

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Gerardo Torres,

Complainant

against

Docket # FIC 2023-0294

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

Respondents

May 22, 2024

The above-captioned matter was heard as a contested case on February 9, 2024 and March 20, 2024, 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, on May 16, 2023, via the respondents' online public records portal, the complainant requested that the respondents provide him with a copy of the following: "all records, reports, media, investigative materials and any other materials pertaining to Bridgeport PD Case Number 91-1623. The case involved in the 1991 shooting death of William Giusti [(the "Incident")]. The arrestee's name is Gerardo Torres."
3. It is found that the respondents acknowledged the complainant's request on May 16, 2023.
4. By complaint filed June 9, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records. Specifically, the complainant alleged that the respondents did not provide copies of the requested records or an opportunity to review such records.

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 section 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 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.

7. 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.”

8. It is concluded that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that on February 8, 2024, the respondents provided the complainant with a copy of responsive records. It is further found that the respondents withheld certain responsive records, in whole or in part, pursuant to several claims of exemption.

10. Pursuant to an order of the hearing officer, the respondents submitted to the Commission, on March 20, 2024, the responsive records, or portions thereof, that they claimed were exempt from disclosure for in camera inspection, along with an Index to Records Submitted for In Camera Inspection (“In Camera Index”). The in camera records are hereinafter referred to as IC-2023-0294-001 through IC-2023-00294-550.

11. At the hearings on this matter, the respondents presented testimony of one witness, a typist in the respondent police department’s records division, who is responsible for processing the majority of the records requests submitted to the respondent police department. Based on the typist’s testimony, it is found that the records described in paragraph 2, above, relate to the respondent police department’s investigation of the Incident and that five suspects had been charged and arrested for allegedly committing crimes related to the Incident. It is also found that, after receiving certain assistance from one other colleague in locating the records responsive to the complainant’s May 16, 2023 request, the typist reviewed and redacted such records.

12. During the hearings and on the In Camera Index, the respondents claimed that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(3)(A), 1-210(b)(3)(B), 1-210(b)(3)(C), 1-210(b)(3)(F), 14-10, 29-164f, and 52-142a, G.S. The respondents also claimed that certain personally identifiable information (Dates of Birth, Social Security Numbers, and Operator License Numbers) is exempt from disclosure in accordance with Garrison v. Supervisor, Unclaimed Property Division, State of Connecticut Office of the Treasurer, Docket #FIC 89-76 (Sept. 13, 1989) (“Garrison”).

13. During the hearings on this matter, the complainant contended that the respondents improperly withheld responsive records and did not promptly comply with his request. However, during the February 9, 2024 hearing, the complainant withdrew his objection to the claims of exemption made pursuant to Garrison (personally identifiable information) as well as §§14-10 and 29-164f, G.S. Consequently, such claims of exemption shall not be addressed further herein.

14. With respect to the respondents' claim that certain in camera records, or portions thereof, described on the In Camera Index as "Handwritten Notes" are exempt from disclosure pursuant to §1-210(b)(1), G.S., such provision provides 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."

15. In Shew v. Freedom of Info. Comm'n, the Court ruled that "the concept of preliminary [drafts or notes], as opposed to final [drafts or notes], should not depend upon...whether the actual documents are subject to further alteration..." but rather "[p]reliminary drafts or notes reflect that aspect of the agency's function that precede formal and informed decision making.... It is records of this preliminary, deliberative and predecisional process that...the exemption was meant to encompass." Shew v. Freedom of Information Commission, 245 Conn. 149, 165 (1998), citing Wilson v. Freedom of Info. Comm'n, 181 Conn. 324, 332 (1989) ("Wilson"). In addition, once the underlying document is identified as a preliminary draft or note, "[i]n conducting the balancing test, the agency may not abuse its discretion in making the decision to withhold disclosure. The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded." State of Connecticut, Office of the Attorney General v. Freedom of Info. Comm'n, 2011 WL 522872, *8 (Conn. Super. Ct. Jan. 20, 2011) (citations omitted).

16. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, and added to the FOI Act the language now codified in §1-210(e)(1), G.S. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S., which provides, in relevant part:

Notwithstanding the provisions of subdivisions (1) and (16) of subsection (b) of this section, disclosure shall be required of...

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency....

17. Based upon a careful inspection of the in camera records described in paragraph 14, above, it is found that such records are handwritten. It is further found that the typist testified that, based upon his recollection, he did not believe he had redacted or withheld any handwritten notes from the complainant in this case. Accordingly, it is found that the respondents failed to present evidence of the origin or meaning of each of the handwritten records that were redacted

or withheld. Nor did the respondents present any evidence regarding whether such handwritten records are drafts or notes that were integrated into a final report, which is not evident on the face of the records themselves. Additionally, 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.

18. It is further found that the respondents failed to address whether any of the records claimed to be exempt pursuant to §1-210(b)(1), G.S., are subject to mandatory disclosure pursuant to §1-210(e)(1), G.S.

19. In light of the foregoing, it is found that the respondents failed to prove that the records referenced in paragraph 14, above, constitute “preliminary drafts or notes” within the meaning of §1-210(b)(1), G.S.

20. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of the in camera records, or portions thereof, referenced in paragraph 14, above, to the complainant.

21. With respect to the respondents’ claim that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3), G.S., such provision 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 intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, ... (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes

22. After careful in camera inspection, it is found that the subject in camera records are records of law enforcement agencies not otherwise available to the public which were compiled in connection with the investigation of a crime, within the meaning of §1-210(b)(3), G.S.

23. With respect to the respondents’ claim that certain in camera records, or portions thereof, described on the In Camera Index as “Identifier of Witness Not Otherwise Known” are exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., it is found that the typist conducted a “google search” and reviewed certain media and court records with respect to the individuals named or identified in the camera records, but he was unable to find any information that led him to conclude that the identities of any such individuals were “publicly available.”

24. It is found that the typist did not discuss the case with any police detectives or investigators nor the Connecticut State's Attorney's Office and he was not aware of all of the witnesses who testified at the trials related to the Incident nor whether any of the witnesses were still living. The typist also testified that, based upon his review of the in camera records, most if not all of the witnesses had reported, in the 1990s, that they feared intimidation or harm.

25. At the hearing, the respondents argued that there was no evidence that would "rebut the presumption" that the identities of the witnesses were not otherwise known and that, because certain witnesses had feared intimidation and harm in the early 1990s, all of the witnesses were likely to suffer intimidation or harm, if their identities were disclosed at this time, despite the passage of approximately thirty years.

26. With respect to the respondents' claim that there exists a "rebuttable presumption" that the identity of the witnesses referenced in the in camera records is not otherwise known, no such presumption exists in the law. To the contrary, it is well settled that "[t]he burden of proving the applicability of an exception [to disclosure under the act] rests upon the party claiming it." City of Bridgeport v. Freedom of Info. Comm'n, 222 Conn. App. 17, 66 (2023), cert. denied, 348 Conn. 936 (2024) ("City of Bridgeport").

27. Moreover, the standard set forth in §1-210(b)(3)(A), G.S., is not whether the identities of the witnesses is "publicly available" on the internet three decades after the Incident occurred, as claimed by the respondents. The Connecticut Supreme Court has repeatedly held that "the burden of proving the applicability of an exemption under the act 'requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.'" City of Bridgeport, at 70, citing Director, Dep't of Info. Tech. of Town of Greenwich v. Freedom of Info. Comm'n, 274 Conn. 179, 193 (2005) ("Director"). Further, "generalized claims of a possible safety risk do not satisfy the [respondents'] burden of proving the applicability of an exemption from disclosure under the [FOI Act]." City of Bridgeport, at 70, citing Director, at 193.

28. It is found that the typist did not establish through his testimony that the identity of anyone specifically identified in the in camera records was "not otherwise known," nor is such a finding evident based on a careful inspection of the in camera records. Rather, it is found, based upon the in camera records themselves, that at least two of the witnesses identified in the in camera records testified at certain of the trials that related to the Incident. It is also found that, based upon a review of the in camera records, only two of the numerous witnesses had expressed fear of harm or intimidation in the 1990s, contradicting the typist's testimony that most, if not all, of the witnesses expressed such fear. It is also found that the typist improperly redacted the name of the examiner who performed the autopsy of the victim, based upon his belief that such information was irrelevant.¹

¹ It is also found, based upon the typist's testimony, that he improperly redacted the names of certain other unspecified witnesses he believed were "irrelevant" or "nonresponsive" to the complainant's May 16, 2023 request.

