

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Cordaryl Silva,

Complainant

against

Docket #FIC 2022-0025

Kevin Hale, Chief, Police
Department, Town of Ansonia;
Police Department, Town of
Ansonia; and Town of Ansonia,

Respondents

January 13, 2023

The above-captioned matter was heard as a contested case on November 17, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits, and argument on the complaint. By order of the hearing officer, the hearing was reopened for the purpose of taking additional evidence. The reopened hearing was held on December 14, 2022, at which time the complainant and the respondents again appeared and presented additional testimony, exhibits and argument on the complaint.

The complainant, who is incarcerated, appeared via teleconference pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Anthony Sinchak v. Freedom of Information Commission, Docket No. HHD-CV03-0826293, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 December 28, 2021, the complainant made a request to the respondents for copies of:
 - (a) all reports made for the 2012 drug bust of the Zimmerman crew; and
 - (b) all warrant affidavits made by police related to the June 1, 2012 drug bust on the Zimmerman crew.

3. It is found that, by letter received and filed January 18, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide copies of the requested records. The complainant also requested that the Commission impose a civil penalty against the respondents.

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 section 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 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.

6. 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.”

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

8. It is found that the complainant is an inmate in the custody of the Department of Correction (“DOC”). It is found that, sometime prior to July 1, 2022, the respondents sent copies of some responsive records to the complainant at the DOC facility at which he was incarcerated, but withheld other responsive records. It is found that, by letter dated July 1, 2022, the DOC notified the complainant that it was withholding the records sent by the respondents pursuant to §1-210(b)(18), G.S., because such records contained the criminal records of individuals other than the complainant, and that it would pose a safety and security risk for individuals incarcerated in DOC facilities to possess such records.

9. At the November 17, 2022 hearing, the complainant testified that the only records at issue were those records withheld by the respondents as described in paragraph 8, above.¹

¹ Despite the July 1, 2022 letter from the DOC stating that it was withholding the records that were sent by the respondents, the complainant testified that he received copies of those records sometime prior to that date. It is

10. It is found that, after the November 17th hearing, the respondents located additional records responsive to the request. It is found that, by email dated December 7, 2022, the respondents notified the DOC that they would be sending such records to the complainant. It is further found that, by email dated December 8, 2022, the DOC instructed the respondents to send the records to the DOC FOI office, and notified the respondents that such records would be withheld from the complainant if they contained criminal records of individuals other than the complainant. It is found that at the time of the December 14, 2022 reopened hearing, the respondents had not sent the records at issue to the DOC.

11. On December 8, 2022, pursuant to an order of the hearing officer, the respondents submitted the records that they withheld from the complainant for in camera inspection, along with an in camera index. The in camera records consist of 14 sets of records, which will be identified as IC-2022-0025-Record 1 through IC-2022-0025-Record 14. On the in camera index and/or at the hearings in this matter, the respondents claimed that the in camera records are exempt from disclosure pursuant to §1-210(b)(3)(H), 1-210(b)(18), and/or 54-142a, G.S.

12. On the in camera index and at the December 14th reopened hearing, the respondents claimed that IC-2022-0025-Record 1 through IC-2022-0025-Record 14 are exempt from disclosure pursuant to §1-210(b)(18), G.S.

13. Section 1-210(b)(18), G.S., provides in relevant part that disclosure is not required of:

[r]ecords, the disclosure of which the Commissioner of Correction ... has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction

14. Section 1-210(c), G.S., provides:

[w]henever a public agency receives a request from any person confined in a correctional institution ... for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction ... of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person

when the record is delivered to the person's correctional institution or facility (Emphasis added.)

15. The respondents contended that they were permitted to withhold IC-2022-0025-Record 1 through IC-2022-0025-Record 14 pursuant to §1-210(b)(18), G.S., because such records were similar in nature to the records described in paragraph 8, above, the disclosure of which the Commissioner of Correction ("Commissioner") determined may result in a safety risk.

16. As this Commission has concluded in prior cases, the plain language of §1-210(c) provides that only the DOC may withhold public records pursuant to §1-210(b)(18). See Herbert Clark v. James P. Wardwell, Chief, Police Department, City of New Britain, et al., Docket #FIC 2017-0545 (Aug. 8, 2018); Julio Burgos Torres v. Chief, Police Department, City of Waterbury, et al., Docket #FIC 2016-0446 (May 10, 2017).

17. It is found that the respondents did not deliver copies of IC-2022-0025-Record 1 through IC-2022-0025-Record 14 to the DOC in accordance with §1-210(c), G.S., and that, therefore, the Commissioner did not make a determination that there were reasonable grounds to believe that disclosure of such records may result in a safety risk.

18. Based on the foregoing, it is concluded that the respondents violated §1-210(c), G.S., by failing to deliver IC-2022-0025-Record 1 through IC-2022-0025-Record 14 to the DOC. It is further concluded that the respondents were not permitted to withhold IC-2022-0025-Record 1 through IC-2022-0025-Record 14 from the complainant pursuant to §1-210(b)(18), G.S.

19. With respect to IC-2022-0025-Record 1, IC-2022-0025-Record 2, IC-2022-0025-Record 5, IC-2022-0025-Record 8, IC-2022-0025-Record 9, and IC-2022-0025-Record 10, at the December 14th reopened hearing, the respondents also claimed that such records are exempt from disclosure pursuant to §1-210(b)(3)(H), G.S., because they contain uncorroborated allegations.²

20. Section 1-210(b)(3)(H), 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 such records would not be in the public interest because it would result in the disclosure of ... (H)

² At the November 17th hearing and on the in camera index, the respondents claimed that all of the in camera records were exempt from disclosure pursuant to §1-210(b)(3)(H), G.S. At the December 14th reopened hearing, however, the respondents testified that they were only claiming that exemption for IC-2022-0025-Record 1, IC-2022-0025-Record 2, IC-2022-0025-Record 5, IC-2022-0025-Record 8, IC-2022-0025-Record 9, and IC-2022-0025-Record 10. Accordingly, the applicability of §1-210(b)(3)(H), G.S., with respect to the remaining in camera records, shall not be further addressed herein.

uncorroborated allegations subject to destruction pursuant to section 1-216.

21. Section 1-216, G.S., provides:

[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.

22. This Commission has consistently interpreted the term “corroborate” to mean “to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence;” “to state facts tending to produce confidence in the truth of a statement made by another;” “to give increased support to; make more sure or evident.” See, e.g., Rachel Gottlieb and The Hartford Courant v. State of Connecticut, Department of Public Safety, Division of State Police, Docket #FIC 1994-291 (May 24, 1995). In Gottlieb, the Commission found that the records at issue in that case “contain[ed] similar accounts relayed to the respondent by different interviewees concerning the allegations under investigation.” The Commission found, therefore, that the allegations in that case were not “uncorroborated,” as that term is used in §§1-210(b)(3)(H) and 1-216, G.S.

23. At the hearings in this matter, the respondents’ witness testified that he determined that IC-2022-0025-Record 1, IC-2022-0025-Record 2, IC-2022-0025-Record 5, IC-2022-0025-Record 8, IC-2022-0025-Record 9, and IC-2022-0025-Record 10, contained uncorroborated allegations solely because such records related to cases that did not result in an arrest. However, this Commission repeatedly has concluded that allegations may be “corroborated,” as that term is used in §§1-210(b)(3)(H) and 1-216, G.S., even if the case did not result in an arrest. See, e.g. Amy Caron Perkins v. Chief, Police Department, City of Norwich, et al., Docket #FIC 2019-0285 (Aug. 28, 2019); Jenny Colluci and OPIN, Inc. v. Chief, Police Department, City of Stamford, et al., Docket #FIC 2019-0149 (July 10, 2019); Gregory Bishop v. Support Services Department, Police Department, City of Middletown, et al., Docket #FIC 2011-372 (April 11, 2012); Michael Thibault v. Chief, Police Department, City of New London, Docket #FIC 2006-344 (May 9, 2007).

24. After a careful in camera inspection of IC-2022-0025-Record 1, IC-2022-0025-Record 2, IC-2022-0025-Record 5, IC-2022-0025-Record 8, IC-2022-0025-Record 9, and IC-2022-0025-Record 10, it is found that the records on their face contain information that tends to strengthen, add weight to, and support the allegations contained therein.

25. Based on the foregoing, it is found that IC-2022-0025-Record 1, IC-2022-0025-Record 2, IC-2022-0025-Record 5, IC-2022-0025-Record 8, IC-2022-0025-Record 9, and IC-2022-0025-Record 10 are not exempt from disclosure pursuant to §1-210(b)(3)(H), G.S.

26. With respect to IC-2022-0025-Record 3, IC-2022-0025-Record 4, IC-2022-0025-Record 6, IC-2022-0025-Record 7, IC-2022-0025-Record 11, IC-2022-0025-Record 12, IC-2022-0025-Record 13, and IC-2022-0025-Record 14, at the December 14th reopened hearing, the respondents also claimed that such records are exempt from disclosure because they are subject to erasure pursuant to §54-142a, G.S.

27. Section 54-142a, G.S., provides in relevant part:

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect....

(c)(1) Whenever any charge in a criminal case has been nolled in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolles entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased....

(e)(1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

28. In Commissioner, State of Connecticut Department of Emergency Services and Public Protection v. Freedom of Information Commission (hereinafter Commissioner v. Freedom of Information Commission), HHB-CV14-602708-S, 2019 WL 4201551, (Aug. 20, 2019), the court concluded that, when a charge is subject to erasure pursuant to §54-142a, G.S., that does not necessarily mean that all law enforcement records from the underlying incident or investigation are barred from disclosure. Instead, only records “pertaining to [a] charge” that results in a dismissal, nolle, or acquittal are deemed erased pursuant to §§54-142a(a) and (c), G.S. Similarly, pursuant to §54-142a(e)(1), G.S., law enforcement agencies are only prohibited from disclosing “information pertaining to any charge erased under any provision of [§54-142a].” (Emphasis added.) In Commissioner v. Freedom of Information Commission, the court analyzed the phrase “pertaining to [an erased] charge” and concluded that §54-142a, G.S. prohibits disclosure of “descriptive information” that discloses ‘when or where a person was arrested, the nature of or circumstances surrounding the crime charged or the names of witnesses from whom further information may be obtained.’” (quoting State v. West, 192 Conn. 488, 496 (1984)).

29. With respect to IC-2022-0025-Record 11, IC-2022-0025-Record 12, IC-2022-0025-Record 13, and IC-2022-0025-Record 14, the respondents contended that such records were deemed erased pursuant to §54-142a, G.S., because they consist of arrest warrant affidavits and arrest reports relating to charges that resulted in a dismissal or nolle. The respondents contended

that, because the entirety of each such record pertains to an erased charge, they were prohibited from disclosing such records.

30. Based on careful consideration of the evidence in the record, it is found that IC-2022-0025-Record 11, IC-2022-0025-Record 13, and IC-2022-0025-Record 14, in their entirety, pertain to charges that were dismissed or nolled. With respect to the charges referenced in such records that were nolled, it is further found that more than thirteen months have elapsed since such nolles. Accordingly, it is found that IC-2022-0025-Record 11, IC-2022-0025-Record 13, and IC-2022-0025-Record 14 were erased pursuant to §54-142a, G.S.

31. Based on the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding IC-2022-0025-Record 11, IC-2022-0025-Record 13, and IC-2022-0025-Record 14 from the complainant.

32. With respect to IC-2022-0025-Record 12, it is found that such record consists of 15 pages.

33. Based on careful consideration of the evidence in the record, it is found that IC-2022-0025-Record 12, pages 5 through 11, pertain to charges that did not result in a dismissal, nolle, or acquittal, and that the respondents previously provided the complainant with copies of such records.³

34. It is further found that IC-2022-0025-Record 12, pages 1 through 4 and 12 through 15, in their entirety, pertain to charges that were nolled, and that more than thirteen months have passed since such nolles. Accordingly, it is found that IC-2022-0025-Record 12, pages 1 through 4 and 12 through 15, consist of records that were erased pursuant to §54-142a, G.S.

35. Based on the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding IC-2022-0025-Record 12, pages 1 through 4 and 12 through 15, from the complainant.

36. With respect to IC-2022-0025-Record 3, IC-2022-0025-Record 4, IC-2022-0025-Record 6, and IC-2022-0025-Record 7, the respondents claimed that such records, in their entirety, are exempt from disclosure pursuant to §54-142a, G.S., because portions of such records referenced arrests of individuals whose charges were dismissed or nolled. The respondents acknowledged that other portions of such records were unrelated to the charges that were dismissed or nolled.

37. Based on careful consideration of the evidence in the record, it is found that the respondents failed to prove that IC-2022-0025-Record 3, IC-2022-0025-Record 4, IC-2022-0025-Record 6, and IC-2022-0025-Record 7, in their entirety, disclose “when or where a person was arrested [for an erased charge], the nature of or circumstances surrounding the crime

³ The Commission notes that the respondents submitted the in camera records without page numbers. The hearing officer numbered the pages of IC-2022-0025-Record 12 in pencil to avoid confusion regarding which portions of such record are exempt from disclosure.

charged or the names of witnesses from whom further information may be obtained.” Commissioner v. Freedom of Information Commission, 2019 WL 4201551, at *17.

38. However, it is found that portions of IC-2022-0025-Record 3, IC-2022-0025-Record 4, IC-2022-0025-Record 6, and IC-2022-0025-Record 7 contain the following categories of information which disclose “when or where a person was arrested [for an erased charge], the nature of or circumstances surrounding the crime charged or the names of witnesses from whom further information may be obtained.” Commissioner v. Freedom of Information Commission, 2019 WL 4201551, at *17:

- (1) names and addresses of arrestees whose charges were dismissed or nolled;
- (2) references to such arrests and charges;
- (3) addresses where such arrests were made; and
- (4) names of witnesses from whom additional information about such arrests may be obtained.

39. It is found that the information described in paragraph 38, above, “pertains to [erased] charges,” as that phrase is used in §54-142a, G.S. It is therefore found that the portions of IC-2022-0025-Record 3, IC-2022-0025-Record 4, IC-2022-0025-Record 6, and IC-2022-0025-Record 7 that contain such information are exempt from disclosure pursuant to §54-142a, G.S.

40. In addition, although the respondents did not claim that any portion of IC-2022-0025-Record 1, IC-2022-0025-Record 2, IC-2022-0025-Record 5, IC-2022-0025-Record 8, IC-2022-0025-Record 9, and IC-2022-0025-Record 10 are exempt from disclosure pursuant to §54-142a, G.S., based on a careful in camera inspection, it is found that portions of such records contain the same categories of information described in paragraph 38, above. It is therefore found that the portions of IC-2022-0025-Record 1, IC-2022-0025-Record 2, IC-2022-0025-Record 5, IC-2022-0025-Record 8, IC-2022-0025-Record 9, and IC-2022-0025-Record 10 that contain such information also are exempt from disclosure pursuant to §54-142a, G.S.⁴

41. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding IC-2022-0025-Record 1 through IC-2022-0025-Record 10 from the complainant, except for the portions of such records that contain the categories of information described in paragraphs 38 through 40, above.

42. Notwithstanding the conclusion in paragraph 41, above, the Commission in its discretion declines to consider the imposition of a civil penalty.

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

⁴ The Commission notes that the copy of IC-2022-0025-Record 8 that was submitted for in camera inspection was partially redacted. The respondents testified that the redacted portions of such record identified the names of juvenile witnesses, and the complainant testified that he was not seeking that information. Accordingly, such information is not at issue and shall not be further addressed herein.

1. Within 14 days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant, free of charge, a copy of IC-2022-0025-Record 1 through IC-2022-0025-Record 10.

2. In complying with paragraph 1 of the Order, above, the respondents shall redact the information described in paragraphs 38 through 40 of the findings, above.

3. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210 and 1-212, G.S.

Approved by Order of the Freedom of Information Commission at its special meeting of January 13, 2023.



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:

CORDARYL SILVA, #332230, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

KEVIN HALE, CHIEF, POLICE DEPARTMENT, TOWN OF ANSONIA; POLICE DEPARTMENT, TOWN OF ANSONIA; AND TOWN OF ANSONIA, c/o Attorney John P. Marini, Corporation Counsel, City of Ansonia, 252 Main Street, Ansonia, CT 06461



Cynthia A. Cannata
Acting Clerk of the Commission