

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Anthony Lazzari,

Complainant

against

Docket #FIC 2020-0547

Chief, Police Department,  
City of Meriden; Police  
Department, City of Meriden;  
and City of Meriden,

Respondents

March 23, 2022

The above-captioned matter was heard as a contested case on October 25, 2021, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The hearing was conducted remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Sp. Sess.). This matter was consolidated with Anthony Lazzari v. Chief, Police Department, City of Meriden, et al., Docket #FIC 2020-0574; and Anthony Lazzari v. Chief, Police Department, City of Meriden, et al., Docket #FIC 2020-0575.

By motion dated October 19, 2021, the Division of Criminal Justice requested permission to intervene in this matter. Absent objection from any party, such motion was granted.

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 September 29, 2020, the complainant requested from the respondents certified copies of all records related to Meriden PD case files 20-003903 and 20-005055; and Berlin PD case file 20-11662. The complainant listed the following examples of the records sought: police reports, incident reports, dispatch audio calls, CAD call (dispatch) records, emails, call logs, tow slips, impound records, tow bills and any search warrants issued. The September 29<sup>th</sup> request specifically referenced an incident that occurred on September 16, 2020 at a Stop & Shop in Meriden.
3. It is found that, by letter dated September 30, 2020, the respondents acknowledged the request, described in paragraph 2, above. It is found that, by letter dated October 19, 2020,

the respondents informed the complainant that the case files identified in his request related to ongoing criminal investigations, and that therefore, the majority of the requested records were exempt from disclosure pursuant to §1-210(b)(3), G.S.

4. By letter dated and filed October 27, 2020,<sup>1</sup> the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide 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.<sup>2</sup>

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 concluded that the records requested by the complainant are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, by letters dated November 9, 2020, November 27, 2020, and December 11, 2020, the respondents provided certain responsive records relating to Meriden PD case files 20-003903 and 20-005055, consisting of certain police reports, a stolen vehicle report,

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<sup>1</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, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

<sup>2</sup> 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”.

call logs, radio dispatch logs, and emails. It is found that the respondents withheld other responsive records relating to those same Meriden PD case files, including other police reports, search warrants, a Notice of Vehicle Tow, a tow bill from Danby's Towing, an impounded vehicle processing form, and vehicle inventory slips. It is found that the respondents do not maintain any records relating to Berlin PD case file 20-11662.

10. At the hearing in this matter, the complainant argued that the respondents improperly withheld responsive records. In particular, the complainant argued that the respondents improperly withheld copies of the tow bill, tow slip, impound record and search warrants.

11. The respondents' witness, Detective Lieutenant Clements of the Meriden Police Department Special Crimes Unit, testified at the hearing in this matter that the requested records were not provided to the complainant because they are records of ongoing criminal investigations into human trafficking, and that disclosure of most of those records would be prejudicial to a future arrest.

12. Section 1-210(b)(3), G.S., provides 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 said 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....

13. It is well established that the agency "bears the burden of proving the applicability of an exemption..." See Wilson v. Freedom of Information Commission, 181 Conn. 324, 341 (1980). Testimony or affidavits concerning "the content and use of the documents... must not be couched in conclusory language or generalized allegations... but should be sufficiently detailed, without compromising the asserted right to confidentiality, to present the [FOI] [C]ommission with an informed factual basis for its decision in review under the act." *Id.*

14. A law enforcement agency seeking to withhold investigatory records pursuant to §1-210(b)(3)(D), G.S., must prove the following: (1) the requested records were "compiled in connection with the detection or investigation of a crime"; (2) the records are "to be used in a prospective law enforcement action"; and (3) public release of the records would be "prejudicial to such action." Dept. of Public Safety v. Freedom of Information Commission, 51 Conn. App. 105 (1998).

15. It is found that the requested records are records of a law enforcement agency that were compiled in connection with the detection or investigation of a crime that are not otherwise available to the public. Therefore, it is found that the first prong of the exemption has been satisfied.

16. With regard to the second prong of the exemption, the respondents must prove that the investigation remains open, and that a prospective law enforcement action is a “reasonable possibility”. Drumm v. Freedom of Information Commission, 2021 WL 4047111 at \*9, *appeal pending* SC 20656.

17. Det. Lt. Clements testified that the requested records relate to ongoing investigations of instances of human trafficking that occurred in 2019 and 2020. Det. Lt. Clements further testified that, although no arrest had been made at the time of the hearing, he believed there is probable cause to arrest the complainant and that the case against the complainant is very strong. He further testified that there is no statute of limitations or death of a suspect that would create an obstacle to a future arrest. Finally, Det. Lt. Clements testified that an arrest as a result of the ongoing investigations was likely.

18. Based on the credible testimony of Det. Lt. Clements, it is found that the investigations were open and ongoing at the time of the request and at the time of the hearing in this matter, and that an arrest was, at a minimum, a “reasonable possibility.” It is therefore found that the requested records are records to be used in a prospective law enforcement action and that therefore the second prong of the exemption has been satisfied.

