

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Evan Parzych,

Complainant

against

Docket # FIC 2022-0363

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

Respondents

August 9, 2023

The above-captioned matter was heard as a contested case on June 14, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

By notice dated June 29, 2023, the respondents were ordered to submit additional evidence in the form of an affidavit. On July 7, 2023, the respondents filed one affidavit, which has been marked and admitted as Respondents' Exhibit 1 (after-filed): Affidavit of Dina A. Scalo (5 pages).

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 July 26, 2022, the complainant requested that the respondents provide him with a copy of the following: "all records, reports, media, documents, communications, notes, investigative materials and any and all materials pertaining to the Bridgeport PD Case Number 93D-2221, involving the June 24, 1993 shooting death of Jose Rivera."
3. It is also found that the respondents acknowledged the complainant's request on July 26, 2022.
4. By complaint filed August 18, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records. Specifically, the complainant alleged that the respondents did not provide copies of the requested records or an opportunity to review such records, and that the respondents failed to conduct an adequate search for responsive records.¹

¹ At the hearing, the complainant withdrew the allegation that the respondents failed to conduct an adequate search.

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, 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.

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 described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that on June 9, 2023, June 12, 2023, and June 13, 2023, the respondents provided the complainant with a copy of some, but not all, of the responsive records. It is further found that the respondents withheld responsive records, in whole or in part, pursuant to several claims of exemption.

10. At the hearing and in their closing brief, the respondents contended that the complaint does not contain allegations with respect to respondents’ claims of exemption to disclosure, and therefore the Commission may not address such claims of exemption.

11. The respondents’ argument regarding the scope of the complaint, as described in paragraph 10, above, is unavailing. In the complaint, the complainant alleged that he requested “a copy of *all* records” pertaining to the case identified in paragraph 2, above. The complaint also included allegations that the complainant had not received copies of the requested records, and that the respondents constructively denied the request by not providing any of the records requested.

12. It is well established that the general rule under the FOI Act is disclosure. Pursuant to §1-210(a), G.S., a requester has the right to promptly obtain a *complete copy of all public records requested*. Necessarily implicit in that right is the right to challenge limitations placed on such right by the respondents. In this case, the respondents’ contention that they have not

violated the FOI Act by withholding responsive records (because of various claims of exemption) places the applicability of the exemptions squarely before the Commission.

13. Pursuant to the order of the hearing officer, on June 14, 2023, the respondents submitted the records, or portions thereof, that they claimed were exempt from disclosure for in camera inspection, along with an in Index to Records Submitted for In Camera Inspection (“In Camera Index”). The in camera records are hereinafter referred to as IC-2022-0363-001 through IC-2022-0363-343. At the hearing, and after the hearing by affidavit, the respondents presented testimony of one witness, Attorney Dina A. Scalo, who reviewed and redacted the records located by the respondents.

14. The Commission notes that the respondents submitted several pages of in camera records wherein no corresponding claim of exemption was identified on the In Camera Index. It was unclear to the hearing officer whether all such records were provided to the complainant; therefore, the hearing officer ordered the respondents to clarify the disclosure status of such records. In her affidavit, Attorney Scalo averred that it was her belief that all non-exempt records/portions of records were provided to the complainant, but that she would subsequently confirm that to be the case, and that all records with no claim of exemption would be disclosed to the complainant.

15. In light of the foregoing, it is found that the respondents failed to prove that all records, or portions thereof, for which no claim of exemption was made, were provided to the complainant. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of such records to the complainant.

16. The Commission also notes that several other pages of the in camera records were identified on the In Camera Index as “non-responsive.” After a careful in camera inspection, these in camera records, on their face, are not responsive to the request identified in paragraph 2, above, and therefore such records shall not be addressed further herein.²

17. The Commission reminds the respondents that records which have not been withheld from disclosure pursuant to a claim of exemption, or which are not responsive to the underlying request at issue, need not be submitted to the Commission for in camera inspection.

18. The respondents claimed that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(3)(A), 1-210(b)(3)(C), 1-210(b)(3)(E), 29-164f, and/or 52-142a, G.S. The respondents also claimed that certain personally identifiable information (Dates of Birth, Social Security Numbers, and Operator License Numbers) is exempt from disclosure in accordance with Garrison v. Supervisor, Unclaimed Property Division, State of Connecticut Office of the Treasurer, Docket #FIC 89-76 (Sept. 13, 1989) (“Garrison”), and that certain in camera records were not subject to disclosure pursuant to the Supreme Court decision in Galvin v. Freedom of Info. Comm’n, 208 Conn. 448 (1986).

² The hearing officer reviewed IC-2022-0363-230 and IC-2022-0363-231 and, on their face, such records also are not responsive to the request identified in paragraph 2, above. Therefore, such in camera records shall not be addressed further herein.

19. During the hearing, the complainant indicated that he did not object to the withholding of personally identifiable information claimed exempt pursuant to Garrison. The Commission also notes that, historically, it has declined to order disclosure of Social Security Numbers and Operator License Numbers. Consequently, such claim of exemption shall not be addressed further herein.

20. With respect to the in camera records, or portions thereof, claimed exempt from disclosure pursuant to §1-210(b)(3), G.S., such statutory provision provides, in relevant part, 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 (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, ... (C) signed statements of witnesses, ... (E) investigatory techniques not otherwise known to the general public,

21. After careful in camera inspection, it is found that the in camera records are law enforcement records not otherwise available to the public which were compiled in connection with the investigation of a crime.

22. First, the respondents' claimed that the in camera records, or portions thereof, described on the In Camera Index as "Identifiers of Witnesses Not Otherwise Known" are exempt from disclosure pursuant to §1-210(b)(3)(A), G.S.³

23. It is found that the respondents' witness, Attorney Scalò, is not an employee of the respondent police department, but instead is an associate city attorney at the Office of the City Attorney for the City of Bridgeport. It is further found that, in order to ascertain the applicability of the exemption identified in paragraph 22, above, Attorney Scalò conducted some research with respect to the individuals named or identified in such in camera records. It is further found that Attorney Scalò was not able to find any information that led her to conclude that the identities of any such individuals were publicly known.

24. It is also found that, due to the passage of time – 30 years in this case – that there is a lack of institutional knowledge in the present day respondent police department with respect to the individuals identified, or potentially identified, in the in camera records. It is found that while Attorney Scalò stated her belief that the respondent police department generally strives to

³ On the In Camera Index, the respondents claimed that information contained in lines 4, 7, and 9 of IC-2022-0363-019 is exempt pursuant to §1-210(b)(3)(A). However, upon review by the hearing officer, IC-2022-0363-019 contained no corresponding information and annotation. Upon further review, it appeared to the hearing officer that the respondents made an error in identifying IC-2022-0363-019 on the In Camera Index, and instead that the respondents intended to identify IC-2022-0363-020 on the In Camera Index. Therefore, the hearing officer applied the claim of exemption set forth on the In Camera Index to IC-2022-0363-020 and not to IC-2022-0363-019.

keep witness identities confidential, she did not establish through her testimony that the identities of anyone specifically identified in the in camera records were “not otherwise known”, nor is it apparent to the hearing officer based on a careful inspection of the in camera records.

25. In light of the foregoing, and after a careful in camera inspection, it is found that the respondents failed to prove that disclosure of the individuals named or potentially identified in the in camera records, described in paragraph 22, above, would reveal the identity of a witness or informant whose identity is not otherwise known, within the meaning of §1-210(b)(3)(A), G.S.

26. It is further found that the respondents failed to prove that the safety of any witness or informant, whose identity is not otherwise known, would be endangered, or that they would be subject to threat or intimidation if their identity were disclosed, within the meaning of §1-210(b)(3)(A), G.S.

27. It is therefore found that the in camera records, or portions thereof, described on the In Camera Index as “Identifiers of Witness Not Otherwise Known”, are not exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., and therefore, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of such records to the complainant.

28. With respect to the respondents’ claim that certain in camera records, described on the In Camera Index as “Signed Statement of Witness” are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., it is found, after careful in camera inspection, that all such records constitute signed statements of witnesses, within the meaning of §1-210(b)(3)(C), G.S., and therefore, that such records are permissibly exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. Consequently, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of such records to the complainant.

29. With respect to the respondents’ claim that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., as investigatory techniques not otherwise known, it is found that, on the In Camera Index, the respondents divided such information into three categories: (1) Internal Law Enforcement Codes, (2) Internal Law Enforcement Records or Information, and (3) Internal Law Enforcement Investigatory Information.

30. Following the hearing, the respondents notified the hearing officer that they were withdrawing their claim that the portions of the in camera records described on the In Camera Index as “Internal Law Enforcement Codes” are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

31. With respect to the remaining in camera records, or portions thereof, described in paragraph 29, above, and claimed as exempt pursuant to §1-210(b)(3)(E), G.S., it is found, after a careful in camera inspection, that the respondents failed to prove that any of the information claimed to be exempt from disclosure constituted an “investigatory technique” that is also “not otherwise known to the general public,” within the meaning of §1-210(b)(3)(E), G.S.

32. It is therefore found that the records identified in paragraph 29, above, are not exempt from disclosure pursuant to §1-210(b)(3)(E), G.S. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of such in camera records to the complainant.

33. With respect to the respondents' claim that certain in camera records, or portions thereof, described on the In Camera Index as "Handwritten Preliminary Drafts/Notes" are exempt from disclosure pursuant to §1-210(b)(1), G.S., such provision provides that disclosure is not required of "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure."

34. In Shew v. Freedom of Info. Comm'n, the Court ruled that "the concept of preliminary [drafts or notes], as opposed to final [drafts or notes], should not depend upon...whether the actual documents are subject to further alteration..." but rather "[p]reliminary drafts or notes reflect that aspect of the agency's function that precede formal and informed decision making.... It is records of this preliminary, deliberative and predecisional process that...the exemption was meant to encompass." Shew v. Freedom of Information Commission, 245 Conn. 149, 165 (1998), citing Wilson v. Freedom of Info. Comm'n, 181 Conn. 324, 332 (1989). In addition, once the underlying document is identified as a preliminary draft or note, "[i]n conducting the balancing test, the agency may not abuse its discretion in making the decision to withhold disclosure. The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded." State of Connecticut, Office of the Attorney General v. Freedom of Info. Comm'n, 2011 WL 522872, *8 (Conn. Super. Ct. Jan. 20, 2011) (citations omitted).

35. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, and added to the FOI Act the language now codified in §1-210(e)(1), G.S. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S., which provides, in relevant part:

Notwithstanding the provisions of subdivisions (1) and (16) of subsection (b) of this section, disclosure shall be required of...

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency....

36. Based upon a careful in camera inspection of the in camera records described in paragraph 33, above, it is found that such records are handwritten. It is further found that the respondents' witness testimony with regard to such records consisted of generalized assertions that they are drafts or notes that may or may not have been integrated into a final report. However, it is found that the respondents failed to present evidence of the origin or meaning of

each record, which is not obvious on their face.

37. It is further found that the respondents failed to address whether any of the records claimed to be exempt pursuant to §1-210(b)(1), G.S., are subject to mandatory disclosure pursuant to §1-210(e)(1), G.S.

38. In light of the foregoing, it is found that the respondents failed to prove that the records referenced in paragraph 33, above, constitute “preliminary drafts or notes” within the meaning of §1-210(b)(1), G.S. Because the respondents failed to prove that the records identified in paragraph 33, above, constitute “preliminary drafts or notes,” within the meaning of §1-210(b)(1), G.S., the Commission need not consider whether the respondents abused their discretion in conducting the balancing test when making the decision to withhold such records from disclosure.

39. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of the in camera records referenced in paragraph 33, above, to the complainant.

40. The respondents further claimed that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §29-164f, G.S., because they are “N.C.I.C.” records or reports. “N.C.I.C.” stands for National Crime Information Center. In Commissioner of Public Safety v. FOI Commission, 144 Conn. App. 821, 827 (2013), the Appellate Court clarified that “the NCIC database is to be used for limited purposes authorized by law, such as background checks, and that NCIC records may only be used for official purposes.” The court concluded that §29-164f, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S. Id. at 831.

41. After careful in camera inspection, it is found that all of the records, or portions thereof, described on the In Camera Index as N.C.I.C. records, with the exception of lines 30-34 in IC-2022-0363-127, are records contained in the N.C.I.C. database, and therefore are exempt from disclosure pursuant to §29-164f, G.S. Consequently, the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of such records (exclusive of IC-2022-0363-127 lines 30-34) to the complainant.

42. It is also found, after careful in camera inspection, that IC-2022-0363-127 lines 30-34 are not N.C.I.C. records, within the meaning of §29-164f, G.S., and therefore the respondents failed to prove that such information is exempt from disclosure pursuant thereto.

43. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide those portions of IC-2022-0363-127, referenced in paragraph 42, above, to the complainant.

44. The respondents also claimed that certain in camera records, described on the In Camera Index as “Office of Chief Medical Examiner Records,” are exempt from disclosure pursuant to the Supreme Court decision in Galvin v. FOI Commission, 201 Conn. 448 (1986). In Galvin, the court concluded that §19a-411, G.S., is a state statute that falls within the “except as otherwise provided” language of §1-210(a), G.S. Id. at 462. Moreover, the Court concluded that

“autopsy reports and other investigative reports may be made available to the public *only through the office of the chief medical examiner and in accordance with . . . the regulations of the commission.*” Id. at 458. (Emphasis in original).

45. After careful in camera inspection, it is found that the in camera records referenced in paragraph 44, above, constitute investigatory reports of the Office of the Chief Medical Examiner. Accordingly, it is found that such in camera records may not be disclosed by the respondents pursuant to §19a-411, G.S. Consequently, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of such in camera records to the complainant.

46. The respondents also claimed that certain in camera records, or portions thereof, described on the In Camera Index as “Information Pertaining to Erased Charge” are exempt from disclosure pursuant to §54-142a, G.S. Section 52-142a, G.S., known as the “erasure statute,” generally requires nondisclosure of all police, court, and prosecutorial records “pertaining to a criminal charge” whenever the person charged is acquitted or pardoned, or the charge is dismissed or nolle.

47. After careful in camera inspection, it is found that the information contained in the following in camera records is exempt from disclosure pursuant to the provisions of §54-142a, G.S.: IC-2022-0363-062 line 15; IC-2022-0363-063 lines 3-6, 9; IC-2022-0363-193 line 15; IC-2022-0363-194 lines 3-5, 6, 9; IC-2022-0363-341 line 20; IC-2022-0363-341 line 23; and IC-2022-0363-342 lines 12 and 13. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of such information to the complainant.

48. However, with respect to IC-2022-0363-062 lines 10-11; IC-2022-0363-193 line 10-11; IC-2022-0363-340 lines 10-11; IC-2022-0363-340 lines 25-28; and IC-2022-0363-341 lines 17-19, it is found that no disposition information is contained within the in camera records. Attorney Scalo averred that “records which contained no disposition information are assumed by the undersigned to be likewise erased.”

49. It is further found that IC-2022-0363-063 line 12; IC-2022-0363-194 line 12; and IC-2022-0363-341 line 26, do not include a disposition of acquitted, pardoned, dismissed or nolle. Attorney Scalo averred that such in camera records reflect a disposition of “SI” which she believed to mean “substituted information.”

50. It is found that the respondents failed to present evidence to establish that either no disposition information, or the designation of “SI” as a disposition, indicates that the person charged was acquitted or pardoned, or that the charge was dismissed or nolle.

51. Consequently, it is found that the respondents failed to prove that the information contained in the camera records referenced in paragraphs 48 and 49, above, constitutes “information pertaining to an erased charge” within the meaning of §54-142a, G.S. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of such information to the complainant.

52. Finally, with respect to the complainant's contention that the respondents failed to provide prompt access to the requested records, the Commission has previously opined that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly" as used in §1-210(a), G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request." The advisory opinion goes on to describe some of the factors that should be considered, including: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

53. As already found in paragraph 9, above, the respondents first provided records to the complainant on June 9, 2023, nearly ten months after the July 26, 2022 request, and just days prior to the June 14, 2023 hearing in this matter. It is further found that the number of pages reviewed by the respondents' attorney in this matter was approximately 343, though several of those pages were duplicates.

54. It is found that the respondents failed to present evidence of the date, or dates, on which they searched for records responsive to the complainant's request, the date(s) on which the records were located, and the date(s) on which the records located were provided to counsel to commence a legal review.

55. However, the Commission notes that on December 20, 2022, five months after the date of the complainant's request in this matter, the complainant informed the Commission via postponement request that the respondents represented that records had been located, a legal review would subsequently commence, and that the respondents estimated that such review would be complete by the end of January 2023. The Commission also notes that on February 14, 2023, the respondents notified the Commission via postponement request that they continued to conduct a legal review and estimated that review would be complete by the end of February 2023. It is found that no specific evidence was introduced to address the delay in disclosure between the February 2023 request to postpone, and the actual June 2023 disclosures, just days before the hearing in this matter.

56. It is also found that Attorney Scalo was the only staff-person assigned to conduct a legal review of the records located by the respondent police department in response to the request described in paragraph 2, above. It is found that Attorney Scalo quantified the time required for her to review such records as over 40 hours. However, Attorney Scalo's testimony did not address why it took the respondents up to five months to search for and locate records, and why counsel required approximately six months to conduct a legal review of 343 pages (a number of which are duplicates).

57. Accordingly, it is found that the respondents failed to prove that they provided prompt access to the requested records. It is therefore concluded that the respondents violated the

promptness provisions of §§1-210(a) and 1-212(a), G.S., under the facts and circumstances of this case.

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

1. If they have not already done so, the respondents shall immediately disclose the in camera records, or portions thereof, for which no claim of exemption was asserted on the In Camera Index, as described in paragraph 14, above, to the complainant, free of charge.

2. Forthwith and within 30 days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant with an unredacted copy, free of charge, of all of the in camera records, or portions thereof, identified in paragraphs 22, 29, 33, 42, 48, and 49, of the findings above.

3. In complying with paragraph 2 of the order above, the respondents may withhold the personally identifiable information specifically referenced in paragraphs 18 and 19, above.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of August 9, 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:

EVAN PARZYCH, c/o Attorney Katharine Goodbody, Connecticut Innocence Project, 55 Farmington Avenue, 8th Floor, Hartford, CT 06105

CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Michael C. Jankovsky, and Attorney Dina A. Scalo, City of Bridgeport, Office of the City Attorney, 999 Broad Street, 2nd floor, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission