

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Maryanne Hornish,

Complainant

against

Docket # FIC 2020-0037

Chief, Police Department, Town of Suffield;  
Police Department, Town of Suffield; and  
Town of Suffield,

Respondents

July 14, 2021

The above-captioned matter was heard as a contested case on August 26, 2020, 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 telephonically.<sup>1</sup>

Subsequent to the hearing in this matter, the respondents submitted two after-filed exhibits. Such exhibits have been marked as Respondents' Exhibit 2 (after-filed): redacted responsive records, received October 1, 2020; and Respondents' Exhibit 3 (after-filed): letter from respondents' counsel, received October 20, 2020.

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 January 23, 2020,<sup>2</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request for records, dated January 14, 2020.
3. Section 1-200(5), G.S., provides:

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

<sup>2</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 jurisdiction.

“[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.

4. 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.

5. 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.”

6. It is found that the records responsive to the request described in paragraph 2, above, are public records within the meaning of §§ 1-200(5), 1-210(a) and 1-212(a), G.S.

7. It is found that on November 6, 2019, an incident occurred at the complainant’s home during which the complainant’s dog bit a visitor. It is further found that the visitor later died. It is further found that the respondent Suffield Police Department opened an investigation, and such investigation remained open until the middle of February 2020. It is further found that such investigation did not result in any arrest or criminal charge. However, an Animal Disposal Order was issued for the dog which, at the time of the hearing in this matter, was the subject of an appeal before the State Department of Agriculture.

8. It is found that on January 10, 2020, the complainant made a request to the respondent Suffield Police Department for all records concerning the “incident that occurred on or around November 6, 2019 involving Janet D’Aleo, Maryanne Hornish, and/or ‘Dexter Hornish’”; case number 19-626-OF; or an “Animal Disposal Order” for the dog.

9. It is found that complainant renewed this request on January 14, 2020 and such request is the subject of the instant appeal.

10. It is found that the respondents’ records clerk acknowledged the January 14, 2020 request and noted that the investigation was pending. It is found that no records were provided to the complainant at that time. However, it is found that responsive records were later provided in February, May, and July 2020.

11. At the hearing, the complainant contended that the respondents violated the FOI Act by failing to promptly provide all responsive records. The respondents claimed that all responsive, non-exempt records were promptly provided to the complainant.

12. Immediately following the hearing, the hearing officer issued an order to submit records for in camera inspection. On October 1, 2020, the respondents delivered records, identified as the “entire case file for 19-626-OF,” with an Index to Records Submitted for In Camera Inspection (“Index”) to the Commission. The records submitted for in camera inspection shall be referred to hereafter as IC-2020-0037-1 through IC-2020-0037-134 (“in camera records”).<sup>3</sup>

13. By email dated October 2, 2020, the complainant questioned whether the respondents provided all withheld responsive records to the Commission. On October 6, 2020, the hearing officer issued a second order stating that if all responsive records claimed to be exempt had not been submitted for in camera inspection, that the respondents were ordered to do so by October 20, 2020.

14. By motion dated October 20, 2020, the respondents requested permission to file a letter in response to the October 6, 2020 order. Such letter, submitted by counsel to the respondents, sets forth in relevant part, that the respondent Suffield Police Department maintains one file related to Case Number 19-626-OF; and that counsel retrieved such file, copied it in its entirety, and filed such copy pursuant to the first order to submit records for in camera inspection. The letter also stated that there are no other responsive records maintained by the respondent Suffield Police Department.

15. On October 28, 2020, the complainant filed an opposition to the motion for permission to file a letter, in which she raised certain objections. After consideration of the respondents’ motion and complainant’s opposition, such motion is hereby granted over the complainant’s objection and the letter is marked Respondents’ Exhibit 3 (after-filed).

16. According to the Index, the respondents contended that the in camera records are exempt from disclosure as follows:

“Victim and Witness Identifying Information” – §1-210[b](3), G.S.

“Photographs Depicting Private Areas of the Victim” – §§ 1-210(b)(3) and 1-210[b](27), G.S.;

“Witness Statements made in the course of an Uncompleted Investigation” – §§ 1-210[b](3) and 1-210[b](3)(C), G.S.;

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<sup>3</sup> The in camera records were not bates stamped in accordance with the hearing officer’s order. Consequently, the hearing officer penciled in a number at the bottom right hand corner of each page, from page 1 through page 134. Additionally, many of the records submitted for in camera inspection were claimed exempt in part, but the respondents did not identify which parts were claimed as exempt. Instead, the respondents submitted to the Commission a packet of the redacted records that had been provided to the complainant. As indicated above, this packet of records has been marked as Respondents’ Exhibit 2 (after-filed) so that the hearing officer could review the parts specifically withheld from disclosure.

“Medical Records” – §1-210[b](2), G.S.; and

“Unredacted Investigative Files of the City of Norwich” – §1-210[b](3), G.S.

Each exemption will be addressed in turn.

17. Upon initial review of the in camera records and comparing them to Respondents’ Exhibit 2 (after-filed), it is found that several of the records were previously disclosed to the complainant by the respondents. Additionally, several of the in camera records are not at issue because the complainant stated during the hearing that she had no objection to the respondents withholding such records. Therefore, the Commission need not address exemptions claimed for the following in camera records:

- (a) IC-2020-0037-17 through IC-2020-0037-59; and IC-2020-0037-64 through IC-2020-0037-71 (photographs depicting injuries of the deceased);
- (b) IC-2020-0037-3 through IC-2020-0037-14; IC-2020-0037-60 through IC-2020-0037-62; IC-2020-0037-85 through IC-2020-0037-87; IC-2020-0037-91 and IC-2020-0037-92 (identity of witnesses and other personally identifiable information, which the complainant does not contest); and
- (c) IC-2020-0037-93 through IC-2020-0037-96; IC-2020-0037-98 and IC-2020-0037-99; and IC-2020-0037-101 (copies of records which were already provided to the complainant contained in Respondents’ Exhibit 2 (after-filed)).

18. The general rule under the FOI Act is disclosure; exceptions to this rule must be narrowly construed. The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. New Haven v. FOI Comm’n, 205 Conn. 767, 775 (1988). “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.” Id. at 776.

19. First, the respondents failed to identify on the Index any exemption for several pages of in camera records: IC-2020-0037-1 and IC-2020-0037-2; IC-2020-0037-15 and IC-2020-0037-16; IC-2020-0037-63; IC-2020-0037-72 through IC-2020-0037-84; IC-2020-0037-88 through IC-2020-0037-90; IC-2020-0037-97; IC-2020-0037-100; IC-2020-0037-102 and IC-2020-0037-103; and IC-2020-0037-118. It is therefore found that the respondents failed to prove that these in camera records are exempt from disclosure.

20. It is therefore concluded that the respondents violated §§ 1-210(a) and 1-212(a), G.S., by withholding such records.

21. Next, the respondents claimed that IC-2020-0037-104 through IC-2020-0037-111, identified as “witness statements made in the course of an uncompleted investigation,” and IC-2020-0037-119 through IC-2020-0037-131, “unredacted investigative file of City of Norwich,” are exempt from disclosure pursuant to §§ 1-210(b)(3), or 1-210(b)(3)(C) G.S.

22. Section 1-210(b)(3), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require disclosure of:

[r]ecords 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 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.

23. Based upon a careful in camera inspection, it is found that IC-2020-0037-104 through IC-2020-0037-107, IC-2020-0037-109, IC-2020-0037-110, and IC-2020-0037-111 constitute records of law enforcement agencies not otherwise available to the public which were compiled in connection with the detection or investigation of crime, the disclosure of such would not be in the public interest because it would result in disclosure of signed statements of witnesses within the meaning of §1-210(b)(3)(C), G.S.

24. Consequently, it is concluded that the respondents did not violate the FOI Act by withholding such records from the complainant.

25. With respect to the respondents' claim that IC-2020-0037-108, and IC-2020-0037-119 through IC-2020-0037-131 are exempt from disclosure pursuant to any of the law enforcement exemptions set forth in §1-210(b)(3), G.S., it is found that such records are records of law enforcement agencies not otherwise available to the public which were compiled in connection with the detection or investigation of crime. However, it is found that the respondents failed to prove that disclosure of any of these records would result in 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 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.

26. Accordingly, it is found that the respondents failed to prove that IC-2020-0037-108 and IC-2020-0037-119 through IC-2020-0037-131 are exempt from disclosure pursuant to §1-210(b)(3)(A)-(H), G.S.

27. It is therefore concluded that the respondents violated §§ 1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

28. Next, the respondents claimed that IC-2020-0037-112 through IC-2020-0037-117 and IC-2020-0037-132 through IC-2020-0037-134, identified on the Index as “victim medical records,” are exempt from disclosure as medical files under §1-210(b)(2), G.S.<sup>4</sup>

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

30. In Perkins v. Freedom of Info. Comm'n, 228 Conn. 158, 175 (1993), our Supreme Court explained that the claimant of §1-210(b)(2), G.S. must first establish that the files in question constitute a personnel, medical or similar file. Second, the claimant must establish that disclosure would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish that (1) the information sought does not pertain to legitimate matters of public concern, and (2) that disclosure of such information is highly offensive to a reasonable person.

31. Whether a record is a medical file under §1-210(b)(2), G.S. requires a functional review. In Connecticut Alcohol & Drug Abuse Comm'n v. Freedom of Info. Comm'n, 233 Conn. 28, 41 (1995), the Court explained that a medical file “of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual.

32. The Perkins Court also construed the term “invasion of personal privacy” according to its common-law meaning and adopted the definition for invasion of privacy set forth in 3 Restatement (Second) Torts. Section 652I of the Restatement provides, in relevant part, that a claim “for invasion of privacy can be maintained only by a living individual whose privacy is invaded.” The commentary provides that in the absence of statute, an action for invasion of

<sup>4</sup> During the hearing, the respondents also claimed that certain records were exempt from disclosure pursuant to the federal Health Insurance Portability and Accountability Act of 1996, or “HIPAA.” However, HIPAA was not claimed with respect to any particular in camera record and not identified on the Index. To the extent the respondents intended to claim HIPAA as a basis to withhold records, the respondents failed to present any evidence at hearing that they constitute a “covered entity” which is prohibited from disclosing protected health information under HIPAA. See 45 C.F.R. §§ 164.104(a) 164.502(a).

privacy cannot be maintained after the death of the individual. The Commission has also historically held that an individual's privacy rights are extinguished at death. See Docket #FIC 2007-123; Jessica Crowley, et. al. v. Commissioner, State of Connecticut, Department of Public Health (August 8, 2007); Docket #FIC 1999-019; David K. Jaffe v. State of Connecticut, Connecticut Lottery Corporation, et. al. (April 28, 1999) (Disclosure of deceased employee's personnel files would not be an invasion of privacy because privacy rights terminate at death).

33. Based upon careful in camera inspection, it is found that IC-2020-0037-112 through IC-2020-0037-114 are medical files within the meaning of §1-210(b)(2), G.S., in that each page contains medical information gathered for the purpose of furnishing information to make a medical decision about the victim.

34. However, it is found that the medical files pertain to the deceased victim identified in paragraph 7, above. Because an individual's privacy rights are extinguished at death, it is found that disclosure of IC-2020-0037-112 through IC-2020-0037-114 would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

35. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S. by withholding such records from the complainant.

36. With regard to IC-2020-0037-115 through IC-2020-0037-117 and IC-2020-0037-132 through IC-2020-0037-134, after careful in camera inspection, it is found that such records are not medical files within the meaning of §1-210(b)(2), G.S.

37. It is therefore concluded that such records are not exempt from disclosure by virtue of §1-210(b)(2), G.S. and the respondents violated §§ 1-210(a) and 1-212(a), G.S. by withholding such records from the complainant.

38. During the hearing, the complainant contended that the respondents failed to conduct a reasonable and diligent search and provide her with all responsive records. The evidence presented by the respondents on the search for and scope of responsive records was vague and at times contradictory. For example, while counsel testified at hearing that notes and drafts of certain documents were withheld from the complainant, counsel later contended in Respondents' Exhibit 2 (after-filed) that no such notes or drafts exist, and none were submitted for in camera inspection. Moreover, while the Index provided to the Commission states that the "entire case file" was submitted for in camera inspection, the January 14, 2020 request at issue in this case was not limited to records contained in the case file. It is therefore found that the respondents failed to prove that they conducted a reasonable and diligent search for all records responsive to the complainant's request and that all responsive records have been provided to the complainant.

39. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S. by failing to provide the complainant with copies of all records responsive to her request.

40. Finally, the complainant contended that the respondents failed to promptly provide responsive records. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request."

Advisory Opinion #51 describes several factors that should be considered in weighing a request for records against other priorities: the volume of the requested records; the amount of personnel time necessary to comply with the request; the time by which the requester needs the records; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of personnel time involved in complying with the request.

41. It is found that the respondents did not present evidence with respect to the factors identified in paragraph 40, above, while the complainant attested to the importance of the records at the time of the request. It is further found that several months transpired between the initial disclosure of responsive records in mid-February 2020, after the close of the investigation, and subsequent disclosures. Moreover, it is found that the respondents failed to prove that it provided all non-exempt responsive records.

42. Therefore, it is concluded that the respondents violated §§ 1-210(a) and 1-212, G.S., by failing to promptly provide responsive 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 copies of the in camera records identified in paragraphs 19, 25, and 28, to the complainant, free of charge.

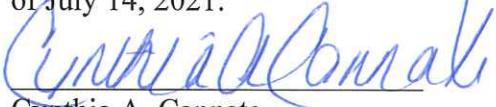
2. In complying with paragraph 1 of this order, the respondents may redact the in camera records to protect from disclosure any personally identifiable information, as agreed to by the complainant during the hearing.

3. The respondents shall, within 15 days of the date of the Notice of Final Decision in this matter, conduct an additional search for records responsive to the complainant's January 14, 2020 request, and shall provide to the complainant any records not already disclosed, free of charge. Such records shall be disclosed within 20 days of the date of the Notice of Final Decision.

4. The respondents shall, within 20 days of the date of the Notice of Final Decision in this matter, cause to be executed an affidavit by an individual responsible for the search for the records set forth in Paragraph 3. The affidavit shall set forth the steps taken to search for records, including the name and title of any person conducting the search, a description of the location(s) searched, a description of the search methods used, and the results of the search. Such affidavit shall be provided to the complainant within 20 days of the date of the Notice of Final Decision.

5. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§ 1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 14, 2021.



Cynthia A. Cannata  
Acting Clerk of the Commission