STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by FINAL DECISION

Cliff Brown,

Complainant

against Docket # FIC 2022-0161

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

Respondents March 22, 2023

The above-captioned matter was heard as a contested case on December 19, 2022, January 17, 2023 and February 7, 2023, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

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 March 24, 2021, the complainant requested that the respondents provide him with a copy of "all records, reports, media, investigative materials, and any other materials pertaining to Bridgeport PD Case Number 00D-1694", which involved the 2000 shooting death of Evon Brown.

3. It is found that on March 24, 2021, the respondents acknowledged receipt of the complainant's request.

4. It is found that on July 7, 2021, July 30, 2021, February 9, 2022, March 3, 2022, and March 10, 2022, the complainant contacted the respondents to request an update on the status of his pending March 24, 2021 request.

5. It is found that, on March 10, 2022, the respondents emailed the complainant, stating in relevant part, that "a search for records responsive to your request has been conducted, and, at this time, no responsive records have been located. However, your request has not been closed, and will continue to remain open and in progress – *your request has not been denied*." (Emphasis in original.)

6. By complaint filed April 11, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his

request for the records identified in paragraph 2, above.

7. At the time of the request, §1-200(5), G.S., provided:

> "[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, printed, photostated, photographed or recorded by any other method.[1]

8. 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.

9. 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."

10. 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.

11. It is found that on September 23 and 30, 2022, and October 3, 2022, more than 18 months following the initial request, the respondents disclosed to the complainant approximately 250 pages of redacted records, and withheld approximately 300 pages of additional responsive records.

12. At the hearing, the complainant contended that the respondents improperly withheld responsive records and did not promptly comply with his request.

13. First, the respondents contended that the complaint in this matter was not filed within thirty days of the denial, and therefore the Commission lacks subject matter jurisdiction over this matter.

14. Section 1-206, G.S., provides, in relevant part that:

> (a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right … within

[1] Public Act 21-2 (June Sp. Sess.) amended the definition of "public records or files" to also include data or information that is "videotaped."

> four business days of such request … Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.
>
> (b)(1) Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial ... For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.

15. As found in paragraph 4 and 5, above, on March 10, 2022, the complainant contacted the respondents to renew his request, identified in paragraph 2, above. It is found that, in response, the respondents neither provided the requested records nor denied the request within four business days of such request, or March 16, 2022. It is therefore found, pursuant to §1-206(a), G.S., that the respondents constructively denied the complainant's request on March 16, 2022.

16. It is further found that the complainant filed his complaint with the Commission 26 days later on Monday, April 11, 2022. It is therefore found that the notice of appeal in this matter was not filed more than thirty days after the denial of the request described in paragraph 2, above.

17. Accordingly, it is concluded that the Commission has subject matter jurisdiction in this matter.

18. Next, the respondents contended that the Commission lacks jurisdiction to address whether certain records were properly withheld from the complainant because the complainant did not specifically allege that the respondents violated the FOI Act by withholding such records. Such argument is unavailing, however, because the complainant clearly alleged in his complaint that the respondents violated the FOI Act by failing to provide all responsive records.

19. Pursuant to the Order of the hearing officer, on January 10, 2023, the respondents submitted the records, or portions thereof, claimed exempt from disclosure for in camera inspection, along with an in Index to Records Submitted for In Camera Inspection ("Index"). The in camera records are hereinafter referred to as IC-2022-0161-001 through IC-2022-0161-305.

20. The respondents first claimed that the in camera records, or portions thereof, are exempt from disclosure pursuant to §§1-210(b)(1), §1-210(b)(2), 1-210(b)(3)(A), 1-210(b)(3)(C), 1-210(b)(3)(E), 1-210(b)(19), 1-217, 14-10, 29-164f, and 52-142a, G.S.

21. However, during the hearing and by email dated March 6, 2023, the complainant withdrew his objection to the following claims of exemption: §§1-210(b)(2), 1-210(b)(3)(E) (limited to internal law enforcement codes only), 1-210(b)(19), 1-217, 14-10, and 29-164f, G.S. Consequently, such claims of exemption shall not be addressed further herein.[2]

22. First, the respondents contended that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(1), G.S.

23. With respect to §1-210(b)(1), G.S., such provision states 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."

24. It is found that the in camera records, or portions thereof, claimed exempt pursuant to §1-210(b)(1), G.S., constitute handwritten notes or drafts. The respondents' witness, records custodian Sergeant Michael Sigrist, testified, and it is found, that while he had not specifically reviewed each in camera record, he believed the respondents had a general policy of not disclosing notes or drafts while a case is pending. The witness further testified, and it is found, that he did not have such concerns as it related to a closed case, such as the matter that is the subject of the request at issue in this case.

25. It is found that the respondents failed to present evidence that they determined that the public interest in withholding each individual record, or portion thereof, clearly outweighed the public interest in disclosure. See Shew v. FOIC, 245 Conn. 149, 167 (1998)(where the town manager had not reviewed the documents, the required balancing test could not have been conducted).

26. Accordingly, it is found that the respondents failed to prove that such in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(1), G.S.

27. Therefore, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 24, above.

28. With respect to the records, or portions thereof, claimed to be exempt from disclosure pursuant to §1-210(b)(3), G.S., such statute 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

[2] Additionally, the respondents identified IC-2022-0161-007 and IC-2022-0161-086 through IC-2022-0161-089, as "nonresponsive." Such in camera records shall not be addressed further herein.

> intimidation if their identity was made known, ... (C) signed statements of witnesses, ... (E) investigatory techniques not otherwise known to the general public, ...

29. After careful inspection of the in camera records, 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.

30. With respect to the respondents' claim that certain information contained in the in camera records is exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., the records custodian testified, and it is found, that although he had no knowledge of whether any specific individual's identity, as set forth in the in camera records, is "not otherwise known", that the respondents' typically do not disclose any witness information, and that they presume that witnesses will be subject to threat, harm or intimidation.

31. It is found that the respondents failed to prove that disclosure of the specific information claimed exempt pursuant to §1-210(b)(3)(A), G.S., as set forth in the in camera records, would result in the disclosure of the identity of informants or witnesses not otherwise known whose safety would be harmed or who would be subject to threat or intimidation if their identity was made known.

32. Therefore, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 30, above.

33. With respect to the respondents' claim that 2021-0161-015 is exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., it is found that the respondents presented no evidence to establish that the in camera record constitutes a signed witness statement within the meaning of §1-210(b)(3)(C), G.S. After careful in camera inspection of such record, it is found that the respondents failed to prove that such record is a signed statement of a witnesses within the meaning of §1-210(b)(3)(C), G.S

34. Therefore, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 33, above.

35. With respect to the respondents' claim that certain records, or information contained therein, are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., it is found that the respondents' records custodian testified generally about investigatory techniques that the respondents may use, such as speaking with other law enforcement agencies and reviewing databases. However, it is found that the respondents presented no evidence to explain how any of the specific information claimed to be exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., constitutes an investigatory technique that is also not otherwise known to the public. After careful in camera inspection, it is found that the respondents failed to prove that such information is exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

36. Therefore, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 35, above.

37. Next, the respondents claimed that IC-2022-0161-002, and IC-2022-0161-084 and IC-2022-0161-085, described on the index as material or information pertaining to an erased charge, are exempt from disclosure pursuant to §52-142a, G.S.

38. 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 nolled.

39. In Commissioner, State of Connecticut Department of Emergency Services and Public Protection 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. The court analyzed the phrase "pertaining to [an erased] charge" and concluded that §54-142a, G.S., prohibits disclosure of transcripts, police reports, charging documents and records that disclose "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)). However, in State v. West, the Supreme Court concluded that photographs do not pertain to any specific criminal charge because they do not disclose "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." Id. at 496. Accordingly, the Court held that photographs are not subject to erasure pursuant to §52-142a, G.S.

40. In this case, it is found, after careful in camera inspection, that the charges identified in IC-2022-0161-002, and IC-2022-0161-084 through and IC-2022-0161-085 were nolled. However, it is also found that only the information contained in line 7 in IC-2022-0161-002, IC-2022-0161-084, and line 19 in IC-2022-0161-085 "pertain to" the nolled charge.

41. Therefore, it is found that the in camera records identified in paragraph 37, above, with the exception of IC-2022-0161-002 (line 7 only), IC-2022-0161-084, and IC-2022-0161-085 (line 19 only), are not exempt from disclosure pursuant to §52-142a, G.S.

42. Therefore, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 41, above.

43. Based upon the foregoing, it is concluded that the respondents violated the disclosure provisions contained in §§1-210(a) and 1-212(a), G.S., with respect to the records described in paragraphs 27, 32, 34, 36, and 41, above.

44. With respect to the complainant's contention that the respondents failed to provide access to such records promptly, 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.

45. The respondents contended that the delay in disclosure was the complainant's fault in that he did not identify himself as the arrestee in his request. However, such argument is unavailing.

46. First, it is found that the complainant's attorney regularly contacted the respondents' counsel during this time and offered to assist the respondents in any with compliance with his request, including offering to provide the respondents with additional information. However, it is found that at no time did the respondents request the name of the arrestee from the complainant. Second, it is found that responsive records were misfiled by the respondents under "miscellaneous." Third, the respondents presented no evidence that any efforts were taken to comply with the respondents' request until after the complainant filed an appeal with the Commission, well over one year from the date of the complainant's initial request.

47. Taking into consideration all of the factors presented, it is concluded that the respondents failed to provide the records described in paragraph 2, above, to the complainant promptly.

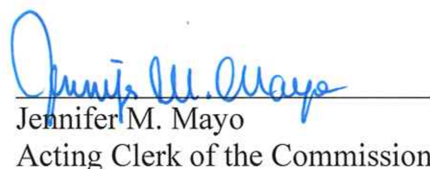
48. Accordingly, it is therefore concluded that the respondents violated the promptness provisions in §§1-210(a) and 1-212(a), G.S., under the facts of this case.

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

1. Forthwith, the respondents shall provide to the complainant a copy, free of charge, of all of the in camera records withheld from disclosure, with the exception of the in camera records no longer at issue, identified in paragraph 22, above, IC-2022-0161-002 (line 7 only), IC-2022-0161-084, and IC-2022-0161-085 (line 19 only).

2. 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 regular meeting of March 22, 2023.



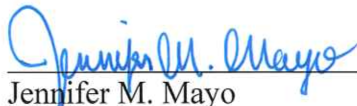
Jennifer M. Mayo
Acting Clerk of the Commission

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:

CLIFF BROWN, c/o Attorney Evan Parzych, CT 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 Dina A. Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604



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