19. With respect to the third prong of the exemption, Det. Lt. Clements testified that disclosure of the investigative records would be prejudicial to a prospective law enforcement action for several reasons. In support of this claim, Det. Lt. Clements testified that if the suspect (the complainant) knew the details of the investigation, such information would provide him or her with the ability to formulate a defense, tamper with evidence, or the opportunity to flee. Det. Lt. Clements further testified that the victims in these cases are vulnerable and could be subjected to harassment and intimidation, which in turn could cause such witnesses to recant their testimony. Also, disclosure of the names of witnesses or victims could have a chilling effect on a witness’ or victim’s willingness to come forward and cooperate with the investigation. Further, with regard to witnesses, Det. Lt. Clements testified that information about the investigation should not be disclosed in order to ensure that a witness to an incident is recalling only what he or she saw or heard at the time of the incident, and that such recollection is not tainted by what he or she might have read in a police report, or heard from another person.

20. At the hearing, the complainant questioned whether §1-210(b)(3)(D), G.S. applied to the Notice of Vehicle Tow, the tow bill from Danby’s Towing, the impounded vehicle processing form, the vehicle inventory slips (together the “tow records”), and the search warrants.

21. Upon questioning by the hearing officer, the respondents conceded that, to the extent they maintained the tow records, their disclosure would not be prejudicial to a prospective law enforcement action. The hearing officer ordered the respondents to determine whether they maintained the tow records and to provide an affidavit from an individual familiar with the search for such records. After the hearing, the respondents submitted the affidavit of David Puska, the Records Supervisor for the respondent police department. Such affidavit has been marked as Respondents’ Exhibit B (after-filed). In his affidavit, Mr. Puska averred, and it

is found, that the tow records, consisting of five pages, were located and that a certified copy of such records was provided to the complainant on October 28, 2021.

22. Although the respondents provided the tow records to the complainant, it is found that such records were improperly withheld initially, and therefore were not provided promptly to the complainant.

23. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide the tow records to the complainant.

24. With regard to the search warrants, the Commission takes administrative notice of the affidavit of Det. Lt. Clements which was marked as Respondents' Exhibit B (after-filed) in Anthony Lazzari v. Chief, Police Department, City of Meriden, et al., Docket #FIC 2020-0574. Based upon the affidavit, it is found that, among the records maintained by the respondents in connection with the investigations referenced in paragraph 2, above, are three search and seizure warrants that authorized the search of the complainant's vehicle and other property, and one additional search and seizure warrant authorizing the search of the complainant's person and the seizure of certain property. Such warrants were signed by a judge on September 17, 2020, September 21, 2020, and September 16, 2020. Each of the four warrants states that, pursuant to §54-33c, G.S., the respondents need not provide a copy of the warrant applications and affidavits to the complainant for a period of two weeks after the dates such warrants were executed.<sup>3</sup>

25. It is found that the warrants were executed, and that, pursuant to §54-33c, G.S., the respondents provided a copy of such warrants to the complainant by mail. At the time of the contested case hearing in this matter, the warrants were not sealed.

26. At the hearing in this matter, the complainant claimed that he did not receive a copy of any of the four search warrants pursuant to §54-33c, G.S., as represented by Det. Lt. Clements in the affidavit, described in paragraph 24, above. It is found that the respondents did not provide a certified copy of the warrants to the complainant pursuant to the FOI request, described in paragraph 2, above.

27. Because the complainant was entitled to receive a copy of the search warrants under §54-33c, G.S., the respondents' argument that disclosure of the search warrants under the FOI Act would be prejudicial to a prospective law enforcement action for the reasons described by Det. Lt. Clements, as set for in paragraph 19, above, is not persuasive.

28. Accordingly it is found that the respondents failed to prove that disclosure of the search warrants described in paragraph 24, above, would be prejudicial to a prospective law enforcement action pursuant to §1-210(b)(3)(D), G.S.

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<sup>3</sup> Although §54-33c(b), G.S., requires that a copy of the search warrant be given to the owner or occupant of the dwelling, motor vehicle or place designated in the warrant, such requirement may be dispensed with for up to two weeks from the date of execution of the warrant if the judge finds that providing such copy would jeopardize the personal safety of a confidential informant; adversely affect a continuing investigation; or would require disclosure of information or material prohibited from disclosure under chapter 959a (wiretapping and electronic surveillance).

29. Therefore, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide to the complainant a certified copy of each of the four search warrants, described in paragraph 24, above.

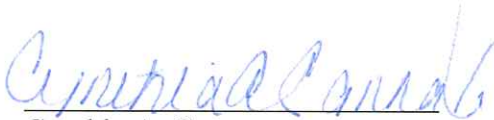
30. However, with regard to the remainder of the investigatory records, described in paragraph 2, above, it is found, based on the credible testimony of Det. Lt. Clements, that disclosure of such records would be prejudicial to a prospective law enforcement action and that such records therefore are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

31. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the remainder of the requested investigatory records from the complainant.

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

1. Forthwith, the respondents shall provide a certified copy of the search warrants, described in paragraph 24 of the findings, above, to the complainant, free of charge.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 23, 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:

**ANTHONY LAZZARI**, 34-3 Shunpike Road #107, Cromwell, CT 06416

**CHIEF, POLICE DEPARTMENT, CITY OF MERIDEN; POLICE DEPARTMENT, CITY OF MERIDEN; AND CITY OF MERIDEN**, c/o Attorney Christopher A. Clark, City of Meriden Corporation Counsel, 142 East Main Street, Meriden, CT 06450



Cynthia A. Cannata  
Acting Clerk of the Commission