FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Meredith Braxton,

Complainant

against Docket # FIC 2020-0309

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

Respondents January 12, 2022

The above-captioned matter was heard as a contested case on August 2, 2021 and November 4, 2021, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Pursuant to §149 of Public Act 21-2 (June Sp. Sess.), the hearing was conducted remotely.

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 May 22, 2020, the complainant, on behalf of her client Brian Scanlan, requested a copy of:

> [d]ocuments and/or database information reflecting all changes made (i.e., text inserted, changed or deleted from the file) to the investigation file of CFS No. 1600027332 (the investigation file for the complaint by Doe against Roe) and of all changes made to the application for an arrest warrant in that case.

3. It is found that, with her May 22nd letter, the complainant provided the respondents with a set of database commands, and suggested the respondents use such commands to retrieve the requested records. The complainant also informed the respondents that she would pay the cost of retrieval by a qualified technician, if necessary.

4. It is found that, by letter dated June 16, 2020, the respondents informed the complainant that they did not "have any information reflecting any changes that could have been made." In addition, the respondents informed the complainant that "NexGen has informed the Greenwich Police Department that they cannot produce any prior versions."

5. It is found that, by letter dated June 19, 2020, the complainant clarified for the respondents that she was not seeking "different versions" of the investigative file and the arrest warrant applications; but rather, was seeking "database information that reflects changes made to those files in the NextGen system."

6. By letter of complaint filed July 7, 2020,[1] the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act G.S., by denying the request, described in paragraph 2, above.[2]

7. At the time of the request, §1-200(5), G.S., provided:

> "[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.[3]

8. 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 (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. Any agency rule or regulation, or part thereof, that

---

[1] 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, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

[2] The July 7th complaint also alleged that the respondents denied a March 13, 2020 records request. However, at the hearing in this matter, the complainant stated that the March 13th request had been satisfied, and that she therefore wished to withdraw the complaint as it relates to the March 13th request only.

[3] Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of "public records or files" to also include data or information that is "videotaped".

> conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by the subsection shall be void.

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

10. 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."

11. Specifically, with respect to computer stored records, §1-211(a), G.S., provides in relevant part:

> [a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made.

12. At the contested case hearing held on August 2, 2021, the respondents claimed that they do not maintain any "prior versions" of the investigative report or arrest warrant application, or any other record that would show any edits made to such records. The complainant claimed that such records are, in fact, maintained in the respondents' database, and at the November 4, 2021 contested case hearing, offered the testimony and affidavit of Lee Wezenski, Chief Development Officer for NexGen Public Safety Solutions ("NextGen"), in support of her claim.

13. It is found that the electronic records management system and software used by the respondents is provided by NexGen. It is found that police incident reports, and arrest warrant applications, among other records, are created, revised and maintained in such database. It is found that reports and other documents may be edited or revised in the database up until the time they are reviewed and approved by the commanding officer. It is found that NexGen has access to all of the respondent department's computer servers and all of the information located on such servers.

14. It is found that Mr. Wezenski wrote the database commands, referenced in paragraph 3, above, and provided such commands to Mr. Scanlan, in response to a subpoena[4]. It is found that these database commands are the same commands that the complainant provided to the respondents with the records request at issue herein, and described in paragraph 2, above.

---

[4] The subpoena was issued in connection with civil litigation involving the Scanlan family and the respondents.

15. It is further found that execution of the database commands would produce a "rich text format" ("RTF") file reflecting additions or deletions to the text of a record maintained in the respondents' database, and the time and date such changes were made. It is also found that, if the respondents so requested, Mr. Wezenski could, and would, execute the database commands for the respondents so that such file could be produced.

16. It is found that, prior to receiving the database commands from Mr. Scanlan, the respondents had no knowledge of such commands, were unaware that such commands could be used to produce the file, described in paragraph 15, above, and did not have a staff member trained to execute such commands.

17. However, it is found that, at least by August 2, 2021 (the date of the initial hearing in this matter), the respondents had information, in the form of Mr. Wezenski's affidavit, dated June 9, 2021, that a file showing additions and deletions to the report and arrest warrant application, to the extent those records had been edited, would be maintained in the database and accessible by running the database commands, referenced in paragraph 3, above.

18. It is found that, despite having such information, the respondents had not, as of the date of the initial or continued hearing in this matter, requested that NexGen execute the database commands in order to determine whether or not there is a record or records in the database that would be responsive to the request, described in paragraph 2, above.

19. Rather, without having made an attempt to retrieve and review any potentially responsive record or records, at the hearing in this matter, and in their post-hearing brief, the respondents claimed that the requested records are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(3)(D), and 1-210(b)(20), G.S.

20. With respect to §1-210(b)(1), G.S., such provision states that disclosure is not required of "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure."

21. It is found that the respondents did not review any potentially responsive records prior to the hearing in this matter, and it is therefore further found that the testimony offered at the hearing was not specific to any particular record. Although the assistant police chief testified that it would violate an unspecified policy of the department to execute the database commands, it is found that the assistant police chief did not testify that he had determined that the public interest in withholding the record clearly outweighed the public interest in disclosure. Accordingly, it is found that the respondents failed to prove that the requested records, if they exist, are exempt from disclosure pursuant to §1-210(b)(1), G.S.

22. Next, the respondents claimed that the requested records are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

23. Section 1-210(b)(3)(D), G.S., states that disclosure is not required 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…(D) information to be used in a prospective law enforcement action if prejudicial to such action…."

24. It is found that the requested records, if they exist, are law enforcement records that were compiled in connection with the investigation of an alleged sexual assault. However, it is also found that no arrest warrant was signed as a result of the criminal investigation, that the investigation is closed, and that therefore there is no "prospective law enforcement action" to which disclosure could be prejudicial. Accordingly, it is found that the respondents failed to prove that the requested records, if they exist, are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

25. Finally, the respondents claimed that the requested records are exempt from disclosure pursuant to §1-210(b)(20), G.S., which provides that disclosure is not required of "[r]ecords 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." However, because the requested records are not "standards, procedures, processes, software or codes" but rather, are records that may be produced upon execution of certain database commands, it is found that such exemption is not applicable to the requested records.

26. Based upon all of the foregoing, it is concluded that the respondents violated §§1-210(a), 1-211(a), and 1-212(a), G.S., by failing to provide the requested records, described in paragraphs 2 and 15, above, to the complainant.

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

1. Within fourteen days of the date of the Notice of Final Decision, the respondents shall provide a copy of the records described in paragraph 2 of the findings and further described in paragraph 15 of the findings above, to the complainant, free of charge. The method of delivery shall be of the complainant's choosing.

2. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-211(a), and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 12, 2022.

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:

MEREDITH BRAXTON, Braxton Hook PLLC, 280 Railroad Avenue, Suite 205, Greenwich, CT 06830

CHIEF, POLICE DEPARTMENT, TOWN OF GREENWICH POLICE DEPARTMENT, TOWN OF GREENWICH; AND TOWN OF GREENWICH, c/o Abby R. Wadler, Esq., Office of the Town Attorney, Town of Greenwich, 101 Field Point Road, Greenwich, CT 06830

Cynthia A. Cannata
Acting Clerk of the Commission

FIC 2020-0309/FD/CAC/1/12/2022