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SUPERIOR COURT
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JUDICIAL DISTRICT OF
NEW BRITAIN

DOCKET NO.: HHB-CV-23-6081745-S

CHIEF OF POLICE, CITY OF BRIDGEPORT, POLICE DEPARTMENT, CITY OF BRIDGEPORT, CITY OF BRIDGEPORT	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	TAX AND ADMINISTRATIVE APPEALS SESSION
FREEDOM OF INFORMATION COMMISSION, ET. AL	:	JANUARY 15, 2025

MEMORANDUM OF DECISION

The plaintiffs, the Chief of Police, City of Bridgeport, the Bridgeport Police Department, and the City of Bridgeport (together, Bridgeport), appeal from an August 9, 2023, final decision (the decision) of the defendant, the Freedom of Information Commission (the commission), ordering the disclosure of public records under the Connecticut Freedom of Information Act, see General Statutes § 1-200 et seq. (the act), related to the 1994 murder of Erica Corbett. This matter is the third appeal to come before this court on much the same issues. This court has previously issued two decisions dismissing appeals brought by Bridgeport seeking to prevent the disclosure of public records related to old and closed murder investigations. See *Chief of Police, City of Bridgeport* v. *Freedom of Info. Comm'n*, HHB-CV-23-6079418-S, 2024 WL 2720162 (Conn. Super. Ct. May 24, 2024), consolidated with *Chief of Police, City of Bridgeport* v. *Freedom of Info. Comm'n*, HHB-CV23-6079420-S (Conn. Super. Ct. May 24, 2024) (together "*Bridgeport I*"); *Chief of Police, City of Bridgeport, Police Department, City of Bridgeport* v. *Freedom of Information Commission*, HHB-CV-23-6078668-S, 2024 WL 3042370 (Conn. Super. Ct. June 12, 2024)) ("*Bridgeport II*"). The Appellate Court has also issued a controlling opinion deciding issues similar (and in

Electronic notice sent to all counsel of record: 1) Dina Scalo (Pl), 2) Mary-Kate Smith (D).
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some cases, identical) to the issues raised by Bridgeport in this appeal. See *City of Bridgeport* v. *Freedom of Info. Comm'n*, 222 Conn. App. 17, 304 A.3d 481 (2023), cert. denied, 348 Conn. 936, 306 A.3d 1072 (2024) ("*Bridgeport III*"). Finally, Judge Klau has issued a decision that is relevant to the issues presented in this appeal. See *Chief of Police, City of Bridgeport, Police Department, City of Bridgeport* v. *Freedom of Information Commission*, HHB-CV-20-6060495-S. January 12, 2021 ("*Bridgeport IV*"). For many of the same reasons previously set forth in the case law cited above, the court dismisses this appeal as well.

FACTS

The administrative record before the court demonstrates the following facts as relevant to this memorandum of decision which, except where noted, are not in dispute.

On July 26, 2022, Attorney Evan Parzych filed a request (the request) under the act with Bridgeport seeking all documents relating to Bridgeport Police Department (the department) case number 94D-1447 and the department's investigation into the murder of Erica Corbett. Ms. Corbett was murdered in 1994. Attorney Parzych is a Deputy Assistant Public Defender with the Connecticut Innocence Project/Post Conviction Unit. On July 26, 2022, Bridgeport acknowledged receipt of the request. On July 26, 2022, all the documents potentially responsive to the request were in the possession of the Bridgeport city attorney because the relevant documents had already been gathered for a separate legal matter. Return of Record, (ROR), 169. On August 18, 2022, Attorney Parzych filed an appeal with the commission. By August 18, 2022, no records responsive to the request had been provided to Attorney Parzych.

On March 10, 2023, the commission scheduled an initial hearing on Attorney Parzych's appeal. The March 10, 2023, initial hearing was continued because Bridgeport had not completed its review of the potentially responsive records. From April 28, 2023 through May 19, 2023, Bridgeport produced responsive records to Attorney Parzych. On May 26, 2023, Attorney Parzych notified the commission that Bridgeport was withholding certain responsive records (and redacting certain records) under claimed exemptions set forth in the act (hereinafter, the subject records). On June 29, 2023, the commission held a contested hearing regarding the subject records and Bridgeport's claimed exemptions. On July 6, 2023, Bridgeport submitted 291 pages of subject records to the commission for *in camera* review. On July 20, 2023, Bridgeport submitted an additional 33 pages of subject records to the commission for *in camera* review, plus one compact disc containing a responsive audio recording. Bridgeport claims that the subject records submitted to the commission for *in camera* review are exempt from disclosure under the act. On June 29, 2023, the commission issued a proposed final decision finding that Bridgeport had failed to present sufficient evidence to prove its claimed exemptions and ordering production of the subject records to Attorney Parzych. On August 9, 2023, the commission adopted the proposed final decision as the commission's final decision. See ROR, 351-366.

LEGAL STANDARD

"Our resolution of [administrative appeals] is guided by the limited scope of judicial review afforded by the Uniform Administrative Procedure Act; General Statutes § 4-166 et seq.; to the determinations made by an administrative agency. We must decide, in view of all

of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily or illegally, or abused its discretion. . . . Even as to questions of law, the 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. . . . Although the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given a statute by the agency charged with its enforcement." (Citations omitted; emphasis in original; internal quotation marks omitted). *Rocque* v. *Freedom of Information Commission*, 255 Conn. 651, 658, 774 A.2d 957 (2001).

"Our review of an agency's factual determination is constrained by . . . § 4-183(j), which mandates that a 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 . . . (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . . This limited standard of review dictates that, 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. . . . An agency's factual determination must be sustained if

it is reasonably supported by substantial evidence in the record taken as a whole." (Citations omitted; internal quotation marks omitted). Id., 658-59.

"It must be noted initially that there is an overarching policy underlying [the Freedom of Information Act] . . . favoring the disclosure of public records. . . . It is well established that the general rule under the act is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the . . . legislation [comprising the act]. . . . The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. . . . This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." (Citations omitted; internal quotation marks omitted). Id., 660-61.

LEGAL ANALYSIS

a. Promptness

Bridgeport first argues that the commission's conclusion that Bridgeport did not promptly respond to the request was not supported by substantial evidence in the record. The court disagrees.

General Statutes § 1-210(a) provides in pertinent part, "[e]xcept 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." (Emphasis added.) Further, General Statutes § 1-212(a) provides in pertinent part, "[a]ny person applying in writing shall receive, *promptly* upon request, a plain, facsimile, electronic or Certified copy of any public record." (Emphasis added.) To implement these statutory commands, the commission has issued Advisory Opinion #51 (herein after, the opinion, or FIC Adv. Op. #51) .[1] In the opinion, the commission defines "promptly" as used in the foregoing statutes to mean "quickly and without undue delay, taking into account all of the factors presented by a particular request." See FIC Adv. Op. #51. The opinion provides that some of the factors to be considered are (i) the volume of records requested, (ii) the amount of personnel time necessary to address the request, (iii) the timeframe under which the requestor needs the information, (iv) the importance of the records to the requestor, (v) time constraints placed on the agency by other work, and (vi) the importance of other pressing work at the agency. See id; see also *Comm'r of Dep't of Emergency Servs. & Pub. Prot.* v. *Freedom of Info. Comm'n*, HHB-CV-18-6047741, 2020 WL 5540637, at *2 (Conn. Super. Ct. July 2, 2020) (Cordani, J.). The opinion also states that providing access to records is a "primary duty" of all public agencies and should be considered part of their mission. See FIC Adv. Op. #51.

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[1] See Freedom of Information Commission of the State of Connecticut, Advisory Opinion #51 (January 11, 1982), available at https://www.state.ct.us/foi/Advisory_Opinions_&_Dec/AO_51.htm

Here, it is undisputed that Bridgeport received the request on July 26, 2022 and that Bridgeport had already gathered the documents responsive to the request when the request was received. It is also undisputed that the request concerned a police investigation that ended some thirty years previously. Despite these facts, Bridgeport did not begin producing documents to Attorney Parzych for nine months; beginning on April 28, 2023. Taking nine months to produce thirty-year-old documents that have already been gathered is not "quickly and without undue delay." It is also undisputed that, at the time, Bridgeport had only one person within its ranks conducting legal reviews of documents sought under the act. Failing to devote sufficient resources to carry out a statutory duty is not a justification for failing to fulfill that statutory duty, or for failing to provide a prompt response under the act. The court concludes that these facts in the record constitute substantial evidence supporting the commission's finding that Bridgeport violated the act by failing to respond to the request promptly.

b. General Statutes § 1-210(b)(3)(A); safety of witnesses not publicly known

Bridgeport next argues that the commission's conclusion that Bridgeport failed to sustain its burden to demonstrate that disclosure of certain of the subject records would endanger the safety of witnesses whose identities were not publicly known was against the weight of evidence. The court is not convinced.

To determine whether the commission applied the facts of this case to the well settled meaning of the exemptions laid out in § 1-210 (b), "[t]he appropriate standard of judicial review . . . is whether the commission's factual determinations are reasonably supported by

substantial evidence in the record taken as a whole." (Internal quotation marks omitted.) *Bridgeport III*, supra, 222 Conn. App. 67. In this case, Associate City Attorney Dina Scalo testified that she depended on Google searches and a review of case law and court filings to determine whether the identity of witnesses was publicly known. See ROR, 182-83. Neither Attorney Scalo nor anyone at Bridgeport has any firsthand or institutional knowledge as to whether any witnesses were publicly known at the time of the investigation into Ms. Corbett's murder, or whether they had become publicly known in the interceding 30 years since the investigation in 1994. See ROR, 182. There is no evidence in the record that Attorney Scalo or anyone at Bridgeport attempted to locate or contact any witnesses, or even knew if they were still alive. With respect to any possible danger a witness might face, Attorney Scalo simply presumed that "there is always an inherent risk of harm for those witnesses." ROR, 183-84; see also ROR, 185-86. Attorney Scalo did not testify that she considered the very practical fact that approximately 30 years had passed since the original investigation into Ms. Corbett's murder and how that fact might affect any possible threats a witness might face. It is undisputed that there is no direct evidence in the record that any witness is actually subject to any threats or intimidation, or even that such was the case at the time of the original investigation.

In *Bridgeport III*, the Appellate Court found that a city witness "express[ing] nothing more than a department policy of not disclosing names of witnesses due to general concerns for witness safety in *all cases* . . . does not support a finding that disclosure of the names of specific witnesses in [a specific] case would subject such witnesses to threat or harm. The

burden of proving the applicability of an exemption under the act 'requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.' . . . For this reason, 'generalized claims of a possible safety risk do not satisfy the plaintiffs' burden of proving the applicability of an exemption from disclosure under the act.'" (Citation omitted.) *Bridgeport III*, supra, 222 Conn. App. 69-70; see also *New Haven* v. *Freedom of Information Commission*, 205 Conn. 767, 776, 535 A.2d 1297 (1988) ("[T]he claimant of the exemption [must] provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.").

