

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Terrance Burton,

Complainant

against

Docket # FIC 2020-0161

James Rovella, 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 November 23, 2020, at which time the complainant and the respondent(s) 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 telephonically.¹

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 April 3, 2020, 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. The complainant also requested that the Commission consider imposing a civil penalty against the respondents.
3. It is found that in letters dated November 5, 2019 and March 16, 2020, the complainant requested that the respondents provide him with a copy of a police report that was filed on January 4, 2019, regarding alleged misconduct by a judicial marshal.
4. It is found that in a letter dated November 21, 2019, the respondents acknowledged the November 5, 2019 request and indicated that the search fee to conduct a search for responsive records was \$16.00.

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

5. It is found that on January 10, 2020, the respondents received the \$16.00 search fee from the complainant. It is further found that on February 21, 2020, the respondents denied the complainant's request indicating that the requested records were exempt from disclosure pursuant to §1-210(b)(3)(H), G.S.

6. 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.

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

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

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

9. It is found that the records described in paragraph 3, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. It is found that on March 16, 2020, the complainant renewed his request for the records described in paragraph 3, above.

11. It is found that on June 12, 2020, in response to the complainant's appeal to the Commission, the respondents reconsidered their decision to withhold the requested records in their entirety and decided to provide the complainant with redacted copies of the records responsive to his request. The respondents contended that some records consisted of signed statements of witnesses and were therefore exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. The respondents also contended that some of the records contained uncorroborated allegations subject to destruction pursuant to §1-216, G.S., and were therefore subject to redaction pursuant to §1-210(b)(3)(H), G.S.

12. Section 1-210(b)(3) states in relevant part:

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(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 said records would not be in the public interest because it would result in the disclosure of: ... (C) signed statements of witnesses... (H) uncorroborated allegations subject to destruction pursuant to section 1-216;

13. Section 1-216, G.S., states:

Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

14. At hearing, the complainant acknowledged receiving responsive records from the respondents but questioned the validity of the redactions made by the respondents. The complainant requested the Commission review the records in camera.

15. After the hearing on this matter, the respondents were ordered to submit a copy of the records responsive to the complainant's request for which they were claiming exemptions for in camera inspection. On November 27, 2020, the respondents complied with such order and submitted 16 pages of records for in camera inspection. The records will be referred to as IC2020-0161-001 through IC2020-0161-016.

16. After careful inspection of the in camera records, it is found that such records are records of a law enforcement agency not otherwise available to the public which records were compiled in connection with the detection or investigation of crime.

17. It is found that all the in camera records contain uncorroborated allegations subject to destruction pursuant to §1-216, G.S., as contemplated by the exemption set forth in §1-210(b)(3)(H), G.S. Our appellate court has concluded that the entirety of a record containing uncorroborated allegations of criminal activity is exempt from disclosure. Bona v. Freedom of Info. Comm'n, 22 Conn. App. 622 (1997). It is further found that IC2020-0161-009 through IC2020-0161-013 are signed statements of witnesses and exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. Therefore, it is found that all the in camera records are exempt from disclosure in their entirety.

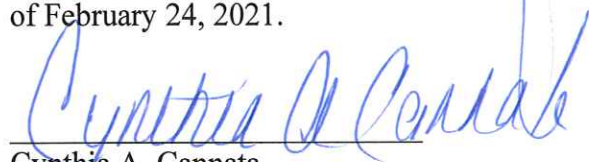
18. It is found that although all the in camera records are exempt from disclosure in their entirety, the respondents exercised their discretion by releasing the records to the complainant with redactions as opposed to withholding all the records. It is found that all the redactions to the in camera records were proper and made pursuant to the claimed exemptions described in paragraph 17, above. Accordingly, it is concluded that the respondents did not violate the Act as alleged by the complainant.

19. Based on the circumstances of this complaint and the actions taken by the respondents, the Commission declines to consider the imposition of a civil penalty.

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

1. The complaint is dismissed.

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:

TERRANCE BURTON, #244193, Osborn Correctional Institution, 335 Bilton Road, P.O. Box 100, Somers, CT 06071

JAMES ROVELLA, 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 Janet K. Ainsworth, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission