

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Picard,

Complainant,

against

Docket # FIC 2021-0581

Chief, Police Department, Town of
South Windsor; Police Department,
Town of South Windsor; and Town
of South Windsor;

Respondents

September 28, 2022

The above-captioned matter was heard as a contested case on February 28, 2022, and August 18, 2022, at which times the complainant and the respondents appeared, stipulated to certain facts 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.), as amended by §1 of Public Act 22-3.

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)(A), G.S.
2. It is found that, by email dated September 27, 2021, the complainant requested from the respondent police department a copy of certain records, including “any and all operational plans relating to protests/demonstrations in general and/or specifically related to the “Back the Blue” event.
3. It is found that, by email dated October 4, 2021, the respondents provided copies of certain records responsive to the request, including the Operations Plan for the “Back the Blue Rally” (the “Operations Plan”). It is found that the respondents redacted certain portions of the Operations Plan, and informed the complainant in their October 4th email that disclosure of such portions raised security concerns.
4. By email dated October 7, 2021, the complainant appealed to this Commission, alleging that the respondent department violated the Freedom of Information (“FOI”) Act by failing to provide to him an unredacted copy of the Operations Plan, described in paragraphs 2 and 3, above.

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, ... 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:

[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: “[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. 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.... Such records include, but are not limited to:

(i) Security manuals or reports;

(ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;

(iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(v) Internal security audits of government-owned or leased institutions or facilities;

(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel; and

(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official. (Emphasis added).

10. In addition, §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 ... 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...

11. The Connecticut Supreme Court has held that §1-210(b)(19), G.S., requires deference to the Commissioner's safety risk assessment "unless the party seeking disclosure establishes that the determination was frivolous, patently unfounded or in bad faith." People for the Ethical Treatment of Animals, Inc. v. Freedom of Information Commission, et al., 321 Conn. 805, 819 (2016).

12. It is found that, upon receipt of the request at issue, the respondent chief determined that disclosure of certain portions the Operations Plan may result in a safety risk. It is found that the chief did not notify the Commissioner of the Department of Emergency Services and Public Protection (“DESPP”) of the request, and seek a safety risk assessment from the Commissioner, prior to redacting those portions. The chief testified, and it is found that at the time of the request, he was unaware of the requirements of §§1-210(b)(19) and 1-210(d), G.S.

13. It is found that, by letter dated February 18, 2022, five months after the date of the request, and ten days prior to the date of the first contested case hearing in this matter, the respondent chief notified the Commissioner of DESPP of the request for the Operations Plan, and requested a safety risk assessment regarding disclosure of the redacted portions of the plan. It is found that such notification was not prompt.

14. Accordingly, it is concluded that the respondents violated §1-210(d), G.S., by failing to promptly notify the Commissioner of DESPP of the request at issue herein.

15. It is found that the Commissioner of DESPP conducted the requested assessment and determined that disclosure of the redacted information, including the location of staging areas, contingency plans, emergency communication methods, tactical procedures, and types of safety equipment used or available, may result in a safety risk “because knowledge of specific tactics, manpower, and capabilities unfortunately can provide a person with violent intentions with the details necessary to perpetrate a crime or evade detection.”

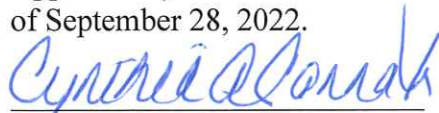
16. It is found that the Commissioner of DESPP provided the safety risk assessment in a letter to the respondents dated July 6, 2022, with direction to the respondents to withhold the redacted information.

17. It is found that the Commissioner of DESPP had reasonable grounds to believe that disclosure of the redacted information may result in a safety risk, within the meaning of §1-210(b)(19), G.S. It is further found that the determination that disclosure would create a safety risk was not frivolous or patently unfounded and was arrived at in good faith. It is therefore found that the redacted portions of the Operations Plan are exempt from disclosure pursuant to §1-210(b)(19), G.S.

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

1. Henceforth, the respondents shall strictly comply with the promptness requirement in §1-210(d), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 28, 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:

MICHAEL PICARD, c/o Attorney Joseph Sastre, The Law Office of Joseph R. Sastre, LLC, 852 Plainville Avenue, Farmington, CT 06032

CHIEF, POLICE DEPARTMENT, TOWN OF SOUTH WINDSOR; POLICE DEPARTMENT, TOWN OF SOUTH WINDSOR; AND TOWN OF SOUTH WINDSOR, c/o Attorney Kari L. Olson, Murtha Cullina LLP, 185 Asylum Street, Cityplace I, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission