

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Julio Burgos Torres,

Complainant

against

Docket #FIC 2021-0540

Fernando Spagnolo, Chief,
Police Department, City of
Waterbury; Police Department,
City of Waterbury; and
City of Waterbury,

Respondents

May 11, 2022

The above-captioned matter was heard as a contested case on March 7, 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 Sp. Sess.). At the time of the request and the hearing, the complainant was incarcerated.

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, on August 6, August 23, August 24 and August 31, 2021 the complainant made five separate requests¹ for copies of records maintained by the respondents related to the investigation of the “Carolina Boys”, conducted “around 2005 or 2006”, including booking photos and a “photoboard” of a police “line up”.
3. It is found that, on August 16, 2021, the complainant requested a copy of the police report or reports related to “when [he] got shot...around 2001 or 2002”, and the police report related to “when [he] got charged with assault.”
4. It is found that the respondents received and acknowledged the requests, described in paragraph 2, above.
5. By letter dated and filed September 10, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his requests.

¹ The complainant made two different requests dated August 23, 2021.

6. 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.

7. 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....

8. 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.”

9. It is found that the records, described in paragraphs 2 and 3, above, to the extent they exist and are retained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that, by letter dated December 10, 2021, the respondents informed the complainant that they had conducted a thorough search, but that such search did not locate any records responsive to the requests, described in paragraphs 2 and 3, above.

11. At the hearing in this matter, the complainant argued that the respondents should maintain the requested records.

12. The respondents’ witness, Sergeant Keroack, who is in charge of the respondent department’s records division, testified that, upon receipt of the complainant’s requests, he determined that the respondent department, along with several other law enforcement agencies, was involved in the investigation of the “Carolina Boys” in or around 2005 or 2006. He further determined that many if not most of the detectives who were involved in the investigation have since retired from the department. It is found that such investigation did not involve a homicide or allegations of sexual assault.

13. Sgt. Keroack testified, and it is found, that he conducted a thorough search for records of the investigation of the “Carolina Boys”, responsive to the request, described in paragraph 2, above, and reports related to the complainant being shot and assaulted, responsive

to the request, described in paragraph 3, above. He further testified, and it is found that such search did not locate any responsive records.

14. It is found that, for records of municipal police departments, the records retention schedule set by the state Public Records Administrator for case investigation files not involving a homicide or sexual assault, requires that such records be retained for ten years.

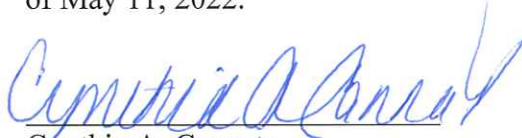
15. Sgt. Keroack testified, credibly, that because the records, described in paragraphs 2 and 3, above, to the extent they existed, pertained to investigations that occurred some 17 to 20 years ago and did not pertain to a homicide or sexual assault, such records likely would have been destroyed after the applicable records retention period expired.

16. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged, with regard to the requests, described in paragraphs 2 and 3, above.

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 May 11, 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:

JULIO BURGOS TORRES, #268558, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

FERNANDO SPAGNOLO, CHIEF, POLICE DEPARTMENT, CITY OF WATERBURY; POLICE DEPARTMENT, CITY OF WATERBURY; AND CITY OF WATERBURY, c/o Attorney Richard J. Scappini, City of Waterbury, Office of Corporation Counsel, 235 Grand Street, 3rd Floor, Waterbury, CT 06702



Cynthia A. Cannata
Acting Clerk of the Commission