

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Evan Parzych,

Complainant

against

Docket # FIC 2022-0366

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

Respondents

August 9, 2023

The above-captioned matter was scheduled to be heard as a contested case on March 10, 2023, at which time the complainant and the respondents appeared. Prior to the presentation of evidence in this matter, City of Bridgeport Associate City Attorney Michael Jankovsky represented that the respondents' counsel of record, Attorney Dina Scalo, was unable to appear at the March 10, 2023 hearing, but that Attorney Scalo was in possession of the requested records, and needed additional time to complete her review of such records before providing them to the complainant. The Hearing Officer agreed to continue the matter to allow the parties an opportunity to resolve their differences and settle the complaint.¹

The matter was then heard as a contested case on June 29, 2023, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2022-0365, Evan Parzych v. Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport (FIC 2022-0365). Prior to the June 29, 2023 hearing, the complainant and the respondents reached a settlement in FIC 2022-0365, and the complainant withdrew that complaint.²

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.

¹ The parties were unable to arrive at a settlement and the Commission scheduled the matter for a hearing on June 29, 2023.

² See complainant's May 12, 2023 letter of withdrawal in Docket # FIC 2022-0365, Evan Parzych v. Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport.

2. It is found that on July 26, 2022, in relevant part, the complainant requested from the respondent department³:

[a] copy of all records, reports, media, investigative materials and any other materials pertaining to Bridgeport PD Case Number 94D-1447, which involved the 1994 murder of Erica Corbett. Records for the case may also be labeled with the file number 940514-323. (hereinafter “requested records”).

The request also contained a certification by the complainant that he is a member of the Division of Public Defender Services, and requested that “fees associated with providing the requested records” be waived, pursuant to §1-212(d)(5), G.S.⁴

3. It is found that on July 26, 2022, the respondents acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant, in relevant part, “we are reviewing your request and will contact you in writing when the requested information is available. Your request has been given reference number W006181-072622 for tracking purposes.”

4. By email dated and filed on August 18, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to provide him with the requested records, described in paragraph 2, 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, 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:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency,

³ The request was sent via the city’s FOI electronic portal.

⁴ Section 1-212(d) provides, in relevant part: “[t]he public agency shall waive any fee provided for in this section when... (5) The person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a Division of Public Defender Services assigned counsel under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties.”

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., in relevant part, further provides: “[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 requested records are “public records”, within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that beginning on April 28, 2023 through May 19, 2023, the respondents provided the complainant, on a rolling basis, a link where records responsive to his request could be accessed electronically. It is also found that subsequent to the June 29, 2023 hearing in this matter, the respondents provided the complainant with additional records responsive to his request.⁵

10. At the June 29, 2023 hearing in this matter, the complainant contended that the respondents have withheld numerous responsive records in their entirety, and provided him with other records that contain redactions. The respondents contended that the records at issue are voluminous, pertain to a 1994 homicide investigation, and contain material exempt from disclosure pursuant to numerous statutes.

11. On July 7, 2023, and July 20, 2023, the respondents submitted the records at issue to the Commission, for an in camera inspection.⁶

12. The in camera records submitted to the Commission on July 7, 2023 comprise 291 pages, and have been marked IC 2022-0366-1-July 7 through IC 2022-0366-291-July 7. The in camera records submitted to the Commission on July 20, 2023 comprise 33 pages, and one compact disc (audio recording), and have been marked IC 2022-0366-1-July 20 through IC 2022-0366-33-July 20, and “compact disc”, respectively.

13. At the hearing in this matter, and in their brief, the respondents made numerous claims, including jurisdictional, and claims of exemption.

⁵ On July 13, 2023, the respondents informed the Commission that they had located and provided the complainant with additional responsive records. In the July 13, 2023 communication, the respondents requested that the Commission accept an after-filed exhibit reflecting such additional disclosure. The complainant did not object to the filing of the after-filed exhibit and the hearing officer granted the request. The after-filed exhibit has been marked Respondents’ after-filed exhibit 3.

⁶ At the June 29, 2023 hearing, the hearing officer ordered that the in camera records be submitted to the Commission by the respondents on July 7, 2023, with which order the respondents complied. On July 13, 2023, the respondents informed the Commission that additional records were located and requested that they be permitted to submit such additional records for in camera inspection. The complainant did not object to the filing of additional records for in camera inspection and the hearing officer granted such request. The additional records located were submitted to the Commission for in camera inspection on July 20, 2023.

14. The respondents first claimed that the complainant's objection to the respondents' redactions and claims of exemption, is outside the scope of the complaint.

15. With regard to the respondents' claim, described in paragraph 14, above, which challenges the Commission's jurisdiction to address the redactions and the withholding of records in their entirety, it is found that as of August 18, 2022, the date of the filing of the complaint in this matter, the respondents had not provided the complainant with any responsive records, nor informed him that they would be providing records in a redacted form. Neither had they informed him of the statutory basis, and/or other reasons, for redacting and withholding entire records.

16. Pursuant to §1-210(a), G.S., the complainant had the right to promptly obtain a complete copy of all the public records he requested. Necessarily implicit in that right, is the right to challenge limitations placed on such right, including the withholding of responsive records in their entirety and/or redacting portions of such records.

17. Because the respondents' position only became known to the complainant many months subsequent to the filing of the complaint, it is found that the issues of redaction and the withholding of responsive records in their entirety have been timely raised.⁷

18. Consequently, it is concluded that the Commission has jurisdiction to address the redactions made by the respondents, and the withholding of responsive records in their entirety.

19. The respondents next claimed that they withheld the following in camera records because such records are "nonresponsive" and "outside the scope of the request" and therefore, need not be disclosed to the complainant:

IC 2022-0366-60-July 7 through IC 2022-0366-62-July 7
IC 2022-0366-219-July 7 through IC 2022-0366-231-July 7
IC 2022-0366-244-July 7
IC 2022-0366-252-July 7
IC 2022-0366-255-July 7
IC 2022-0366-258-July 7.

20. Based upon careful in camera inspection, it is found that the records described in paragraph 19, above, are nonresponsive and outside the scope of the request. Accordingly, such records shall not be further addressed herein.

21. The respondents contended that the following records are exempt from disclosure pursuant to §17a-101k, G.S.: IC 2022-0366-28-July 7; IC 0366-33-July 7 through IC 2022-0366-127- July 7; IC 2022-0366-180-July 7; and IC 2022-0366-274-July 7. The complainant informed

⁷ The record reflects that the complainant became aware of the statutory basis for the respondents' redactions and the withholding of entire records, during the period April 28, 2023 through July 13, 2023, when records were provided to him by the respondents.

the Commission that he is not challenging the respondents' claims of exemption made pursuant to §17a-101k, G.S.

22. Section 17a-101k, G.S., provides, in relevant part, that the “[i]nformation contained in the [Department of Children and Families] registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of the federal law or regulations.”

23. Upon careful in camera inspection, it is found that the records described in paragraph 21, above, are records of child abuse, and are therefore exempt from disclosure pursuant to §17a-101k, G.S. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant. Therefore, such records shall not be further addressed herein.

24. The respondents next claimed that the following in camera records are Department of Emergency Services and Public Protection (DESPP) DNA Data Bank records, exempt from disclosure pursuant to §54-102j, G.S.: IC 2022-0366-275-July 7 through IC 2022-0366-282-July 7.

25. Section 54-102g, G.S., requires that blood or other biological samples be taken for deoxyribonucleic acid (DNA) analysis from certain individuals who have been arrested or convicted, and further requires that the Division of Scientific Services within the Department of Emergency Services and Public Protection store and maintain the “identification characteristics of the profile resulting from the analysis” in a DNA data bank which “shall be made available only as provided in section 54-102j.”

26. Section 54-102j, G.S., requires the division “to receive blood or other biological samples and to analyze, classify and file the results of DNA identification characteristics profiles of blood or other biological samples submitted...and to make such information available as provided in this section.”

27. Section 54-102j, G.S., further provides that “the results of an analysis and comparison of the identification characteristics from two or more blood or other biological samples shall be made available directly to federal, state and local law enforcement officers upon request made in furtherance of an official investigation of any criminal offense.” In addition, any person from whom a blood or other biological sample has been taken may, upon request, obtain a copy of his or her DNA profile, and a person who has been identified and charged with an offense as a result of a search of information in the data bank, may, upon request, obtain a copy of the search request.

28. Section 54-102i, G.S., provides that, other than as provided in §54-102j, G.S., “the results of the analysis shall be securely stored and shall remain confidential.”

29. After careful in camera inspection, it is found that the records identified in paragraph 24, above, are 1994 results of DNA testing performed by the DESPP⁸ Forensic Science Lab (Lab) with regard to a request submitted to the Lab by the respondent department in connection with the underlying 1994 homicide case. On its face, the records reflect that the results were made “directly” to the respondent department, within the meaning of §54-102j, G.S., as they are addressed to the Chief of the respondent department. It is also found that in accordance with §54-102j, G.S., “the results of the analysis shall be securely stored and shall remain confidential.” Consequently, it is found that records described in paragraph 24, above, are exempt from disclosure pursuant to §§54-102i and 54-102j, G.S., and the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with a copy of such records.

30. The respondents contended that certain in camera records are exempt from disclosure by virtue of §1-210(b)(3), G.S., which 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 witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof....

31. Specifically, the respondents claimed that the following in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S., because they contain the identity of minor witnesses:

IC 2022-0366-3-July 7, lines 4-6 and 16-17
IC 2022-0366-13-July 7, lines 6-8, 20-22 and 30-32
IC 2022-0366-15-July 7, lines 7, 9, and 17-18
IC 2022-0366-16-July 7, lines 9-16
IC 2022-0366-17-July 7 through IC 2022-0366-26-July 7

⁸ The records at issue identify DESPP by its former name, the Department of Public Safety.

IC 2022-0366-27-July 7, line 4
IC 2022-0366-191-July 7 through IC 2022-0366-200-July 7
IC 2022-0366-201-July 7, line 4
IC 2022-0366-233-July 7 through IC 2022-0366-236-July 7
IC 2022-0366-256-July 7, line 2
IC 2022-0366-257-July 7, lines 1-2, 10, and 26
IC 2022-0366-283-July 7
IC 2022-0366-285-July 7, lines 1 and 4
IC 2022-0366-1-July 20 through IC 2022-0366-2-July 20
IC 2022-0366-3-July 20
IC 2022-0366-7-July 20
IC 2022-0366-8-July 20 through IC 2022-0366-12-July 20
IC 2022-0366-13-July 20
IC 2022-0366-16-July 20 through IC 2022-0366-17-July 20
IC 2022-0366-22-July 20 through IC 2022-0366-23-July 20
IC 2022-0366-28-July 20 through IC 2022-0366-31-July 20.

32. After careful inspection of the in camera records described in paragraph 31, above, it is found that such records are law enforcement records not otherwise available to the public which were compiled in connection with the investigation of a crime. It is also found that the following records, described in paragraph 31, above, contain the identity of minor witnesses pursuant to §1-210(b)(3)(B), G.S.:

IC 2022-0366-3-July 7, lines 4-6 and 16-17
IC 2022-0366-13-July 7, lines 6-8, 20-22 and 30-32
IC 2022-0366-15-July 7, lines 7, 9, and 17-18
IC 2022-0366-16-July 7, lines 9-16
IC 2022-0366-17-July 7 through IC 2022-0366-26-July 7
IC 2022-0366-191-July 7 through IC 2022-0366-200-July 7
IC 2022-0366-233-July 7 through IC 2022-0366-236-July 7
IC 2022-0366-256-July 7, line 2
IC 2022-0366-257-July 7, lines 1-2, 10, 26.

33. It is concluded that the records described in paragraph 32, above, are exempt from disclosure by virtue of §1-210(b)(3)(B), G.S. It is further concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

34. After careful in camera inspection, it is found that that the following records, described in paragraph 31, above, do not contain the identity of minor witnesses, and are therefore not exempt from disclosure pursuant to §1-210(b)(3)(B), G.S.:

IC 2022-0366-27-July 7, line 4
IC 2022-0366-201-July 7, line 4
IC 2022-0366-283-July 7
IC 2022-0366-285-July 7, lines 1 and 4
IC 2022-0366-1-July 20 through IC 2022-0366-2-July 20

IC 2022-0366-3-July 20
IC 2022-0366-7-July 20
IC 2022-0366-8-July 20 through IC 2022-0366-12-July 20
IC 2022-0366-13-July 20
IC 2022-0366-16-July 20 through IC 2022-0366-17-July 20
IC 2022-0366-22-July 20 through IC 2022-0366-23-July 20
IC 2022-0366-28-July 20 and IC 2022-0366-31-July 20.

35. The respondents next claimed that the following in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., because they are signed statements of witnesses:

IC 2022-0366-27-July 7
IC 2022-0366-29-July 7 through IC 2022-0366-32-July 7
IC 2022-0366-131-July 7 through IC 2022-0366-161-July 7
IC 2022-0366-170-July 7 through IC 2022-0366-179-July 7
IC 2022-0366-181-July 7 through IC 2022-0366-190-July 7
IC 2022-0366-201-July 7
IC 2022-0366-202-July 7 through IC 2022-0366-212-July 7
IC 2022-0366-238-July 7 through IC 2022-0366-243-July 7
IC 2022-0366-248-July 7
IC 2022-0366-264-July 7 through IC 2022-0366-273-July 7
Compact Disc Audio Recording.

36. After careful in camera inspection, it is found that the following records described in paragraph 35 above, are signed statements of witnesses, and therefore may be withheld from disclosure pursuant to §1-210(b)(3)(C), G.S.:

IC 2022-0366-29-July 7 through IC 2022-0366-32-July 7
IC 2022-0366-133-July 7 through IC 2022-0366-143-July 7
IC 2022-0366-145-July 7 through IC 2022-0366-157-July 7
IC 2022-0366-159 July 7 through IC 2022-0366-161-July 7
IC 2022-0366-170-July 7 through IC 2022-0366-179-July 7
IC 2022-0366-181-July 7 through IC 2022-0366-183- July 7
IC 2022-0366-185-July 7 through IC 2022-0366-190-July 7
IC 2022-0366-202-July 7 through IC 2022-0366-212-July 7
IC 2022-0366-238-July 7 through IC 2022-0366-243-July 7
IC 2022-0366-264-July 7 through IC 2022-0366-273-July 7.

37. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 36, above, from the complainant.

38. It is further found that the following records identified in paragraph 35, above, are not signed statements of witnesses, and are not exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.:

IC 2022-0366-27-July 7
IC 2022-0366-131-July 7
IC 2022-0366-132-July 7
IC 2022-0366-144-July 7
IC 2022-0366-158-July 7
IC 2022-0366-184-July 7
IC 2022-0366-201-July 7
IC 2022-0366-248-July 7
Compact Disc Audio Recording.

39. The respondents next claimed that the following in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., because they contain the identities of witnesses not otherwise known:

IC 2022-0366-1-July 7, lines 5-7,16, 24-27, 42, 45-47, and 49
IC 2022-0366-2-July 7, lines 6, 9-26, and 28-36
IC 2022-0366-3-July 7, line 22
IC 2022-0366-6-July 7,
IC 2022-0366-7-July 7, line 2
IC 2022-0366-8-July 7, lines 3-5, and 8-10
IC 2022-0366-9-July 7, line 6
IC 2022-0366-10-July 7, lines 1-5
IC 2022-0366-11-July 7, lines 7-9, 12-14, 16-22, and 24-25
IC 2022-0366-12-July 7, lines 1-13
IC 2022-0366-13-July 7, lines 6, 8, 10, 14-15, 17, 31-32, and 34-35
IC 2022-0366-14-July 7, lines 8-9, 11, 13, and 15-16
IC 2022-0366-15-July 7, lines 12-13, 22, 34-35, 38, and 40-41
IC 2022-0366-217-July 7, line 19
IC 2022-0366-248-July 7
IC 2022-0366-249-July 7
IC 2022-0366-251-July 7
IC 2022-0366-253-July 7-lines 1-8
IC 2022-0366-254-July 7- lines 1-9
IC 2022-0366-256-July 7, lines 1-8, 12, 15, and 17
IC 2022-0366-257-July 7, right side, lines 19-22, and 24 to 25
IC 2022-0366-259-July 7
IC 2022-0366-283-July 7
IC 2022-0366-284-July 7, line 6
IC 2022-0366-4-July 20 through IC 2022-0366-5-July 20
IC 2022-0366-6-July 20
IC 2022-0366-8-July 20 through IC 2022-0366-12-July 20
IC 2022-0366-13-July 20
IC 2022-0366-14-July 20 through IC 2022-0366-15-July 20
IC 2022-0366-16-July 20 through IC 2022-0366-17-July 20
IC 2022-0366-18-July 20 through IC 2022-0366-19-July 20
IC 2022-0366-20-July 20 through IC 2022-0366-21-July 20

IC 2022-0366-22-July 20 through IC 2022-0366-23-July 20
IC 2022-0366-24-July 20 through IC 2022-0366-28-July 20
IC 2022-0366-28-July 20 through IC 2022-0366-31-July 20.

