

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Ira Alston,

Complainant

against

Docket # FIC 2022-0452

Karl Jacobson¹, Chief, Police Department,
City of New Haven; Police Department,
City of New Haven; City of New Haven,

Respondents

September 13, 2023

The above-captioned matter was heard as a contested case on May 31, 2023, and August 16, 2023, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Anthony Sinchak v. Freedom of Information Commission, Docket No. CV 03-0826293, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 August 25, 2022, the complainant requested that the respondents provide him with copies of the audio recordings of all witness statements contained in police case files numbered 99-76967 and 99-76968, among other records.²
3. It is found that, by postcard dated September 2, 2022, the respondents acknowledged the request.
4. By letter dated September 23, 2022 and filed September 29, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records responsive to the request described in paragraph 2, above. The complainant also requested that this Commission impose civil penalties against the respondents.

¹The caption of this case has been corrected to reflect the change in the respondent chief from “Otoniel Reyes” to “Karl Jacobson.”

² At the August 16, 2023 contested case hearing, the complainant withdrew his claims concerning his request for other records, including certain handwritten notes and evidence sheets.

5. It is found that, at the time that the complainant filed his complaint in this matter, he had not received any records or correspondence from the respondents.

6. Section 1-200(5), G.S., provides:

"Public 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:

Except 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 ... or (3) receive a copy of such records in accordance with the provisions of section 1-212.

8. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

9. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that, on or about April 20, 2023, in accordance with §1-210(c), G.S.,³ and the policy of the Department of Correction, the respondents sent copies of the recordings of the witness statements described in paragraph 2, above, to the Department of Correction's FOI Administrator, A. Campanelli, via an electronic link from Axon's "evidence.com." It is found that the respondents redacted the names, addresses, dates of birth, phone numbers and other identifying information of the witnesses to the crimes in question (hereinafter the "Witnesses")

³ Section 1-210(c), G.S., provides:

[w]henever a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Hospital facility, for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Hospital facility of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility or Whiting Forensic Hospital facility.

in the audio recordings that the respondents provided to the FOI Administrator through evidence.com. It is found further that the FOI Administrator, as of the date of the hearings, had not forwarded the redacted records to the complainant.

11. At the hearings, the respondents contended that the names, addresses, dates of birth, phone numbers and other identifying information of the Witnesses are exempt from disclosure pursuant to §1-210(b)(3)(A), G.S.

12. The complainant challenged the redactions, contending that the Witnesses testified at his trial and some of them testified (and provided their current addresses) at one of the complainant's recent habeas trials.

13. On June 1, 2023, the respondents submitted to the Commission an unredacted copy of the records for an in camera inspection, along with an in camera index. Such records shall be identified as IC-2022-0452-1 through IC-2022-0452-7.⁴ On the index to the in camera records, the respondents claimed that the Witnesses' names and other identifying information is exempt from disclosure pursuant to §1-210(b)(3)(A), G.S.

14. Section 1-210(b)(3)(A), 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 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 intimidation if their identity was made known....

15. It is found that the complainant was convicted of manslaughter in the first degree with a firearm and of carrying a pistol without a permit after a jury trial in 2002.

16. A lieutenant of the respondent department (the "Lieutenant"), who is the officer in charge of the records division, testified at the hearings on behalf of the respondents. The Lieutenant testified that, generally, the department strives to keep the names of witnesses confidential in order to err on the side of safety. The respondents did not offer, however, any testimony or evidence specifically with respect to the Witnesses.

17. It is found that five of the six Witnesses testified at the complainant's trial and that the identity of the other was revealed during the trial and otherwise known to the complainant.

18. After careful inspection of the in camera records, it is found that they are law enforcement records not otherwise available to the public compiled in connection with a murder investigation.

⁴ The respondents submitted seven recordings, however one recording was a duplicate; therefore, only six different recorded witness statements were submitted.

19. It is found that the respondents failed to prove that the identity of the Witnesses are not otherwise known; and further failed to prove that the safety of the Witnesses would be endangered, or that they would be subject to threat or intimidation if their identities were disclosed.

20. It is therefore found that the names and other identifying information included throughout the in camera records are not exempt from disclosure under §1-210(b)(3)(A), G.S.

21. With respect to the complainant's claim that the records were not provided to him "promptly," the Commission has held 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 (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 consideration all of the factors presented by a particular request.

22. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: 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. In addition, common sense and good will ought to be the guiding principles.

23. It is found that the respondent department receives hundreds of records requests per month, which must be processed along with the respondents' numerous other responsibilities.

24. The Lieutenant testified, and it is found, that the respondents acknowledged the complainant's records request described in paragraph 2, above, on September 2, 2022, but they failed to record the complainant's request in the logbook the respondent department keeps to track records requests. The Lieutenant testified further, and it is found, that he does not know what happened to the complainant's request after it was received by the department.

25. It is found that the respondents also failed to place the complainant's August 25th request in the file that the respondent department maintains specifically for the complainant's records requests.

26. It is found that the respondents made no efforts to search for responsive records until after January 4, 2023, when the respondents received a copy of the complaint, described in paragraph 4, above.

27. It is found, that, after receiving a copy of the complaint, described in paragraph 4, above, the respondents prioritized the search for records responsive to the complainant's August 25th request. It is also found that the recordings of the witness statements requested in paragraph 2, above, were originally recorded on cassette tapes and needed to be sent to a third-party vendor

to be digitized, which process took several weeks. It is found further that, after receiving the digitized audio recordings, the respondents reviewed, redacted, and re-reviewed them.

28. While the Lieutenant testified credibly that he acted promptly once he became aware, in January 2023, of the complainant's August 25, 2022 request, it is concluded that the respondents' over seven month delay in sending the responsive records to the FOI Administrator was not prompt.⁵

29. It is therefore concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

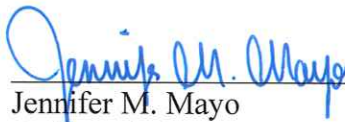
30. Under the facts and circumstances of this case, the Commission declines to consider the imposition of a civil penalty.

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

1. The respondents shall forthwith provide an unredacted copy of the in camera records in compact disc form to the Department of Correction's FOI Administrator, in accordance with §1-210(c), G.S., and the policy of the Department of Correction.⁶

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 September 13, 2023.



Jennifer M. Mayo
Acting Clerk of the Commission

⁵ The complainant also contended that the respondents violated the FOI Act by not sending the responsive records directly to him. However, it is found that the respondents complied with §1-210(c), G.S., pursuant to which they are not permitted to send the responsive records directly to the complainant, who is confined in a correctional institution or facility. The complainant may request such records directly from the Department of Correction and, if he does not receive such records in response to such request, the complainant may file a complaint with the Commission concerning that request.

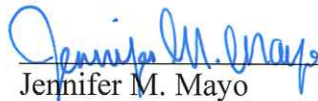
⁶ If the complainant does not receive the records from the Department of Correction, he may file a complaint with the FOI Commission as discussed in footnote 5, above.

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:

IRA ALSTON, #275666, Corrigan Correctional Center, 986 Norwich-New London Tpke., Uncasville, CT 06382

OTONIEL REYES, CHIEF, POLICE DEPARTMENT, CITY OF NEW HAVEN; POLICE DEPARTMENT, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Catherine E. LaMarr, Office of the Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Jennifer M. Mayo
Acting Clerk of the Commission