

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Patrick Lexis,

Complainant

against

Docket #FIC 2023-0156

Commissioner, State of Connecticut,
Department of Emergency
Services and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

February 28, 2024

The above-captioned matter was heard as a contested case on December 1, 2023, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. By motion dated and filed November 6, 2023, the Division of Criminal Justice (“DCJ”) requested permission to intervene in this matter. On November 9, 2023, the hearing officer granted such motion. 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 Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, 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 March 6, 2023, the complainant requested the following record: a “copy of body cam audio/video recording of Connecticut State Trooper Clifford Magloire #964 on August 2, 2022” (“video”).
3. It is found that, by letter dated March 10, 2023, the respondents denied the complainant’s request. It is also found that, in such letter, the respondents informed the complainant that the State’s Attorney had copies of the requested records and that the complainant should contact that office to obtain such records.
4. By letter of complaint, dated April 4, 2023 and filed April 10, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records, described in paragraph 2, above.

5. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

6. 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.

7. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

9. In its motion to intervene, the DCJ represented to the Commission that it was relying upon §1-215, G.S., as the basis for such intervention, and, specifically, §1-215(d), G.S., claiming that “when a records request is made to a law enforcement agency for any records that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending, the state’s attorney for such district shall be afforded the opportunity to intervene in any proceeding before the FOIC concerning such request.”

10. 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. . . .

11. Contrary to the DCJ's claims, however, at the hearing on this matter, the respondents represented, and it is found, that the requested video, described in paragraph 2, above, does not depict the arrest or custody of the complainant within the meaning of §1-215(c), G.S., but, rather, depicts an entirely separate interaction between the complainant and a law enforcement officer.

12. It is therefore concluded that §1-215(c), G.S., does not apply to the requested video, the DCJ's reliance on such statute as the basis for intervention under §1-215(d), G.S., was erroneous, and that the DCJ's intervention in this matter, on such grounds, was improper.¹

13. At the hearing, the respondents also represented that they were not claiming any exemptions to disclosure of the requested video, but, rather, were relying on the objection put forward by the DCJ.

14. In its motion to intervene, and at the hearing, the DCJ argued that the video constitutes evidence in three pending criminal cases and should be obtained by the complainant, or his attorney, through the discovery process, pursuant to Practice Book §§40-1 et seq., particularly §40-11. The DCJ further argued that disclosure of such video outside of the criminal court process would impede the ability for a fair trial. It is found that, beyond arguing that the video should be obtained through the discovery process, the DCJ did not claim any exemptions to disclosure of the video, pursuant to the FOI Act.

15. Section 1-213(b)(1), G.S., provides:

[n]othing in the Freedom of Information Act shall be deemed in any manner to: (1) [a]ffect the status of judicial records as they existed prior to October 1, 1975, nor to limit the rights of litigants, including parties to administrative proceedings, under the law of discovery of this state.

16. In Chief of Police v. Freedom of Information Commission, 252 Conn. 377 (2000), the Supreme Court ruled that questions of whether records are disclosable under the FOI Act are separate from questions of whether the same records are or would be discoverable in litigation, and that requests for records under the FOI Act are to be determined by reference to the

¹ The Commission notes that the Regulations of Connecticut State Agencies, §1-21j-31(a), sets forth the bases upon which a party can move to intervene in a proceeding under the FOI Act, other than the specific basis set forth in §1-215(d), G.S.

provisions of such Act, irrespective of whether they are or otherwise would be disclosable under the rules of state discovery. The Court concluded that, “the provisions of the [FOI] Act do not affect or limit discovery rights, and discovery rights do not affect or limit the provisions of the [FOI Act]. The two operate separately and independently.” Chief of Police, 252 Conn. at 396 (emphasis added).

17. Further, the Commission has long held that the rules of discovery, whether civil or criminal, cannot be used to limit the right to promptly receive copies of public records under the FOI Act. See Docket #FIC 2018-0650; Fred Olszewski v. Director of Human Resources, Town of Windsor; and Town of Windsor (July 24, 2019); Docket #FIC 2011-371; Robert Cushman v. Chief, State of Connecticut, University of Connecticut, Public Safety Division, University of Connecticut Police Department; and State of Connecticut, Public Safety Division, University of Connecticut Police Department (May 9, 2012); Docket #FIC 2001-490; Ethan Book, Jr. v. Chief, Police Department, City of Stamford (May 8, 2002); Docket #FIC 1999-444; Leo F. Smith v. Ivan Ramos, Office of the Corporation Counsel, City of Hartford (February 9, 2000).

18. It is concluded, therefore, that Practice Book §40-1 et. seq., cannot be interpreted so as to interfere with the disclosure of public records as prescribed by the FOI Act, and that the DCJ’s claims in this regard are unavailing.

19. It is found, however, that the requested video, described in paragraph 2, above, is a record that will be used as evidence in one or more pending criminal prosecutions against the complainant.

20. Although the respondents claimed no exemptions to the requested video and relied solely on the arguments of the DCJ, the Commission recognizes that §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.

21. As set forth in paragraph 10, above, §1-215(b), G.S., requires only the disclosure of the “record of arrest” during a pending criminal prosecution.

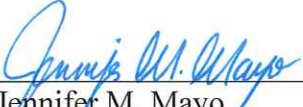
22. It is found that the requested video does not constitute a “record of arrest” as defined in §1-215(b), G.S., and it is concluded therefore that the respondents are not required to disclose such record to the complainant under the FOI Act while the criminal prosecution(s) remain pending.

23. Based on all of the foregoing, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), 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 dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 28, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

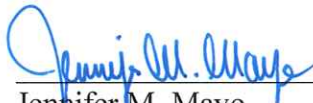
PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

PATRICK LEXIS, #370866, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Cynthia Isales, Department of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Kathryn Bare, Division of Criminal Justice, 300 Corporate Place, Rocky Hill, CT 06067



Jennifer M. Mayo
Acting Clerk of the Commission