

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Siobhan McGirl
and NBC Connecticut,

Complainants

against

Docket #FIC 2020-0538

Chief, Police Department,
Town of Old Saybrook; Police
Department, Town of Old Saybrook;
and Town of Old Saybrook,

Respondents

June 8, 2022

The above-captioned matter was heard as a contested case on October 15, 2021, at which time the complainants 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 2020-0537, Emilia Otte and Connecticut Examiner v. Chief, Police Department, Town of Old Saybrook, et al.; Docket #FIC 2020-0573, Alfred Wilcox v. Chief, Police Department, Town of Old Saybrook, et al.; and Docket #FIC 2020-0592, Meghan Friedmann and Hearst Connecticut Media v. Chief, Police Department, Town of Old Saybrook, 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 October 12, 2020, the complainants requested that the Chief of Police for the Town of Old Saybrook provide them with a copy of the following records: “[a]ll body camera video that was captured at 1 Barnes Road in Old Saybrook on Saturday, October 10th, 2020”.
3. It is found that, by email dated October 18, 2020, the respondents acknowledged the request, but informed the complainants that the requested records concerned

uncorroborated allegations and therefore the request was denied.

4. By email dated November 16, 2020 and filed November 17, 2020,¹ the complainants appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide them with a copy of the requested records.

5. 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.²

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 complainants, to the extent that they exist, are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S.

9. It is found that, on October 10, 2020, the police received a 911 call from a citizen, which alleged that two citizens were stealing a street sign, and which provided a general description of the suspects. It is found that, after receiving the 911 call, the respondent police department interviewed a family, including a young man with Down Syndrome, in connection with an investigation concerning the stolen street sign. It is found that the respondent police department subsequently determined that neither the young man nor any member of his

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 with 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 Section 147 of Public Act 21-2 (June Spec. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.”

family had anything to do with the theft.

10. It is found that the complainants were able to obtain a copy of the 911 call from a source other than the respondents.

11. The complainants contended that the claimed exemption does not apply in this case because the allegations contained in the 911 call were too general and did not specifically identify a particular person or persons. The complainants further contended that the claimed exemption does not apply to allegations arising out of a police department's investigation.

12. At the hearing, the respondents contended that the requested records contain uncorroborated allegations and are therefore exempt from disclosure pursuant to §§1-210(b)(3)(H) and 1-216, G.S.

13. The respondents submitted the records at issue to the Commission for in camera inspection. The in camera records are fairly described as one flash drive containing 1) a 911 call; 2) dash camera and body camera video from Officer Stephanie Milardo, and 3) dash camera and body camera video from Officer Christopher Demarco.

14. Section 1-210(b)(3)(H), G.S., provides, in relevant part, that nothing in the FOI Act shall require the 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 a crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216.

15. Section 1-216, G.S., which section is read in conjunction with §1-210(b)(3)(H), G.S., provides as follows:

[e]xcept 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.

16. With regard to the complainants' first argument that the exemption for uncorroborated allegations applies only if such allegations identify a specific suspect, the

plaintiffs cited no basis for such proposition and the Commission is aware of none.

17. With regard to the complainants' second argument, in Bona, et al. v. FOI Comm'n, et al., Nos. CV-94-0123208-S, CV-94-0123411-S, 1995 WL 491386 (Conn. Super. Ct. Aug. 10, 1995), the court clarified that the exemptions contained in §§1-210(b)(3)(H) and 1-216, G.S., may be invoked to prevent the disclosure of uncorroborated allegations contained in law enforcement records whether such allegations are provided to or made by law enforcement. See Bona, 1995 WL 491386, at *14 ("There is nothing in [the public act] which suggests that Section 1-20c³ applied only to allegations of criminal activity made by the police rather than allegations made to the police. The defendants cite no basis for the claim that the exemption applies only to allegations of criminal activity made by the police. The court finds no support for such a contention in the legislative history or elsewhere."). The Appellate Court affirmed this determination. See Bona v. FOI Comm'n, 44 Conn. App. 622, 630, n.8 (1997).

18. In addition, in contested case Docket #FIC 94-219, Rachel Gottlieb and The Hartford Courant v. State of Connecticut, Department of Public Safety, Division of State Police, (hereinafter "Gottlieb"), the Commission found that Black's Law Dictionary, Sixth Edition (1990), defines "corroborate" as "to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence." Ballentines Law Dictionary, Third Edition (1969) defines corroborate as "to state facts tending to produce confidence in the truth of a statement made by another." Funk & Wagnall New Standard Dictionary of the English Language (1946) defines corroborate as "to give increased support to; make more sure or evident."

19. In Gottlieb, the Commission found that "the reports contain similar accounts relayed to the interviewees concerning allegation under investigation." The Commission went on to find that "the requested reports contain allegations which were corroborated."

20. After a careful review 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. It is further found that the in camera records in this case contain no similar accounts of the underlying events as those set forth in Gottlieb, nor is there any evidence in this case that tends to strengthen, add weight or support the allegations contained in the in camera records.

21. It is therefore found that the disclosure of the in camera records would result in the disclosure of uncorroborated allegations subject to destruction within the meaning of §§1-210(b)(3)(H) and 1-216, G.S.

22. It is concluded that the in camera records are permissibly exempt from disclosure pursuant to §§1-210(b)(3)(H) and 1-216, G.S.

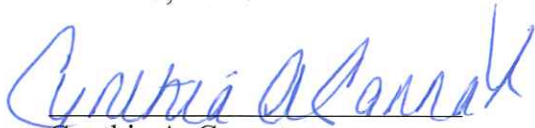
23. It is further concluded that the respondents did not violate the disclosure provisions of the FOI Act, as alleged in the complaint.

³ Section 1-20c, G.S. was transferred to §1-216, G.S. in 1999.

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 June 8, 2022.



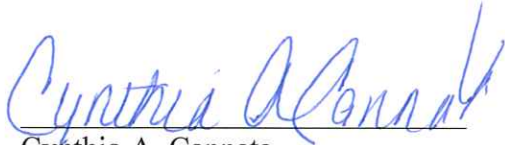
Cynthia A. Cannata
Acting Clerk of the Commission

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:

SIOBHAN MCGIRL AND NBC CONNECTICUT, 1422 New Britain Avenue, West Hartford, CT 06110

CHIEF, POLICE DEPARTMENT, TOWN OF OLD SAYBROOK; POLICE DEPARTMENT, TOWN OF OLD SAYBROOK; AND TOWN OF OLD SAYBROOK, c/o Attorney Michael E. Cronin, Jr., 201 Main Street, Old Saybrook, CT 06475



Cynthia A. Cannata
Acting Clerk of the Commission