

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Frank Bell,

Complainant

against

Docket # FIC 2022-0325

Chief, Police Department, City of New
Britain; Police Department, City of New
Britain; and City of New Britain,

Respondents

May 10, 2023

The above-captioned matter was heard as a contested case on February 2, 2023, at which time 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 email dated June 28, 2022, the complainant requested that the respondents provide him with a copy of the following records (among others no longer at issue): “a police report ... and a sworn statement signed by Crystalee Leduc dated 7-19-21.”
3. It is found that, by email dated June 28, 2022, the respondents acknowledged the complainant’s request and immediately commenced a search. However, it is found that the respondents were unable to locate any responsive records and so notified the complainant.
4. It is found that, on or about July 18, 2022, the complainant contacted the respondents about the June 28, 2022 request. It is found that the respondents reiterated that they do not maintain any responsive records.
5. By letter of complaint filed July 25, 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.
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 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.

8. 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.”

9. 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.

10. It is found that, following receipt of the complaint at issue in this matter, the respondents conducted additional searches and were able to locate responsive records after expanding their search beyond the July 19, 2021 date initially provided by the complainant.

11. However, at the hearing in this matter, the respondents contended that the responsive records they located following the additional searches referenced in paragraph 10, above, were exempt from disclosure. The complainant disputed this contention.

12. Immediately following the hearing in this matter, the undersigned hearing officer issued an order to the respondents to submit all of the records claimed exempt for an in camera inspection, along with an Index to Records Submitted for In Camera Inspection (“Index”). On February 27, 2023, the respondents submitted the in camera records and index. On the index, the respondents identified the first in camera record as Record A “Police/Incident Reports” and claimed that such record is exempt from disclosure pursuant to §§1-215(a)(2)(A) and 1-215(e), G.S. (hereinafter referred to as IC-2022-0035-001A through IC-3033-0035-0009A). The respondents identified the second in camera record as Record B “Signed Statement of a Witness,” and claimed that such record is exempt from disclosure pursuant to §§ 1-210(b)(3)(C) and 1-215, G.S. (hereinafter referred to as IC-2022-0035-001B).

13. Section 1-215, G.S., provides, in relevant part, as follows:

(a) For the purposes of this section, “record of the arrest” means

(1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and

(2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. “Record of the arrest” does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) the name, address or other identifying information of any victim of 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, (3) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (4) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the

Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. . . . (emphasis added).

14. Section 1-215, G.S., exclusively governs law enforcement agencies' disclosure obligations under the FOI Act while a criminal prosecution is pending. In Commissioner of Public Safety v. Freedom of Information Commission, et al., 312 Conn. 513 (2014) ("Public Safety"), the Supreme Court interpreted §1-215, G.S., and ruled that during the pendency of a criminal prosecution, a law enforcement agency must disclose no more than basic police blotter information and one other piece of information, designated by the law enforcement agency: either a press release, the arrest or incident report, or other similar report of the arrest of a person. In response to Public Safety, the General Assembly enacted Public Act 15-164, *An Act Concerning the Disclosure of Arrest Records During a Pending Prosecution under the Freedom of Information Act*, which amended §1-215, G.S., by increasing law enforcement agencies' disclosure obligations under §1-215, G.S., to require disclosure of the "record of the arrest" within the meaning of §§1-215(a) and (b), G.S.

15. It is found that the in camera records identified in paragraph 12, above, relate to an August 9, 2021 arrest of the complainant for an offense that was alleged to have occurred on July 13, 2021. It is further found that, at the time of the appeal and hearing in this matter, a criminal prosecution related to such arrest was pending.

16. It is further found, based on a careful in camera inspection, that neither IC-2022-0035-001A through IC-3033-0035-0009A nor IC-2022-0035-001B constitute the "record of the arrest" within the meaning of §§1-215(a) and (b), G.S. It is therefore concluded that the respondents are not required to disclose such records to the complainant.¹

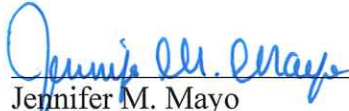
17. Accordingly, it is concluded that the respondents did not violate the disclosure provisions in §§1-210(a), 1-212(a) and 1-215, G.S.

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.
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¹ Because IC-2022-0035-001B does not constitute the "record of the arrest" within the meaning of §§1-215(a) and (b), G.S., and therefore is not subject to disclosure during a pending criminal prosecution, the Commission need not consider whether such record is also exempt from disclosure pursuant to §1-210(b)(3)(A), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 10, 2023.



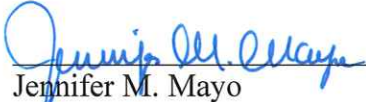
Jennifer M. Mayo
Acting Clerk of the Commission

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:

FRANK BELL, 23 Carlson Street, 3rd Floor, New Britain CT 06051

CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN; POLICE DEPARTMENT, CITY OF NEW BRITAIN; AND CITY OF NEW BRITAIN, c/o Attorney John F. Diakun, Corporation Counsel, City of New Britain, 27 West Main Street, New Britain, CT 06051


Jennifer M. Mayo
Acting Clerk of the Commission