

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John Cavanna,

Complainant,

Docket # FIC 2022-0187

against

Chief, Police Department, Town of Berlin;
Police Department, Town of Berlin; and
Town of Berlin,

Respondents

February 8, 2023

The above-captioned matter was heard as a contested case on September 26, 2022, at which time the complainant appeared and presented testimony, exhibits and argument on the complaint. The respondents did not appear. A continued hearing was held on November 21, 2022, at which time the complainant and the respondents appeared, and presented testimony, exhibits and argument on the complaint.¹

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 email dated April 18, 2022, the complainant requested that the respondents provide him with “all case reports, written statements, investigative notes (to include copies of officers [sic.] notepads) emails, and videos (including dash cam and body worn) pertaining to the investigation of a stolen firearm under Berlin case number 2000003790.”
3. It is found that, on or about April 22, 2022, the respondents provided copies of certain responsive records to the complainant. However, by email dated April 26, 2022, the respondents informed the complainant that they had withheld a copy of a sworn witness statement.
4. By email filed on April 26, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with a copy of the sworn witness statement.
5. Section 1-200(5), G.S., defines “public records or files” as:

¹ At the hearing on November 21, 2022, the respondents advised that they did not appear at the September 26, 2022 hearing because they did not receive notice of such hearing until two days after it convened.

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, 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 (1) inspect such records promptly during regular office or business hours . . . (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 "any 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 requested by the complainant are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing, the respondents contended that the statement was exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. The complainant disputed this contention, arguing that the statement did not constitute a signed witness statement within the meaning of §1-210(b)(3)(C), G.S., because the individual providing the statement was not a "witness," but instead, was the victim or complainant. The complainant also contended that the respondents should be required to provide him with a copy of the statement because they previously disclosed the identity of the individual who provided such statement when they disclosed a copy of the incident report to him.

10. On November 21, 2022, the hearing officer ordered the respondents to submit to the Commission for in camera inspection an unredacted copy of the statement withheld, along with an in camera index. On December 12, 2022, the respondents submitted the in camera record and index. On the index, the respondents claimed that the statement is a signed witness statement exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. Such record shall be hereinafter referenced as IC-2022-0187-1.

11. Section 1-210(b)(3), 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 said records would not be in the public interest because it would result in the disclosure of ... (c) signed statements of witnesses....

12. It is found that an individual's firearm was stolen from his motor vehicle in the Town of Berlin. It is further found that the incident was reported to the Town of Berlin Police Department and that a police department investigation ensued. It is further found that the individual whose firearm was stolen provided a statement to the police in the course of the investigation, and that this statement is the statement at issue.

13. Based on a careful in camera inspection, and the credible testimony of the Chief of the Police Department of the Town of Berlin, it is found that IC-2022-0187-1 is a record of a law enforcement agency not otherwise available to the public, and that such record was compiled in connection with the detection or investigation of a crime. It is further found that disclosure of IC-2022-0187-1 would not be in the public interest because it would result in the disclosure of a signed witness statement within the meaning of §1-210(b)(3)(C), G.S.

14. The complainant's contention that IC-2022-0187-1 is not a signed witness statement within the meaning of §1-210(b)(3)(C), G.S., because the individual who provided the statement was the victim or complainant, and not a "witness," is unavailing. The Commission has previously found that signed statements of individuals who are victims constitute witness statements within the meaning of §1-210(b)(3)(C), G.S. See, e.g., Docket #FIC 2004-026, Mustafa Bilal v. Chief, Police Department, City of East Hartford (December 14, 2003); Docket #FIC 2006-655, David Grant v. State of Connecticut, Department of Public Safety (November 14, 2007); and Docket #FIC 2007-205, Anderson v. Neil O'Leary, Chief, Police Department, City of Waterbury (March 26, 2008) (each finding that the signed statement of the victim constituted a signed witness statement within the meaning of §1-210(b)(3)(C), G.S.).

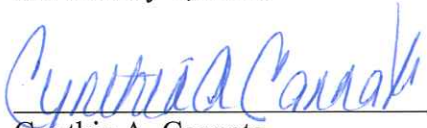
15. The complainant also contended that the signed statement is not exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., because the respondents disclosed the identity of the individual who provided the statement when they provided him with an unredacted copy of the incident report. Notwithstanding disclosure of the witness's identity in the incident report, the plain language of §1-210(b)(3)(C), G.S., categorically exempts signed witness statements from disclosure.

16. It is therefore concluded that IC-2022-0187-1 is exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 8, 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:

JOHN CAVANNA, 63 Woodland Street South, Glastonbury, CT 06073

CHIEF, POLICE DEPARTMENT, TOWN OF BERLIN; POLICE DEPARTMENT, TOWN OF BERLIN; AND TOWN OF BERLIN, c/o Attorney Jeffrey M. Donofrio, Ciulla & Donofrio, LLP, 127 Washington Avenue, PO Box 219, North Haven, CT 06473



Cynthia A. Cannata
Acting Clerk of the Commission