

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ian Wright,

Complainant

against

Docket #FIC 2019-0638

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and
Public Protection,

Respondents

April 28, 2021

The above-captioned matter was heard as a contested case on October 13, 2020, December 3, 2020, and January 28, 2021, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearings were conducted telephonically.¹

Subsequently, the respondents submitted one after-filed exhibit, which has been admitted into evidence, without objection, and marked as Respondents' Exhibit 7: Email Exchange between Attorney Milne and Joy Reho, dated January 25 and 26, 2021, respectively.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated October 3, 2019, the complainant made a multi-part records request to the respondents relating to Laboratory Case #ID-00-002911. Among other records, the complainant requested ballistic testing records and gunshot residue (GSR) testing records conducted in relation to the complainant's criminal case, as well as "any and all documents maintained by [the state forensic science] laboratory that document[] instances of unintended transfer of DNA or sample contamination...." ("October 3rd request").

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

3. By letter received on October 23, 2019,² the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with records responsive to his October 3rd records request, described in paragraph 2, above.³

4. It is found that subsequent to the filing of the complaint, the respondents provided the complainant with records responsive to his October 3rd request.⁴ At the time of the hearings, the only records at issue were ballistic testing records, GSR testing records and records pertaining to “instances of unintended transfer of DNA or sample contamination.”

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

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept 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 . . . or (3) receive a copy of such records in accordance with section 1-212....

7. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

³ In his complaint, the complainant also requested the imposition of civil penalties. However, such request was not pursued at the hearings and therefore will not be further addressed herein.

⁴ It is found that some of the records contained redactions. Such redactions, however, were not contested at the hearings, and therefore will not be further addressed herein.

8. With respect to the request for ballistic testing records, the respondents testified, and it is found, that ballistics testing relating to the complainant's criminal case was conducted by the Bridgeport Police Department, that the state laboratory did not author a ballistics report relating to his case, and that the respondents did not have any ballistic testing records in their possession. It is found that the respondents do not have ballistic testing records responsive to the October 3rd request. It is therefore concluded that the respondents did not violate the FOI Act with respect to such records.

9. With respect to the request for GSR testing records, the respondents testified, and it is found, that GSR examination was done by scanning electron microscopy and that GSR testing records were included among the records already provided to the complainant. The complainant did not contest such testimony. It is found that the respondents do not have additional GSR testing records responsive to the October 3rd request. It is therefore concluded that the respondents did not violate the FOI Act with respect to such records.

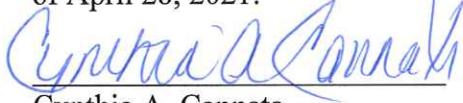
10. With respect to the request for records pertaining to "instances of unintended transfer of DNA or sample contamination", the respondents testified that no responsive materials related to DNA contamination or unintended transfer of DNA were located within the complainant's lab file. The respondents also testified that a search for "any and all" documents pertaining to instances of unintended transfer or sample contamination would be burdensome, requiring the respondents to go through hundreds of thousands of records and expend an enormous amount of time to process.

11. In addition, with respect to the request described in paragraph 10, above, it is found that the parties ultimately reached an agreement under which the respondents would provide the complainant with copies of internal affairs files (consisting of 1757 pages) regarding DNA errors and concerns with DNA testing. The parties also agreed that such records would be sent to the complainant's attorney. At the end of the January 28, 2021 hearing, the respondents represented that they would provide to the complainant copies of the records previously provided, as well as copies of the internal affairs files that had yet to be provided. Since the complainant agreed to accept copies of the internal affairs files in response to the request described in paragraph 10, above, it is concluded that under the facts and circumstances of this case, the respondents did not violate the FOI Act with respect to such records.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 28, 2021.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

IAN WRIGHT, #286236, Osborn Correctional Institution, 335 Bilton Road, P.O. Box 100, Somers, CT 06071

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION,
c/o Attorney Colin Milne, Department of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457 and Attorney Douglas Sauve, State of Connecticut, Department of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission