

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

After Remand

Polly Nugent,

Complainant

against

Docket # FIC 2022-0174

Chief, Police Department, Town of
Guilford; Police Department, Town
of Guilford,

Respondents

March 22, 2023

The above-captioned matter was heard as a contested case on August 16, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic, and the state's response to it, the hearing was conducted remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

A Report of Hearing Officer, dated October 20, 2022, was considered, but not adopted, by the Commission at its November 16, 2022 regular meeting. The matter was tabled and the report again was considered by the Commission at its February 22, 2023 regular meeting. At the February 22, 2023 meeting, the Commission voted 3-2 against adoption of the report. The Commission voted to remand the matter to the hearing officer with the direction to modify the report consistent with the Commission's discussion and vote. The report has been modified accordingly.

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 February 24, 2022, the complainant requested from the respondent department a copy of the Police Incident Report for Case No 22-2121 (hereinafter "requested record").
3. It is found that by letter dated February 24, 2022, the respondent department acknowledged receipt of the request and informed the complainant that the request was being processed.
4. It is found that by letter dated March 24, 2022, the respondents denied the request.

5. By letter of complaint, dated April 14, 2022, and filed with the Freedom of Information (FOI) Commission (Commission) on April 19, 2022, the complainant appealed, alleging that the respondents violated the FOI Act by failing to provide her with the requested record, described in paragraph 2, above.

6. 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.

7. 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, 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.

8. 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.”

9. It is found that the requested record is a “public record”, within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that on January 18, 2022, the complainant was interviewed by a detective from the respondent department in connection with an allegation she made that many years ago she had been sexually assaulted.

11. It is found that although the respondent department determined that the statute of limitations had expired regarding the alleged sexual assault, it nonetheless, conducted an investigation.

12. It is found that the requested record is the police report compiled by the respondent department in connection with the department’s investigation of the alleged sexual assault, described in paragraphs 10 and 11, above (hereinafter “police report”).

13. At the hearing in this matter, the respondents claimed that the police report is exempt from disclosure because it constitutes uncorroborated allegations, within the meaning of §1-210(b)(3)(H), G.S.

14. The respondents submitted the police report to the Commission for an in camera inspection. The in camera records consist of 12 pages, which will be referenced herein as IC 2022-0174-01 through IC 2022-0174-12. IC 2022-0174-01 through IC 2022-0174-05 is a January 27, 2022, 5-page report based on the respondent department's interview of the complainant, referenced in paragraph 10, above. IC 2022-0174-06 is a February 9, 2022, 1-page supplemental report, indicating the respondent department's inability to make contact with the alleged perpetrator of the sexual assault. IC 2022-0174-7 through IC 2022-0174-12 is a February 15, 2022, 6-page supplemental report, based on the respondent department's interview of the alleged perpetrator of the sexual assault.

15. Section 1-210(b)(3)(H), G.S., provides, in relevant part, that nothing in the FOI Act shall require the disclosure 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 a crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216.

16. Section 1-216, G.S., which section is read in conjunction with §1-210(b)(3)(H), G.S., provides as follows:

[e]xcept for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

17. The Commission has interpreted the term "corroborate" to mean "to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence", "to state facts tending to produce confidence in the truth of a statement made by another", and "to give increased support to; make more sure or evident." See e.g., Rachel Gottlieb and the Hartford Courant v. State of Connecticut, Department of Public Safety, Docket #FIC 94-291 (May 24, 1995).

18. After a careful review of the in camera records, it is found that IC 2022-0174-01 through IC 2022-0174-12 are records of a law enforcement agency, not otherwise available to the public, which records were compiled in connection with the detection or investigation of crime.

19. It is further found that IC 2022-0174-01 through IC 2022-0174-12, are records that contain allegations which were corroborated.

20. Consequently, it is concluded, upon careful review, that the in camera records do not constitute uncorroborated allegations, subject to destruction, and are therefore not exempt from disclosure, pursuant to §§1-210(b)(3)(H) and 1-216, G.S.

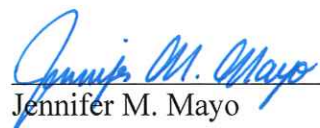
21. It is further concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

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 the complainant with an unredacted copy of IC 2022-0174-01 through IC 2022-0174-12, free of charge.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 22, 2023.



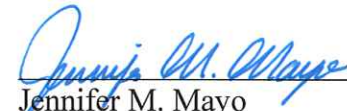
Jennifer M. Mayo
Acting Clerk of the Commission

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:

POLLY NUGENT, c/o Attorney Mark J. Sommaruga, Pullman & Comley LLC, 90 State House Square, Hartford, CT 06103

CHIEF, POLICE DEPARTMENT, TOWN OF GUILFORD; POLICE DEPARTMENT, TOWN OF GUILFORD; AND TOWN OF GUILFORD, c/o Attorney Peter C. Barrett, Town of Guilford, 31 Park Street, Guilford, CT 06437 and Patrick L. Deegan, Susman, Duffy & Segaloff, PC, 700 State Street, Suite 100, New Haven, CT 06511



Jennifer M. Mayo
Acting Clerk of the Commission