

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Eugene Brown,

Complainant

against

Docket # FIC 2020-0315

Chief, Police Department, City of
Bridgeport; Police Department, City of
Bridgeport; and City of Bridgeport,

Respondents

August 26, 2021

The above-captioned matter was heard as a contested case on July 1, 2021, at which time 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 hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

Supervisory Assistant State's Attorney C. Robert Satti, Jr., appeared on behalf of the Fairfield Judicial District State's Attorney. Attorney Satti requested and was granted intervenor status and allowed to participate in the proceedings pursuant to §1-215(e), G.S.

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. By letter of complaint filed July 10, 2020,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records.

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 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. Additionally, such Executive Order also suspended the time requirements for filing an appeal with the Commission.

3. It is found that, by letter dated February 21, 2020, the complainant requested that the respondents provide him with a copy of “any and all documents pertaining to Eugene Brown between the period of June 2019 to Jan 2020.”

4. It is found that the respondents acknowledged the request in two letters each dated February 28, 2020. One letter was from the police chief while the other letter was from the office of the city attorney.

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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

[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 the provisions of section 1-212.

7. Section 1-212(a), G.S., provides in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is concluded that the requested records, to the extent such records exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

9. It is found that in a letter dated March 2, 2020, the respondents informed the complainant that records responsive to his request were exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

10. Section 1-210(b)(3)(D), G.S., states in relevant part that:

[n]othing in the Freedom of Information Act shall be construed to require disclosure of: 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 ... information to be

used in a prospective law enforcement action if prejudicial to such action....

11. It is found that, by letter dated June 5, 2020, the complainant renewed his request to the respondents, specifically requesting records pertaining to his arrest on September 16, 2019. It is found that the respondents replied to this request by letter dated June 8, 2020. The respondents referred the complainant to a previous letter dated March 2, 2020, in which the respondents denied the complainant's request pursuant to §1-210(b)(3)(D), G.S.

12. At the hearing, the respondents moved for a dismissal of the matter claiming that the complainant's appeal to the Commission was untimely. Pursuant to §1-206(b)(1), G.S., an appeal must be made no later than thirty days after the respondents' denial. However, on March 25, 2020, in response to the COVID-19 pandemic, Governor Lamont issued Executive Order 7M. Such order suspended the time requirements for filing an appeal with the Commission and was applicable to any appeal filed on or after the issuance of the order. It is found that the complainant's appeal was filed on July 10, 2020, and such date is after the date of the Governor's order and during the time period when both the declaration of public health and civil preparedness emergency were still in effect. Therefore, it is concluded that the appeal is timely, and the Commission has subject matter jurisdiction over such appeal. The respondents' motion to dismiss is denied.

13. It is found that the records responsive to the complainant's request pertain to the complainant's September 2019 arrest for murder. It is further found that such case is assigned docket #FBT-CR19-0332613-T and is currently pending before the court in the pre-trial phase of prosecution.

14. The release of arrest records during the pendency of prosecution is governed by §1-215, G.S. Such statute states:

a) For the purposes of this section, "record of the arrest" means (1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

- (b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) the name, address or other identifying information of any victim of sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof, (3) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (4) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.
- (c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.
- (d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.
- (e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.

15. At the hearing, the respondents agreed to disclose to the complainant's representative the "record of arrest" as defined in §1-215(a), G.S. The complainant acknowledged that such

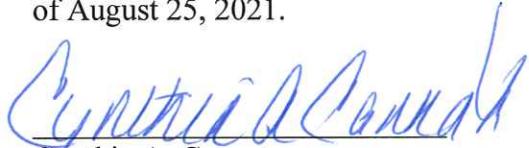
disclosure would satisfy his request.

16. Based upon the circumstances of this case, it is found that the respondents violated §1-215, G.S., with regard to the release of arrest records during the pendency of a criminal prosecution.

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

1. The respondents will disclose to the complainant's representative the "record of arrest" as defined in §1-215, G.S., as agreed at hearing.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §1-215, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 25, 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:

EUGENE BROWN, #317508, MacDougall Walker Correctional Institution, 1153 East Street South, Suffield, CT 06078

CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604

TO INTERVENOR(S)

Attorney C. Robert Satti, Jr., State's Attorney Office, 1061 Main Street, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission