

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant

against

Docket #FIC 2021-0556

Christopher Chute, Chief,
Police Department, City of
New Britain; Police Department,
City of New Britain; and
City of New Britain,

Respondents

July 13, 2022

The above-captioned matter was heard as a contested case on March 2, 2022, 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 Spec. Sess.). In addition, for purposes of hearing, this matter was consolidated with Docket #FIC 2021-0557, Robert Cushman v. Christopher Chute, Chief, Police Department, City of New Britain, et al.

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 email dated September 16, 2021, the complainant requested that the respondents provide him with a copy of the following records related to the arrest of Samuel Figueroa on February 27, 2018 (case number 18-003529):

records, reports, not including investigative and accident reports, audio, video, digital recordings, body-cam videos, photographs (including but not limited to black and white and color), documentation, tapes, transmissions, transcriptions, broadcasts, notes, statements, and recordings.

3. It is found that, by email dated September 21, 2021, the respondents acknowledged the complainant's request.

4. By email dated September 23, 2021 and filed September 27, 2021, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with a copy of the requested records. The complainant requested that the Commission issue a civil penalty.

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, videotaped, printed, photostated, photographed or recorded by any other method.

6. 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.

7. 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.”

8. It is found that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S.

9. It is found that, by email dated October 8, 2021, the respondents’ counsel informed the complainant that the request had been referred to his office. It is found that counsel attached responsive records to the October 8 correspondence and indicated that such records were the only records available at this time because the criminal matter was still pending.

10. At the hearing, the complainant contended that there should be more records responsive to his request, particularly records that document or depict the arrest or custody of Figueroa on February 27, 2018.

11. The respondents contended that they had satisfied their disclosure obligations set forth in §1-215, G.S.

12. Section 1-215, G.S., provides, in relevant part, as follows:

(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....

13. Section 1-215, G.S., exclusively governs law enforcement agencies' disclosure obligations under the FOI Act while a criminal prosecution is pending. In Commissioner of Public Safety v. Freedom of Information Commission, et al., 312 Conn. 513 (July 15, 2014) ("Public Safety"), the Supreme Court interpreted §1-215, G.S., and ruled that during the pendency of a criminal prosecution, a law enforcement agency must disclose no more than basic police blotter information and one other piece of information, designated by the law enforcement agency: either a press release, the arrest or incident report, or other similar report of the arrest of a person. In response to Public Safety, the General Assembly enacted Public Act 15-164, *An Act Concerning the Disclosure of Arrest Records During a Pending Prosecution under the Freedom of Information Act*, which amended §1-215, G.S., by increasing law enforcement agencies' disclosure obligations under §1-215, G.S.

14. It is found that all of the records identified in paragraph 2, above, relate to the arrest of Figueroa, and that, at all relevant times, the criminal prosecution related to such arrest was pending.

15. Accordingly, the respondents were required to disclose to the complainant the "record of the arrest," within the meaning of §1-215(a), G.S. The respondents were also required to disclose to the complainant any other public record that documents or depicts the arrest or custody of Figueroa, within the meaning of §1-215(c), unless such public record is exempt from disclosure.

16. With regard to the complainant's contention that there should be more records that document or depict the arrest or custody of Figueroa, it is found that one of the responsive records disclosed to the complainant on October 8 refers to additional reports and other

records that the complainant did not receive. The complainant requested that the Commission conduct an in camera inspection of such records to determine if these additional records document or depict the arrest or custody of Figueroa, and such request was granted.

17. In addition, the respondents agreed to search again for any responsive records that documented or depicted the arrest or custody of Figueroa, and to disclose the same to the complainant. The respondents were ordered to notify the hearing officer in writing as to whether a post-hearing disclosure of records was made in this case.

18. By email dated March 4, 2022, the respondents copied the hearing officer on an email that was sent to the complainant. The email has been marked as respondents' post-hearing Ex. 6. In the email, the respondents represented that they were disclosing to the complainant a one-page incident report and one-page booking sheet related to the case referenced in paragraph 2, above, and were submitting four additional reports to the Commission for in camera inspection.

19. The respondents contended that, because the criminal prosecution concerning the arrest referred in paragraph 2, above, is still pending, and because the four reports referred to in paragraph 18, above, are not part of the "records of the arrest," within the meaning of §1-215(a), and do not document or depict the arrest or custody of the arrested of Figueroa, within the meaning of §1-215(c), they were not required to disclose such reports at this time.

20. On March 9, 2022, the respondents submitted the four reports referred to in paragraph 18, above, to the Commission for in camera inspection. The records are fairly described as one four-page incident report and three two-page supplemental reports.

21. After a careful in camera inspection, it is found that none of the in camera records constitute the "record of the arrest," nor do such records "document or depict the arrest or custody" of Figueroa.

22. Accordingly, it is concluded that the respondents did not violate the FOI Act by not disclosing such reports to the complainant.

23. It is further found that the respondents do not maintain any other records that document or depict the arrest or custody of the Figueroa, within the meaning of §1-215(c), G.S.

24. Finally, it is found that the records disclosed by the respondents on October 8 satisfied the disclosure requirements set forth in §1-215(a), G.S.¹

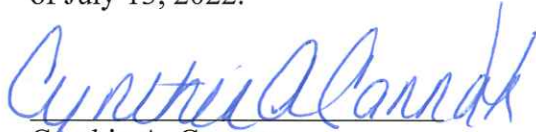
25. It is therefore concluded that the respondents did not violate the disclosure provisions of the FOI Act, as alleged in the complaint.

¹ The Commission notes that, in addition to the disclosure required pursuant to §1-215(a), G.S., the respondents also disclosed to the complainant the 911 call relevant to the underlying arrest.

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 July 13, 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:

ROBERT CUSHMAN, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

CHRISTOPHER CHUTE, CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN; POLICE DEPARTMENT, CITY OF NEW BRITAIN; AND CITY OF NEW BRITAIN, c/o Attorney Joseph E. Skelly, Jr., City of New Britain, Office of Corporation Counsel, 27 West Main Street, New Britain, CT 06051



Cynthia A. Cannata
Acting Clerk of the Commission