40. After careful in camera inspection of the records described in paragraph 39, above, it is found that such records are law enforcement records not otherwise available to the public which were compiled in connection with the investigation of a crime.

41. It is found that the respondents' witness, Attorney Dina Scalco, testified that she conducted google searches and reviewed an Appellate Court case and briefs, and was unable to locate the names of the individuals contained in the records, described in paragraph 39, above, or any information that led her to conclude that the identities of any such individuals were publicly known.

42. It is also found that, due to the passage of time – more than 29 years in this case – there is apparently 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 Scalco explained the research she conducted, she did not establish through her testimony that the identities of anyone specifically identified in the in camera records, described in paragraph 39, above, were “not otherwise known”, nor is it apparent to the hearing officer based on a careful inspection of the in camera records.

43. In light of the foregoing, 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 39, above, would reveal the identity of a witness whose identity is not otherwise known, within the meaning of §1-210(b)(3)(A), G.S.

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

45. It is therefore found that the in camera records, or portions thereof, described in paragraph 39, above, are not exempt from disclosure pursuant to §1-210(b)(3)(A), G.S.

46. The respondents next claimed that the following in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., because they disclose investigatory techniques not otherwise known to the general public:

IC 2022-0366-1-July 7, line 4
IC 2022-0366-128-July 7 through IC 2022-0366-130-July 7
IC 2022-0366-232-July 7
IC 2022-0366-237-July 7
IC 2022-0366-284-July 7.

47. After careful in camera inspection, it is found that the respondents failed to prove that any of the records described in paragraph 46, above, 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.

48. It is therefore found that the records identified in paragraph 46, above, are not exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

49. The respondents next claimed that the following in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3)(G), G.S., because they disclose the name and address of the victim of a sexual assault under sections 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under sections 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof:

IC 2022-0366-6-July 7
IC 2022-0366-7-July 7 line 2
IC 2022-0366-9-July 7 line 6
IC 2022-0366-247-July 7.

50. After careful in camera inspection, it is found that the respondents failed to prove that the records, described in paragraph 49, above, reveal the name and address of the victim of a sexual assault under sections 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof, within the meaning of §1-210(b)(3)(G), G.S.

51. It is therefore found that the records identified in paragraph 49, above, are not exempt from disclosure pursuant to §1-210(b)(3)(G), G.S.

52. The respondents next claimed that the following in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(1), G.S.:

IC 2022-0366-4-July 7, lines 1 through 3, and lines 5 through 6
IC 2022-0366-10-July 7, lines 1 through 5
IC 2022-0366-11-July 7, lines 2 through 25
IC 2022-0366-12-July 7, lines 8 through 13
IC 2022-0366-217-July 7, line 19
IC 2022-0366-218-July 7, line 24
IC 2022-0366-251-July 7
IC 2022-0366-253-July 7
IC 2022-0366-254-July 7
IC 2022-0366-256-July 7
IC 2022-0366-257-July 7
IC 2022-0366-284-July 7
IC 2022-0366-285-July 7
IC 2022-0366-286-July 7 through IC 2022-0366-291-July 7

IC 2022-0366-32-July 20.

53. Section 1-210(b)(1), G.S., provides that “[n]othing in the Freedom of Information Act shall be construed to require disclosure of ... [p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.”

54. The Supreme Court ruled in Shew v. Freedom of Information Commission, 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 Information Commission, 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 Information Commission, 2011 WL 522872, *8 (Conn. Super. Ct. Jan. 20, 2011) (citations omitted).

55. 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) ... 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....

56. Based upon careful in camera inspection of the records described in paragraph 52, above, it is found that such records consist of, and contain, handwritten notes. At the hearing in this matter, the respondents testified that the records are pre-decisional recordkeeping, and memorializing of information, which may or may not be included in a final report. The respondents offered no specific evidence regarding the circumstances under which the notes were created.

57. In light of the foregoing, it is found that the respondents failed to prove that the records described in paragraph 52, above, constitute preliminary drafts or notes, within the meaning of §1-210(b)(1), G.S.

