warrants and violated policy, and that it was important that each document be "locked" in final form after the writing, review and authorization process was completed. See Record pages 193-195 and 197-199. Officer Chan also

[1] This process of reviewing and approving police reports, warrants and warrant applications is the deliberative and quality control process that the exemption in § 1-210 (b) (1) was designed to protect. See *Wilson* v. *Freedom of Information Commission*, 181 Conn. 324, 333, 435 A.2d 353 (1980).

testified concerning the importance of only having one final official signed-off version of each report or warrant. See Record at pages 194-195, 198-199 and 201. Officer Chan further testified that he had checked with NexGen upon receipt of the FOIA request and was informed that the database did not maintain changes to documents or previous versions of documents and could not produce the foregoing. Deputy Chief Berry testified concerning the process of finalizing and authorizing reports and warrants, the importance of the review process, and the importance of only maintaining the final official authorized documents. See Record at pages 262-264 and 268-274. Deputy Chief Berry also testified that he was concerned that running nonstandard, previously unknown, noncommercial database commands might endanger the integrity or security of the database and its records. See Record at pages 271-274. Finally, Deputy Chief Berry testified that attempting to run the nonstandard, previously unknown, noncommercial database commands to produce unauthorized previous versions of police reports and warrants was not "in the best interest of the public." See Record at pages 271-274.

On December 14, 2021, the hearing officer issued her proposed decision. On January 19, 2022, the FOIC adopted the hearing officer's proposed decision as its Final Decision. The Final Decision concludes that, in failing to produce the requested records, the plaintiffs violated FOIA[2]

[2] The court notes that prior to the FOIC hearing, the plaintiffs believed, based upon their knowledge and confirmation from NexGen, that the plaintiffs did not maintain, and their database could not produce, changes made to finalized documents, or previous versions thereof. The plaintiffs were surprised to hear otherwise.

because the requested records were public records within the scope of FOIA and because the plaintiffs had failed to prove that any asserted FOIA exemption applied to the requested records. The Final Decision then ordered the plaintiffs to produce the requested records to the complainant, which records can only be obtained by running the database commands. [3]

The plaintiffs are aggrieved because they appeal from an adverse Final Decision of the FOIC finding that the plaintiffs have violated FOIA and ordering the plaintiffs to produce the requested records, which records can only be obtained by running the database commands provided by the complainant.

STANDARD OF REVIEW:

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183.[4] Judicial review of an administrative decision in an appeal under the

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[3] The administrative record here contains no means for retrieving this information from the plaintiffs' database other than by running the database commands provided by the complainant. The police department and the officers who testified were surprised that the database might contain the requested information and had never seen the proffered database commands before this matter arose. Prior to the hearing, the plaintiffs had checked with NexGen who had informed the plaintiffs that the database did not maintain and could not produce the requested information. The plaintiffs had not, and have not, produced such information from the database.

[4] Section 4-183 (j) provides in relevant part: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law: (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings."

UAPA is limited. *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). "[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the Supreme Court] nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) Id.

Although the courts ordinarily afford deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes, "[c]ases that present pure questions of law . . . 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." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

ANALYSIS:

In general, FOIA provides that all public records are subject to inspection or copy by the public unless an exemption from disclosure is provided for in applicable law. The fundamental Connecticut FOIA provisions are found in the following statutes.

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 . . . 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."

General Statutes § 1-212 (a) provides in relevant part:

> "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."[5]

As is relevant in this matter, our FOIA statues provide the following exemptions from the foregoing disclosure requirements.

Section 1-210 (b) provides in relevant part:

> (b) Nothing in the Freedom of Information Act shall be construed to require disclosure of: . . .
> (1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure; ...
> (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 . . . (D) information to be used in a prospective law enforcement action if prejudicial to such action, ... (G) the name and address of the victim of a sexual assault ... or (H) uncorroborated allegations subject to destruction pursuant to section 1-216; ...

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[5] The foregoing disclosure obligations apply to documents maintained in electronic form. See General Statutes § 1-211 (a).

(20) Records of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system; ...

A. The Records Requested

It appears, and no party has argued otherwise, that the records requested, to the extent that they actually exist in the database of the Greenwich Police Department,[6] are public records subject to FOIA disclosure unless there is an applicable exemption from disclosure provided for in federal or state statute. The Greenwich Police Department is a public agency and, to the extent that the requested records are contained within the Greenwich Police Department's database, the requested records are maintained[7] by that public agency.

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[6] The court notes that the police department has not actually run the nonstandard (the proffered commands had not previously been provided to the police department as a NexGen customer in the ordinary course of business but were obtained by the complainant through a subpoena), previously unknown to the police department (see finding of fact 16) database commands provided by the complainant. Accordingly, there remains at least some uncertainty concerning the actual function of the commands, whether the requested records are actually maintained in the database, and whether the commands will actually produce the requested records. The findings concerning the existence of the records within the database and the functionality of the commands are based upon the testimony of the NexGen Chief Development Officer, who also had not actually run these commands upon the Greenwich Police Department's database. The testimony of the Chief Development Officer conflicts with the information provided to the plaintiffs by NexGen itself and conflicts with the plaintiffs' understanding of its database.

[7] Although not argued here, one may question whether records which (i) were unknown to the plaintiffs to exist as a category prior to this FOIA request, (ii) can only be obtained by running previously unknown, non-standard, and non-commercial computer code, and (iii) which the plaintiff previously believed that the NexGen database was designed not to maintain, are records maintained by the plaintiffs.

The requested records are as follows:

> "documents and/or data base information **reflecting all changes made (i.e., text inserted, changed or deleted from the file)** to the investigation file CFS No. 1600027332 (the investigation file for the complainant by Doe against Roe) and **all changes made to the application for an arrest warrant in that case.**" (Emphasis added.) Record at page 19.

Accordingly, the request explicitly and particularly sought changes made to the documents in the specified department file before such documents were reviewed, finalized, authorized and saved in final form.

The requested records are, pursuant to the terms of the request itself, preliminary drafts of police reports, warrant applications and warrants. The FOIA request specifically and solely is directed to obtain changes made and text inserted, changed or deleted in documents contained within the specified police file before such documents were reviewed, authorized and saved in final form. Accordingly, it was not necessary actually to execute the database commands and examine the documents produced because the request itself specifically and solely sought preliminary drafts by the request's very terms.

The hearing officer did not explicitly find that the requested records were not preliminary drafts but instead broadly found that the plaintiffs failed to prove the applicability of § 1-210 (b) (1). Nevertheless, the defendants in this appeal, including the FOIC, have argued in their briefs that the plaintiffs have failed to prove that the requested records are preliminary drafts because they did not produce and examine the records. Such arguments appear to be deeply misplaced.

As noted, the FOIA request itself specifically, solely and explicitly requests preliminary drafts of documents. A request for changes, insertions and deletions in relation to now final documents is by definition a request for preliminary drafts of the documents. Whether the changes, insertions and deletions are provided in "red-line" form or merely in notation or list form, the possession of the changes, insertions and deletions along with the final document is the possession of preliminary drafts of the documents.[8]

B. FOIA Exemption § 1-210 (b) (1)

The FOIC's findings concerning the applicability of § 1-210 (b) (1) were as follows:

> "It is found that the **respondents did not review** any potentially responsive records prior to the hearing in this matter, and it is **therefore** further found that the testimony offered at the hearing was not specific to any particular record. Although the assistant police chief testified that it would violate an unspecified policy of the department to execute the database commands, it is found that the assistant police chief did not testify that he had determined that the public interest in withholding the record clearly outweighed the public interest in disclosure. **Accordingly**, it is found that the respondents failed to prove that the requested records, **if they exist,** are exempt from disclosure pursuant to § 1-210(b)(1), G.S." (Emphasis added.) Record at page 358. [9]

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[8] See also the testimony of the Chief Development Officer at Record pages 236-237.

[9] The hearing officer's conclusions effectively force the plaintiffs into a choice between running non-standard, non-commercial, previously unknown and unused data base commands which were supplied from an individual pursuant to a subpoena or violating FOIA.

As noted above, a review of the records produced by executing the database commands was not necessary to determine whether any responsive documents produced were preliminary drafts because the request itself specifically and solely sought preliminary drafts by the request's very terms. Accordingly, either the records produced would be nonresponsive to the request or they would be responsive preliminary drafts.

To the extent that executing the database commands produced responsive preliminary drafts, it was also not necessary to review these documents to discern certain basic attributes of the documents. The Greenwich Police Department NexGen database contains police reports, warrant applications, and warrants created and inputted by the Greenwich Police Department in connection with police activity. The request sought documents and/or database information reflecting all changes made (i.e., text inserted, changed or deleted from the file) to the investigation file CFS No. 1600027332 (the investigation file for the complainant by Doe against Roe) and all changes made to the application for an arrest warrant in that case. Accordingly, the request sought any preliminary drafts of the final documents contained in a specific file (investigation file CFS No. 1600027332) concerning the police department's investigation and handling of an alleged sexual assault.

More succinctly put, the request sought preliminary drafts of police reports, warrants, and warrant applications relating to a specific alleged sexual assault. Accordingly, basic assessments concerning whether the public interest in withholding the documents outweighs the public interest in disclosure can be made without reviewing the specific documents. One can easily see

that police reports, warrants, and warrant applications are critical legal documents upon which ride the most fundamental civil rights of individuals, the public and the state. In view of the importance of these documents, it is not surprising that procedures for creation, review, authorization and finalization of these documents are in place to ensure that the official final documents are accurate, well considered and consistent with our law. Accordingly, one can easily further see that purposefully undermining the procedures for creation, review, authorization and finalization of these documents by releasing preliminary drafts of these documents to the public poses a real risk of undermining police operations, investigations, prosecutions, and the faith and confidence in our legal system. Preliminary drafts of these documents are nonfunctional and have not been considered and reviewed as is required by the normal review and authorization process. Accordingly, they may[10] contain mistakes, poor judgment, and investigatory and prosecutorial thought processes that have not been finalized, any of which may unnecessarily negatively impact the rights of defendants, victims, and the state, as

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[10] In this regard there are only two possibilities. The documents in question may never have been changed at all, in which case there would be no "changes made to (ie. text inserted, changes or deleted from the file)" to be produced as responsive to the FOIA request. In the alternative, changes were made to the documents and these changes comprised preliminary drafts that are protected from disclosure pursuant to § 1-210(b)(1). Further, the exception to § 1-210(b)(1) contained in § 1-210(e)(1) is clearly not applicable because any changes made to these documents were made in the police department's standard review and authorization process, before the document is signed off on and locked as a final pdf, and accordingly remain "subject to revision prior to submission to or discussion among members of such agency". The record clearly indicates that until the review and authorization process is complete and the document is locked as a reviewed, authorized and final pdf, the document is unofficial and remains subject to change pursuant to the review and authorization process.

well as any associated investigation or prosecution. Such preliminary mistakes, poor judgment, and preliminary investigatory and prosecutorial thoughts, all of which would have been properly corrected and refined through the applicable procedures[11], run the risk of unfairly and unnecessarily undermining confidence in the police and the justice system.[12]

Officer Chan and Deputy Chief Berry generally testified as to the foregoing concerns, and Deputy Chief Berry testified that the police department determined that releasing such preliminary drafts was not in the public's best interest. Officer Chan testified that the police department had a process for reviewing reports and warrants before they were authorized and finalized, that producing previous versions of police reports and warrants endangered the integrity of the reports and warrants, and that it was important that each document be "locked" in final form after the writing, authorization and review process was complete. See Record page 193, line 2 through page 195, line 7; and page 197, line 15 through page 199, line 9. Officer Chan also testified concerning the importance of only having one final official signed-off version

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[11] As with most organized human endeavors, the police department is structured with a hierarchy of responsibilities and authority which is deployed and used to ensure that the best possible decisions are made. The process of reviewing, authorizing and finalizing the important documents at issue within this hierarchy is meant to correct mistakes, refine thought and ensure that these important documents contain the best possible decisions that are compliant with all applicable requirements. It is this process that § 1-210 (b) (1) was meant to foster and protect.

[12] The foregoing concerns are reflected in the public policy behind § 1-210 (b) (1) in that the provision was meant to protect the deliberative, quality control and authorization procedures that are naturally in play in the review, quality control and authorization processes deployed before important documents are finalized and official. Further, although not developed on this record, the foregoing concerns are also embedded in the public policy behind § 1-210 (b) (3).

of each report or warrant. See Record at pages 193-199. Deputy Chief Berry testified concerning the process of finalizing reports and warrants, the importance of the review process, and the importance of only maintaining the final official documents. See Record at page 262, line 11 through page 264, line 14; and page 268, line 4 through page 270, line 11. Deputy Chief Berry also testified that he was concerned that running nonstandard, previously unknown[13] database commands might endanger the integrity or security of the database and its records. See Record at page 271, line 15 to page 272, line 1; page 272, lines 11-14. Finally, Deputy Chief Berry testified that attempting to run the nonstandard, previously unknown database commands to produce unauthorized previous versions of police reports and warrants was not "in the best interest of the public." See Record at page 268, line 4 through page 274, line 1.[14]

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[13] See Record at page 261, line 22 through page 262, line 1. See also, Record at page 262, lines 17-25; page 264, lines 4-9; page 271 line 15 through page 272, line 1; and page 272, lines 11-14.

[14] The court notes that in testifying concerning the police department's determination that producing the requested preliminary drafts was not in the best interest of the public, Deputy Chief Berry stated several reasons. First, he stressed the importance of the review and authorization process in finalizing documents. Second, he stated the importance of maintaining only the final reviewed and authorized documents. Lastly, he was concerned that running a previously unknown, nonstandard, noncommercial computer code in the police department's system might jeopardize the integrity of the system and information contained therein. The Deputy Chief's reference to violation of the police department's policies, procedures and standards, when taken in the context of his testimony, refers to all of the foregoing concerns. The policy applies regardless of what the specific changes are in a particular instance and is instead a blanket policy opposed to maintaining and providing preliminary drafts of police reports, warrant applications and warrants. With regard to the foregoing, see the Record at page 273, lines 4-7 where the Deputy Chief explicitly states that what they are being asked to do **"violates our protocols, our standards from --- again, that report is PDF, that's a permanent record."** Officer Chan testified similarly. See Record at page 193, line 2 through page 195, line 7; and page 197, line 15 through page 199, line 9.

Accordingly, it is clear that any responsive documents produced by executing the database commands would be preliminary drafts of police reports, warrants, and warrant applications associated with a particular alleged sexual assault investigation. It is also clear that the two police witnesses testified concerning real concerns about releasing preliminary drafts of the foregoing documents. Lastly, it is clear that the Deputy Chief testified that he had determined that releasing such unauthorized preliminary drafts was not in the best interest of the public or, said another way, that the public's interest in withholding these preliminary drafts outweighed the public interest in disclosure.

As to the last point concerning the weighing or determination of the public interest, § 1-210 (b) (1) is absolutely clear that it is the province of the public agency, not the FOIC, to make this determination. In this regard, see the text of the statute that is clear on its face. See *Van Norstrand* v. *Freedom of Information Commission*, 211 Conn. 339, 345, 559 A.2d 200 (1989). Deputy Chief Berry was also clear in testifying that the police department had made this determination: "And I guess that **our** statement on that is that **we** don't think it would be in the best interest of the public." (Emphasis added.) Record at page 273. Determining that releasing preliminary drafts is not in the best interest of the public is the same as determining that the public's interest in withholding them outweighs the public's interest in disclosure. Both Deputy Berry and Officer Chan testified concerning the reasons for their determination, which were, as noted above, not surprising and reasonable. The agency's determination of the public interest in this regard is reviewed on an abuse of discretion standard, which standard is certainly not met

here. See *Wilson* v. *Freedom of Information Commission*, 181 Conn. 324, 342, 435 A.2d 353 (1980); see also *Lewin* v. *Freedom of Information Commission*, 91 Conn. App. 521, 525, 881 A.2d 519, cert. denied, 276 Conn. 921, 888 A.2d 88 (2005).

Overlaid on all of the foregoing, one must give consideration to the requirement that the police department run nonstandard, noncommercial, previously unknown database commands on its database.[15] It must be noted that these commands were received from an individual, albeit the Chief Development Officer of NexGen, as a result of a subpoena. It is apparent that these commands are nonstandard, in that they are not provided to NexGen's customers in the ordinary course of business.[16] It is also apparent that the Greenwich Police Department had not previously received these commands in connection with its database and that, before this FOIA request was received, the police department was unaware of the existence of the commands and of the very fact that the database retained preliminary drafts of documents. [17] Accordingly, it was not

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[15] The FOIC, in its brief at footnote 5, misleadingly indicates that the FOIC did not order the plaintiffs to run the database commands. While the foregoing is technically true in a narrow sense, the FOIC did order the plaintiffs to produce the requested records (i.e., the preliminary drafts), and the only means of producing those records is to run the database commands. The FOIC rejected the plaintiffs' contention that the requested preliminary drafts did not exist and could not be obtained. Instead, the FOIC has determined that the requested preliminary drafts do exist and can be obtained by running the database commands provided by the complainant.

[16] Apparently, these commands were written by the Chief Development Officer personally.

[17] In fact, Deputy Chief Berry indicated that the police department was investigating whether any laws were broken in the provision of the nonstandard, noncommercial, previously unknown database commands. See Record at page 273, line 19, through page 275, line 19.

unreasonable for Deputy Chief Berry to have legitimate concerns about running these commands. He clearly testified that the police department was concerned that running the commands, something it had never done before, might have unknown impacts on the security and integrity of the database and the information contained therein. See Record at pages 271-275. These commands came only with the assurance of a single individual as to their appropriateness, function and safety in relation to the system.[18] Accordingly, it is not surprising and not unreasonable that the police department was hesitant to run such commands. The court does not believe that a public agency is required to put its computer system at risk by running nonstandard, noncommercial, previously unknown and never before run commands which have been provided by an individual in order to satisfy the agency's FOIA search obligation.[19]

In view of all of the foregoing, this court finds that it was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and a clear error of law, to find that the requested documents were not exempt from FOIA disclosure pursuant to § 1-210 (b) (1).

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[18] Even the Chief Development Officer who wrote the database commands was somewhat reluctant to run them and take responsibility for the results. See Record at page 283, lines 14-23.

[19] Although the commands here were written and supplied by the Chief Development Officer personally, they were apparently not provided by the company NexGen and are not generally commercially available. These "structured query language" commands were written by the Chief Development Officer and provided in response to a subpoena issued in another litigation. The Chief Development Officer testified that even the NexGen Help Desk would not be aware of these commands or that such records existed in the database. See Record at page 281. If the plaintiff's database or the information in it becomes corrupted by using the commands, who will take responsibility for the problem? Further, where do we draw the line concerning when we will and will not require the use of nonstandard, noncommercial, previously unknown computer code, and what assurances of reliability and safety shall we require?

C. FOIA Exemption § 1-210 (b) (3)

The plaintiffs did not brief their position regarding the applicability of § 1-210 (b) (3). Accordingly, the court concludes that the plaintiffs have waived this issue on appeal. Further, without a specific review of the documents or evidence of the information contained therein, it would have been difficult to assess the applicability of the various allied exemptions provided for in § 1-210 (b) (3), particularly if no investigation was ongoing. In any case, the issue was not briefed on appeal and has been waived.

D. FOIA Exemption § 1-210 (b) (20)

Section 1-210 (b) (20) exempts from FOIA disclosure records of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system. Clearly, the requested records are preliminary drafts of specific Greenwich Police Department documents. The requested records are not records of standards, procedures, processes, software and codes. Accordingly, § 1-210 (b) (20) does not apply to the requested records.

While it is true that the database commands are software codes, the FOIA request here was not seeking disclosure of the database commands. To determine whether any FOIA exemption from disclosure applies, the statutory exemption is compared to the requested records themselves, not to the means of obtaining the records. Here, the database commands were supplied pursuant a subpoena in a proceeding that was separate from this administrative proceeding. The mere use of those commands by the Greenwich Police Department would not

potentially implicate the exemption in § 1-210 (b) (20) unless the records which were produced were records of standards, procedures, processes, software and codes. Such is clearly not the case here. In this regard, the court understands the plaintiffs' position to be that, if the police department runs the commands, it will confirm to the public that its database maintains preliminary drafts and that these commands can effectively be used to derive the foregoing, which are two pieces of information previously unknown to the public and apparently to the police department itself. Although the foregoing is a concern, that concern does not implicate § 1-210 (b) (20) because the records produced and provided would not be standards, procedures, processes, software or codes.

As noted above, the court understands and shares the plaintiffs' concern about the potential dangers of introducing nonstandard, noncommercial, previously unknown database commands that were received from an individual into the police department's database. However, those concerns do not implicate § 1-210 (b) (20).

E. Conclusion

In view of the foregoing, the court finds that the plaintiffs have established on appeal that the Final Decision of the FOIC at issue here is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and a clear error of law. The requested records are exempt from FOIA disclosure pursuant to § 1-210 (b) (1).

ORDER:

The plaintiffs' appeal is sustained. Judgment enters for the plaintiffs. The requested records at issue are not required to be disclosed pursuant to the FOIA request at issue, and the plaintiffs have not violated FOIA.

John L. Cordani, Judge