

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

GerJuan Tyus,

Complainant

against

Docket #FIC 2021-0448

Peter G. Reichard, Chief, Police Department,
City of New London; Police Department,
City of New London; and City of New London,

Respondents

July 27, 2022

The above-captioned matter was heard as a contested case on April 12, 2022, at which time the complainant and the respondents appeared remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Special Session). At the time of the request and the hearing, the complainant was incarcerated for a homicide that occurred in 2006.

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 July 29, 2021, the complainant requested from the respondents, a copy of “the full and complete interview of Jason Piontowski, Item No. 65. Case No. 06-5136” and “any and all narrative reports regarding the same.”
3. By letter dated August 3, 2021, and filed August 9, 2021, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by denying his request.
4. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[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....

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

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

8. It is found that the respondents received the request on or about August 4, 2021, and on that date, acknowledged such receipt in writing. Thereafter, the respondents denied the request.

9. At the hearing in this matter, the respondents argued that the requested records are exempt from disclosure, pursuant to §1-210(b)(19), G.S.

10. Section 1-210(b)(19), G.S., provides, in relevant part, that disclosure is not required of:

[r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A)...(ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency....

11. Section 1-210(d), G.S., provides, in relevant part:

[w]henever a public agency...receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall

promptly notify...the Commissioner of Emergency Services and Public Protection...of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person.

12. It is found that, upon receipt of the complainant's request, the respondent police chief and the detective who was the lead investigator into the homicide for which the complainant was incarcerated reviewed the requested records and determined that disclosure of such records may result in the risk of harm to the cooperating witness and/or such witness' family. Therefore, by letter dated February 10, 2022, and in accordance with §§1-210(b)(19) and 1-210(d), G.S., the respondents notified the Commissioner of the Department of Emergency Services and Public Protection ("Commissioner") of the request, described in paragraph 2, above, and requested that the Commissioner review the requested records and provide a security risk determination.

13. It is found that the Commissioner and his legal staff conducted the requested review and determined that disclosure of the requested records may constitute a safety risk to one or more individuals, pursuant to §1-210(b)(19), G.S. It is found that the Commissioner provided such determination in a letter to the respondent chief, dated April 7, 2022, with direction to the respondents to withhold the records.

14. At the hearing in this matter, the complainant contested the Commissioner's determination. However, as the Court stated in People for the Ethical Treatment of Animals v. Freedom of Information Commission, 321 Conn. 805, 818 (2016), the Commissioner [of the Department of Emergency Services and Public Protection] "is required to determine only that there are *reasonable grounds to believe* that disclosure *may* result in a safety risk...." (Emphasis in original). The statute does not require that there must be a clear safety risk to justify nondisclosure. *Id.* According to the Court, this language "supports the conclusion that the [Commissioner] is authorized to rely on the experience and professional expertise of its employees in making a predictive judgment." *Id.* at 818. Once the Commissioner has made a safety risk determination, the FOI Commission must defer to such determination unless it finds that the determination was frivolous, patently unfounded or made in bad faith. See *Id.* at 819, citing Van Nordstrand v. Freedom of Information Commission, 211 Conn. 339, 345-56 (1989).

15. In the present case, it is found that the Commissioner's determination that disclosure of the requested records may result in a safety risk to one or more people was not made in bad faith and is not frivolous or patently unfounded.

16. Accordingly, it is found that the records, described in paragraph 2, above, are exempt from disclosure pursuant to §1-210(b)(19), G.S.

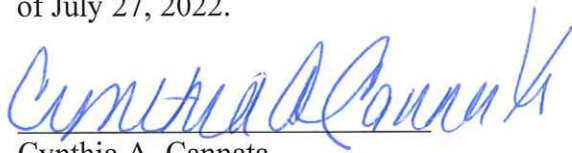
17. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

18. Because the respondents did not violate the FOI Act, consideration of the imposition of a civil penalty is not warranted.

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 27, 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:

GERJUAN TYUS, #300985, Cheshire CI, 900 Highland Avenue, Cheshire, CT. 06410

PETER G. REICHARD, CHIEF, POLICE DEPARTMENT, CITY OF NEW LONDON; POLICE DEPARTMENT, CITY OF NEW LONDON; AND CITY OF NEW LONDON, c/o Brian K. Estep, Esq., Conway, Londregan, Sheehan & Monaco, P.C., 38 Huntington Street, PO Box 1351, New London, CT 06320



Cynthia A. Cannata
Acting Clerk of the Commission