58. It is also found that the respondents failed to address, whether any of the records claimed to be exempt pursuant to §1-210(b)(1), G.S., and described in paragraph 52, above, are subject to mandatory disclosure pursuant to §1-210(e)(1), G.S.

59. It is further found that because the respondents failed to prove that the records identified in paragraph 52, 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.

60. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 52, above.

61. The respondents next claimed that the following in camera records, or portions thereof, are erased records and exempt from disclosure pursuant to §54-142a, G.S.:

IC 2022-0366-162-July 7 through IC 2022-0366-169-July 7
IC 2022-0366-213-July 7 through IC 2022-0366-216-July 7
IC 2022-0366-260-July 7 through IC 2022-0366-263-July 7.

62. Section 54-142a, 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.

63. After careful in camera inspection, it is found that no disposition information such as acquitted, pardoned, dismissed or nolle is contained within the in camera records.

64. It is also found that the respondents failed to present evidence regarding the disposition of the criminal charge with respect to the in camera records.

65. Consequently, it is found that the respondents failed to prove that the information contained in the camera records, described in paragraph 61, above, constitutes “information pertaining to an erased charge” within the meaning of §54-142a, G.S.

66. The respondents next claimed that the following in camera records, or portions thereof, contain the “date of birth” of individuals, and that such information is personally identifiable information, exempt from disclosure pursuant to the Commission’s decision in Docket # FIC 89-76; Eric Garrison v. Supervisor, Unclaimed Property Division, State of Connecticut, Office of the Treasurer, (FIC 89-76):

IC 2022-0366-5-July 7, lines 2 and 6
IC 2022-0366-7-July 7, line 2
IC 2022-0366-8-July 7, lines 3 and 8
IC 2022-0366-9-July 7, lines 2 and 6
IC 2022-0366-15-July 7, line 34
IC 2022-0366-16-July 7, lines 11 and 12.

67. It is found that the Commission addressed the disclosure of social security numbers in FIC 89-76, and not dates of birth. Based upon careful in camera inspection, it is found that the records described in finding 66, above, contain dates of birth and not social security numbers, which dates of birth are not addressed in FIC 89-76.

68. In sum, after consideration of all of the exemptions claimed by the respondents, it is found that the respondents failed to prove the applicability of such exemptions, with the exception of those records described in paragraphs 21, 24, 32, and 36, above. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding from the complainant the records at issue in this matter, with the exception of those records found to be non-responsive or exempt from disclosure, as described in paragraphs 19, 21, 24, 32, and 36, above.

69. 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" in §1-210(a) G.S., means, "quickly and without undue delay, taking into account all of the factors presented by a particular request ... [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request. See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

70. As was already found in paragraph 9, above, the respondents first provided the complainant with responsive records on April 28, 2023, (some nine months after the July 26, 2022 request) and thereafter on a rolling basis, concluding with their final production of records on July 13, 2023, approximately one year after the July 26, 2022 request in this matter.

71. It is found that the respondents failed to present evidence of the date, or dates, on which they first searched for records responsive to the complainant's July 26, 2022 request.

72. It is found that Attorney Scalo was the only staff person assigned to conduct a legal review of the approximately 600 pages of records, (and the 30 minute audio recording), located by the respondents in response to the request at issue. It is found that the time she spent reviewing the responsive records was approximately 40 hours.

73. It is found that, after taking into consideration all the reasons the respondents provided at the hearing that caused the delay, including, the level of staffing, the amount of records to be reviewed and redactions to be made to records prior to disclosure, the respondents failed to prove that their response was prompt.

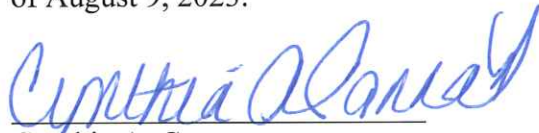
74. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide the complainant with all non-exempt responsive records.

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

1. Forthwith and within 30 days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant an unredacted copy of all the in camera records, with the exception of those records described in paragraphs 19, 21, 24, 32, and 36 of the findings, above, free of charge.

2. Henceforth, the respondents shall strictly comply with the promptness and disclosure 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, 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 Dina A. Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604 and Michael C. Jankovsky, Esq., Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission