

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Picard,

Complainant

against

Docket #FIC 2019-0353

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

Respondents

February 24, 2021

The above-captioned matter was heard as a contested case on September 10, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The respondents submitted the records at issue for an in camera inspection, comprising 366 pages, which are designated as IC-2019-0353-001 through IC-2019-0353-366.

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 June 13, 2019<sup>1</sup>, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for certain public records.
3. It is found that the complainant made a May 28, 2019 request to the respondents for, among other records no longer at issue, “[t]he content of all *completed* internal affairs investigations [from] January 1, 2018 to the present day.” [Emphasis in original.]

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<sup>1</sup> 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 subject matter jurisdiction.

4. It is found that the respondents acknowledged the request on May 30, 2019.

5. It is found that no internal affairs investigations were provided to the complainant until the day of the hearing on this matter.

6. It is found that the records provided to the respondent were redacted. The complainant objects to the redactions. It is also found that some of the requested records were withheld in their entirety.

7. Section 1-200(5), G.S., 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, printed, photostated, photographed or recorded by any other method.

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

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 . . . (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

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

11. It is found that IC-2019-353-002 through 096 are records that were withheld in their entirety from the complainant.

12. It is found that IC-2019-0353-002 through 096 consist of reports of twelve investigations into alleged misconduct by police officers. The respondents claim that the alleged misconduct allegations were not sustained. IC-2019-0353-001 is a cover sheet listing the twelve investigative reports.

13. The respondents contended that the internal investigation reports described in paragraph 11, above, are exempt from disclosure pursuant to §5-278, G.S.

14. Section 5-278(e), G.S., provides in relevant part:

Where there is a conflict between any agreement or arbitration award approved in accordance with the provisions of sections 5-270 to 5-280, inclusive, on matters appropriate to collective bargaining, as defined in said

sections, and any general statute or special act, or regulations adopted by any state agency, the terms of such agreement or arbitration award shall prevail ....

15. It is found the 2018-2022 State Police (NP-1) Bargaining Unit Contract was approved by the Legislature on May 31, 2019, and was effective on that date.

16. It is found that Article 9 Section Two of the Bargaining Unit Contract provides in relevant part:

An employee's [official personnel file] and internal affairs investigations with only a disposition of "Exonerated, Unfounded or Not Sustained" shall not be subject to the Connecticut Freedom of Information Act.

17. It is found that Article 9 Section Two of the Bargaining Unit Contract was in effect at the time of respondents' denial of the complainant's request, although the request was made before Article 9 Section Two went into effect.

18. It is found that all of the investigations reported in the in camera records were internal investigations conducted by the respondents' Bureau of Professional Standards and Compliance Internal Affairs Unit.

19. The respondents contended that the investigation reports contained in IC 2019-0353-001 through 047, 059-062, 077-096 are exempt from disclosure, because these reports are categorized by the respondents on their in camera index as "Complaint numbers' that did not lead to IA/AI." The respondents' argument appears to be that since the respondents did not assign an "IA/AI" label to the reports, but rather called them "complaint numbers," and since no further investigations into the complaints were conducted based on the conclusions contained in those reports, the disposition of those reports is necessarily "Exonerated, Unfounded or Not Sustained."

20. It is found, however, that the question of whether the disposition of respondents' internal investigation reports was "Exonerated, Unfounded or Not Sustained" depends on the content of the report, not simply on the label given by the respondents, or on the respondents' decisions not to escalate the investigations to what the respondents deem an "IA/AI"

21. It is found that IC 2019-0353-002 through 2019-0353-018 comprise a report on an investigation into allegations of misconduct. The report concludes that the evidence did not support the allegations.

22. It is found that IC 2019-0353-019 through 035 comprise a report on an investigation into allegations of misconduct. The report concludes that the evidence supported the allegations.

23. It is found that IC 2019-0353-036 through 040 comprise a report concerning allegations of misconduct and recommends that the complaint be sustained but without discipline.

24. It is found that IC-2019-0353-041 through 047 comprise a report of an investigation into allegations of misconduct. The report concludes that there was not conclusive evidence to sustain the allegations.

25. It is found that IC 2019-0353-048 through 052 comprise a report on an investigation into allegations of misconduct. The report concludes that the investigation was sustained.

26. It is found that IC 2019-0353-053 through 058 comprise a report on an investigation into allegations of misconduct. The report concludes that the investigation was sustained.

27. It is found that IC 2019-0353-059 through 062 comprise a report on an investigation into allegations of misconduct. The report concludes that the actions complained of did not rise to the level of the charges made.

28. It is found that IC 2019-0353-063 through 067 comprise a report on an investigation into allegations of misconduct. The report does not conclude that the allegations were sustained.

29. It is found that IC 2019-0353-068 through 076 comprise a report on an investigation into allegations of misconduct. The report concludes that the officer's actions constituted misconduct.

30. It is found that IC 2019-0353-077 through 082 comprise a report on an investigation into allegations of misconduct. The report concludes that the complaint was unfounded.

31. It is found that IC 2019-0353-083 through 088 comprise a report on an investigation into allegations of misconduct. The report concludes that the complaint was unfounded.

32. It is found that IC 2019-0353-089 through 096 comprise a report on an investigation into allegations of misconduct. The report concludes that the allegations were not substantiated.

33. It is therefore concluded that the investigation reports described in paragraphs 21, 24, 27, 28, 30, 31 and 32, above, all of which factually have dispositions of exonerated, unfounded or not sustained, are exempt from disclosure pursuant to Bargaining Unit Contract and §5-278(e), G.S., and that the respondents did not violate the FOI Act by withholding them.

34. Additionally, the respondents contend that certain reports or portions of reports (IC 2019-0353-123 lines 6-10; 2019-0353-138 lines 13-36; 2019-0353-202 through 252; 2019-0353-253 through 263; 2019-0353-266 lines 26-34; 2019-0353-267 lines 10-35; 2019-0353-268 lines 22-23, 23-24 and 26-45; 2019-0353-269 through 270; 2019-0353-271 lines 1-37; 2019-0353-272 lines 39-46; 2019-0353-273; 2019-0353-274 lines 1-20; 2019-0353-275 lines 25-46; 2019-0353-276 lines 2-36; 2019-0353-278 lines 34-45; 2019-0353-279 lines 2-9; 2019-0353-280 lines 1-13 and 40-46; 2019-0353-281 lines 1-37; 2019-0353-282 lines 42-46; and 2019-0353-283 lines 1-29) that were further investigated but were subsequently marked "unfounded" or "exonerated" are exempt from disclosure pursuant to §5-278e, G.S.

35. It is found that the alleged offense described in IC 2019-0353-123 lines 6-10 was concluded to be unfounded (see IC 2019-0353-138 lines 14-35). (A second alleged

offense, described in IC 2019-0353-123 lines 12-16 was sustained; see IC 2019-0353-138 lines 37-47 and 2019-0353-139.)

36. It is found that the investigation report contained in IC 2019-0353-138 lines 13-36 concludes that the complaint was unfounded.

37. It is found that the investigation report contained in IC 2019-0353-202 through 252 concludes that the complaint was unfounded.

38. It is found that the investigation report contained in IC-2019-0353-253 through 263 concludes that the subject of the complaint was exonerated.

39. It is found that the two alleged offenses described in IC 2019-0353-266 lines 26-34; 2019-0353-267 lines 10-35; 2019-0353-268 lines 22-23, 23-24 and 26-45; 2019-0353-269 through 270; 2019-0353-271 lines 1-37; 2019-0353-272 lines 39-46; 2019-0353-273; 2019-0353-274 lines 1-20; 2019-0353-275 lines 25-46; 2019-0353-276 lines 2-36; 2019-0353-278 lines 34-45; 2019-0353-279 lines 2-9; 2019-0353-280 lines 1-13 and 40-46; 2019-0353-281 lines 1-37; 2019-0353-282 lines 42-46; 2019-0353-281 lines 1-37; 2019-0353-282 lines 42-46; and 2019-0353-283 lines 1-29, were concluded to be not sustained and exonerated. (Three offenses were investigated in the report that begins at IC 2019-0353-266; only the third was sustained.)

40. It is therefore concluded that the records described in paragraph 34, above, were exempt from disclosure pursuant to §5-278(e), G.S., and that the respondents did not violate the FOI Act by withholding those records.

41. The Commission notes that *after* all times material in this matter, the legislature passed House Bill 6004 (July 2020 Spec. Session, P.A. 20-1), signed by the Governor on July 31, 2020, which provides:

For any agreement or arbitration award approved before, on or after the effective date of this section, in accordance with the provisions of sections 5-270 to 5-280, inclusive, on matters appropriate to collective bargaining, as defined in said sections, where any provision in such agreement or award pertaining to the disclosure of disciplinary matters or alleged misconduct would prevent the disclosure of documents required to be disclosed under the provisions of the Freedom of Information Act, as defined in section 1-200, the provisions of the Freedom of Information Act shall prevail.

42. Accordingly, should the unsubstantiated disciplinary records described in paragraphs 21, 24, 27, 28, 30, 31, 32 and 34, above, all of which have dispositions of exonerated, unfounded or not sustained, be requested today, §5-278(e), G.S., would not operate to exempt them from disclosure.

43. As to the investigation reports described in paragraphs 22, 23, 25, 26 and 29, above, it is found, contrary to the respondents' assertions, that each of these reports in fact sustained the allegations against the subject police officers, finding sufficient

evidence to establish that the incident did occur and that facts and circumstances supported a determination that the actions of the officer constituted misconduct.

44. It is therefore concluded that the investigation reports described in paragraphs 22, 23, 25, 26 and 29, above, none of which in fact has a disposition of exonerated, unfounded or not sustained, are not exempt from disclosure pursuant to the Bargaining Unit Contract and §5-278(e) G.S.. See, IC 2019-0353-34 lines 19 through 43; IC 2019-0353-040 lines 3-4; IC 2019-0353-052 lines 20-29; IC 2019-0353-058 lines 12-22; IC 2019-0353-075 lines 16-26.

45. The respondents additionally contend that portions of the in camera records not claimed to be exempt pursuant to the Bargaining Unit Contract and §5-278(e), G.S., are nonetheless exempt from disclosure pursuant to §§1-210(b)(2), 1-210(b)(3) and (20), 1-217, 17a-28(b), 51-5c(b)(1), 54-86e, and 54-142a, G.S.<sup>2</sup>

46. Section 1-210(b)(2), G.S., provides that disclosure is not required of “Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.”

47. It is found, however, that all of the information claimed exempt as “medical information” pursuant to §1-210(b)(2), G.S., concerns disputed use of sick time and other forms of leave, clearly not exempt from disclosure pursuant to *Perkins v. FOIC*, 228 Conn. 158 (1993) (information pertaining to sick leave not exempt from disclosure pursuant to §1-19(b)(2) [now 1-210(b)(2)], G.S.).

48. It is therefore concluded that the respondents violated the FOI Act by redacting information pertaining to sick leave and similar leave from records not here determined to be otherwise exempt from disclosure pursuant to §5-278, G.S.

49. The respondents contended that the addresses of witnesses are exempt from disclosure pursuant to §1-210(b)(3), G.S.

50. Section 1-210(b)(3), G.S., provides in relevant part that disclosure is not required 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 (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the

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<sup>2</sup> The specific lines claimed to be exempt pursuant to §§1-210(b)(2), 1-210(b)(3) and (20), 1-217, 17a-28(b), 51-5c(b)(1), 54-86e, and 54-142a, G.S., are identified in the In Camera Index.

general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a 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, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216

51. It is found that the respondents failed to prove that the addresses of witnesses were compiled in connection with the detection or investigation of crime, or are otherwise exempt from disclosure pursuant to §1-210(b)(3), G.S.

52. It is therefore concluded that the respondents violated the FOI Act by redacting witness addresses from records not here determined to be otherwise exempt from disclosure pursuant to §5-278, G.S.

53. The respondents contend that “employee numbers” are exempt from disclosure pursuant to §1-210(b)(20), G.S.

54. Section 1-210(b)(20), G.S., provides that disclosure is not required of:

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

55. It is found, however, that the respondents failed to prove that disclosure of “employee numbers” would compromise the security or integrity of an information technology system.

56. It is therefore concluded that the respondents violated the FOI Act by redacting employee numbers from records not here determined to be otherwise exempt from disclosure pursuant to §5-278, G.S.

57. The respondents contend that residential addresses of sworn personnel contained in the in camera records are exempt from disclosure pursuant to §1-217, G.S., which provides in relevant part:

(a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency:

....

(2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of

Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Energy and Environmental Protection ....

58. It is found that the in camera records contain the residential addresses of sworn members of the Division of State Police.

59. It is concluded that the residential addresses of sworn members of the Division of State Police contained in the in camera records are exempt from disclosure pursuant to 1-217, G.S., and that the respondents did not violate the FOI Act by redacting those addresses.

60. The respondents contend that information contained in the in camera records concerning the Department of Children and Families ("DCF") is exempt from disclosure pursuant to §17a-28(b), which provides:

Notwithstanding the provisions of section 1-210, 1-211 or 1-213, *records maintained by the department* shall be confidential and shall not be disclosed, unless the department receives written consent from the person or as provided in this section, section 17a-101g or section 17a-101k. Any unauthorized disclosure shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. Any employee of the department who in the ordinary course of such person's employment has reasonable cause to suspect or believe that another employee has engaged in the unauthorized disclosure of records shall report in writing such unauthorized disclosure of records to the commissioner. The report shall include the name of the person disclosing the information and the nature of the information disclosed and to whom it was disclosed, if known. [Emphasis added.]

61. While the in camera records refer to DCF, none of information claimed to be exempt consists of records maintained by DCF.

62. It is therefore concluded that the portions of the records referring to DCF are not exempt from disclosure, and that the respondents violated the FOI Act by withholding them.

63. The respondents contended that information regarding victims of "domestic violence" and "family violence" contained within the in camera records are exempt from disclosure pursuant to §54-86e, G.S., which provides:

The name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or family violence, as defined in section 46b-38a and such other



identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

64. Section 46b-38a, G.S., provides in relevant part:

"Family violence" means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members.

65. It is found that the in camera records contain the names and addresses of victims of family violence (including domestic violence) within the meaning of §§54-86e and 46b-48a, G.S.

66. It is concluded that the names and addresses of the victims of family violence and domestic violence contained in the in camera records are exempt from disclosure pursuant to §§54-86e and 46b-48a, G.S., and that the respondents did not violate the FOI Act by redacting those name and addresses.

67. The respondents contend that the in camera records contain erased information exempt from disclosure pursuant to §54-142a, G.S., which provides in relevant part:

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.

...

(c)(1) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common

Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased ....

...

(e)(1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department *or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record,* upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section  
[Emphasis added.]

68. It is found that the in camera records contain erased records that are exempt from disclosure pursuant to §54-142a, G.S., and that the respondents did not violate the FOI Act by withholding such information.

69. The respondents contended that “protective order information” contained in the in camera records is exempt from disclosure pursuant to §51-5c(b)(1), G.S., which provides in relevant part:

The following information *contained in the registry of protective orders* shall not be subject to disclosure and may be accessed only in accordance with this section, unless otherwise ordered by the court:

- (A) Any information that would identify a person protected by an order contained in the registry;
- (B) any information that is confidential pursuant to state or federal law, including, but not limited to, any information that is confidential pursuant to a court order; and
- (C) any information entered in the registry pursuant to an ex parte order prior to a hearing by a court having jurisdiction over the parties and the subject matter.  
[Emphasis added.]

70. While the in camera records refer to protective orders, that information is contained in the respondents' internal investigation files, not the automated registry of protective orders established by the Chief Court Administrator under §51-5c(a), G.S. (Also, the information concerning protective orders in the in camera records was not shown to have been obtained by the respondents from the court's registry of protective orders.)

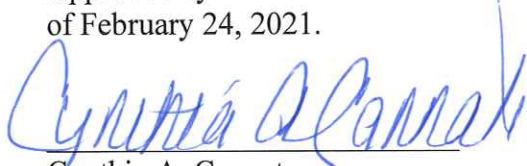
71. It is therefore concluded that the “protective order information” contained in the in camera records is not exempt from disclosure pursuant to §51-5c(b)(1), G.S., and the respondents violated the FOI Act by redacting those portions of the records.

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

1. The respondents shall forthwith provide to the complainants, free of charge, an unredacted copy of the requested records.

2. In complying with the order in paragraph 1, the respondents may exclude the records or portions of records described in paragraphs 21, 24, 27, 28, 30, 31, 32, 34, 59, 66 and 68.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 24, 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:

**MICHAEL PICARD**, 80 Hilton Drive, South Windsor, CT 06074

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION**, c/o Assistant Attorney General Terrence M. O'Neill, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata  
Acting Clerk of the Commission