This court reaches the same conclusion as the Appellate Court in *Bridgeport III.* Where Bridgeport is "unable to provide anything more than a generalized claim of possible safety risks if the information was disclosed, the commission's finding that [Bridgeport] failed to prove the applicability of § 1-210 (b)(3)(A) is reasonably supported by substantial evidence in the record." *Bridgeport III*, supra, 222 Conn. App. 70.

c. *General Statutes § 1-210(b)(3)(C); signed witness statements*

Bridgeport next argues that the commission improperly concluded that a compact disc containing an audio recording of a witness statement was not a signed witness statement exempt from disclosure under General Statutes § 1-210(b)(3)(C). Bridgeport argues that § 1-210(b)(3)(C)'s reference to "signed statements of witnesses" ought to be broad enough to

encompass unsigned audio recordings of witnesses. Like Judge Klau in Bridgeport IV, this court concludes that the plain meaning rule disposes of Bridgeport's argument. See *Bridgeport IV*, supra, at 9-13; see also *Sedensky* v. *Freedom of Info. Comm'n*, HHB-CV-13-6022849-S, 2013 WL 6698055, at *14 (Conn. Super. Ct. Nov. 26, 2013) ("Audio recordings are not "signed statements of witnesses" under § 1-210(b)(3)(B) and the plaintiff has failed to provide a legal basis to treat them as such.")

"It is our duty to 'interpret statutes as they are written. . . . Courts cannot, by construction, read into statutes provisions which are not clearly stated. . . . The intent of the legislature is to be found not in what it meant to say but in what it did say. . . . A statute 'does not become ambiguous merely because the parties contend for different meanings. . . .' Given an unambiguous statute, 'it is assumed that the words themselves express the intent of the legislature . . . and there is no need to construe the statute.'" (Citations omitted.) *Glastonbury Co.* v. *Gillies*, 209 Conn. 175, 179-80, 550 A.2d 8 (1988). "[I]t is not the province of a court to supply what the legislature chose to omit. The legislature is supreme in the area of legislation, and courts must apply statutory enactments according to their plain terms." (Internal quotation marks omitted.) Id., 181.

Here, even assuming that an audio recording is a "statement" within the meaning of § 1–210(b)(3)(B), it is undisputed that the audio recording is not signed. Therefore, the audio recording is not exempt from disclosure under § 1-210(b)(3)(B).

d. General Statutes § 1-210(b)(1); preliminary drafts

Bridgeport's next claim is that certain of the subject records are preliminary drafts and notes under General Statutes § 1-210(b)(1). This court concludes that Bridgeport failed to present any evidence as to what the subject records withheld under § 1-210(b)(1), in fact, were, or how they may have been used by Bridgeport during its investigation of Ms. Corbett's murder. The court finds that the commission's finding that Bridgeport failed to meet its burden to demonstrate the applicability of the exemption in § 1-210(b)(1) is supported by substantial evidence in the record.

"[T]he term preliminary drafts or notes relates to advisory opinions, recommendations and deliberations comprising part of the process by which government decisions and policies are formulated. . . . Such notes are predecisional. They do not in and of themselves affect agency policy, structure, or function. They do not require particular conduct or forbearance on the part of the public. Instead, preliminary drafts or notes reflect that aspect of the agency's function that precedes formal and informed decision-making." (Citations omitted.) *Wilson* v. *Freedom of Information Commission*, 181 Conn. 324, 332-33, 435 A.2d 353 (1980). "Preliminary drafts or notes reflect that aspect of the agency's function that precedes formal and informed decisionmaking. . . . It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass." (Internal quotation marks omitted.) *Shew* v. *Freedom of Info. Comm'n*, 245 Conn. 149, 165, 714 A.2d 664 (1998).

In this matter, neither Attorney Scalo nor Bridgeport presented any facts as to what the subject records withheld under § 1-210(b)(1) might actually be, or how they were used at the time they were created. The evidence in the record demonstrates that Attorney Scalo was merely guessing as to the nature of the withheld records based on her own review of the withheld records nearly thirty years after the fact. Attorney Scalo testified only that the withheld documents were "handwritten notes that, you know, just reading the contents of the notes, I'm able to determine that they were, for lack of a better term, that sort of predecisional-type recordkeeping memorializing things, which may or may not have been finalized into an ultimate report." ROR, 192. Given the age of the documents and the lack of any first hand or institutional knowledge within Bridgeport, Attorney Scalo had no basis to determine how these documents may have been used at the time of the investigation of Ms. Corbett's murder some thirty years previous. For its part, the commission reviewed the withheld subject records *in camera*. Based on that review, the commission found only that the withheld "records consist of, and contain, handwritten notes." ROR, 362. Bridgeport presented no specific evidence to the commission as to what the subject records withheld under § 1-210(b)(1) in fact were, how they were created, or how such records may have been used to support any decision making on the part of Bridgeport or its police department. The court concludes that there is substantial evidence in the record to support the commission's conclusion that the subject records withheld by Bridgeport were not exempt from disclosure under § 1-210(b)(1).

d. Dates of birth

Bridgeport next claims that the commission abused its discretion in ordering the disclosure of dates of birth contained in the subject records because the commission has previously allowed the redaction of social security numbers in other cases, see *Eric Garrison* v. *Sup. Unclaimed Property Div. of the State of Connecticut, Officer of the Treasurer*, FIC Docket No. 89-76 (1989), and dates of birth under General Statutes § 1-210(b)(2), which exempts information contained in medical, personnel or similar files where such disclosure would constitute an invasion of personal privacy. See *Town of Avon* v. *Freedom of Info. Comm'n*, HHBCV196056393, 2020 WL 5102098 (Conn. Super. Ct. Aug. 6, 2020).

As an initial matter, the court observes that dates of birth are not the same as social security numbers. In the exercise of common sense and human experience, dates of birth are much more commonly sought by and provided to third parties in a wide variety of commercial transactions and social media contexts. The same cannot be said for social security numbers, which are much more closely guarded. Regardless, it is undisputed that there is no exemption for dates of birth set forth in the act. Additionally, it is undisputed that the subject records are not medical or personnel files and there was no evidence presented to the commission that any of the individuals whose dates of birth are disclosed as part of the subject records considered the disclosure to be an invasion of personal privacy. It should also be undisputed that having dates of birth would be relevant to Attorney Parzych when attempting to locate any witnesses related to Ms. Corbett's murder. See *Perkins* v. *Freedom of Information Commission,* 228 Conn. 158, 635 A.2d 783 (1993) (disclosure of information is an invasion of personal privacy

if it does not pertain to legitimate matters of public concern). Consequently, there is no basis in the record upon which the commission could have ordered the redaction of dates of birth in the subject records (excepting those related to minors).

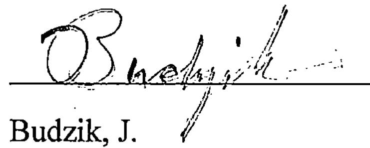
e. Scope of appeal

Finally, Bridgeport argues that the commission lacked jurisdiction to address the scope of Bridgeport's claimed exemptions because Attorney Parzych did not specify which exemptions he was disputing. As Bridgeport acknowledged in its brief, the Appellate Court has previously rejected this argument and this court is bound by that decision. See *Bridgeport III*, supra, 222 Conn. App. 66-67 ("The act makes disclosure of public records the statutory norm. . . . It is well established that the general rule under the act is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the act. . . . Thus the burden of proving the applicability of an exception to disclosure under the act rests upon the party claiming it. . . . In the present case, in which [the requester] alleged that [Bridgeport] failed to comply with [the] request, the fact that [Bridgeport] believed that they complied by providing redacted copies of the responsive records did not resolve [the requester's] complaint that [Bridgeport] had not complied with his request. Indeed, [Bridgeport] bore the burden of proving the propriety of the exemptions they claimed to establish that they had complied with [the] request. Thus, [the requester] had no obligation to amend his complaint to allege that [Bridgeport] violated the act by redacting portions of the responsive records, as such a claim is encompassed within the allegation that

[Bridgeport] failed to comply with his request for *all* responsive records." (Citation omitted; emphasis in original; internal quotation marks omitted.)

CONCLUSION

For all the foregoing reasons, the appeal is dismissed.



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