29. It is also found that the respondents failed to prove that the identities of the specific witnesses identified in the in camera records are “not otherwise known,” within the meaning of §1-210(b)(3)(A), G.S.

30. It is therefore concluded that the in camera records, or portions thereof, described on the In Camera Index as “Identifier of Witness Not Otherwise Known”, are not exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., and therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of such records, or portions thereof, to the complainant.

31. With respect to the respondents’ claim that certain in camera records, or portions thereof, described on the In Camera Index as “Identifier of Minor Witness” are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S., it is found, after careful in camera inspection, that all such withheld information would identify minor witnesses, within the meaning of §1-210(b)(3)(B), G.S. It is therefore concluded that such records are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of such records, or portions thereof, to the complainant.

32. With respect to the respondents’ claim that certain in camera records, described on the In Camera Index as “Signed Statement of Witness” are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., it is found, after careful in camera inspection, that all such records constitute signed statements of witnesses, within the meaning of §1-210(b)(3)(C), G.S. It is therefore concluded that such records are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of such records, or portions thereof, to the complainant.

33. With respect to the respondents’ claim that certain in camera records, or portions thereof, described on the In Camera Index as “Juvenile Arrest Record” are exempt from disclosure pursuant to §1-210(b)(3)(F), G.S., it is found, after careful in camera inspection, that all such records relate to arrest records of a juvenile, within the meaning of §1-210(b)(3)(F), G.S. It is concluded therefore that such records are exempt from disclosure pursuant to §1-210(b)(3)(F), G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of such records, or portions thereof, to the complainant.

34. The respondents also claimed that certain in camera records, or portions thereof, described on the In Camera Index as “Information Pertaining to Erased Charge” are exempt from disclosure pursuant to §54-142a, G.S. 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 nolle.

35. It is found that the typist reviewed the arrest records of the suspects alleged to have been involved in the Incident and that based upon the disposition information provided by the Connecticut Judicial Branch, two of the suspects were acquitted after trial. It is further found

that the typist withheld police, court and prosecutorial records, or portions thereof, relating to those two suspects.²

36. After careful in camera inspection, it is concluded that the information contained in the camera records, or portions thereof, described on the In Camera Index as “Information Pertaining to Erased Charge” is exempt from disclosure pursuant to the provisions of §54-142a, G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they did not provide a copy of those records, or portions thereof to the complainant.

37. Finally, with respect to the complainant’s contention that the respondents failed to provide prompt access to the requested records, 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.

38. As already found in paragraph 9, above, the respondents first provided records to the complainant on February 8, 2024, almost nine months after the date of the request, and less than one day prior to the first hearing date in this matter. It is further found that the number of pages reviewed by the respondents’ witness in this matter was approximately 550, though several of those pages were duplicates.

39. The typist testified, and it is found, that the respondents receive approximately thirty to fifty requests for records per week, involving varying numbers of pages of responsive records and that he is primarily responsible for processing such records requests, although one to two other employees at times also process records requests.

40. The typist testified, and it is found, that he began to search for responsive records within approximately one week after the respondents received the complainant’s May 16, 2023 request. He also testified, and it is found, that he had difficulty locating the records due to

² It is found that the respondents also withheld transcripts of the trials of the two suspects who were acquitted. In 1996, the legislature amended the erasure statute to provide that transcripts of court proceedings are not “court records” for purposes of the erasure statute. See Public Acts 1996, No. 96-63 (P.A. 96-63), codified as §54-142a(h), G.S. Before P.A. 96-63 was enacted, transcripts were within the scope of “court records” that were erased upon acquittal, dismissal or nolle of the charges, or an unconditional pardon. See Comm’r v. Freedom of Info. Comm’n, No. HHBCV146027085S, 2019 WL 4201551, at *10 (Conn. Super. Ct. Aug. 20, 2019). The amendment set forth in P.A. 96-63, that excluded court transcripts from the scope of the erasure statute, does not apply to charges that were erased before October 1, 1996, the effective date of the amendment. Id. It is found that, in this case, the two individuals described in paragraph 35, above, were acquitted of the charges related to the Incident prior to October 1, 1996, and therefore the transcripts at issue in this case are erased, pursuant to the then operative provisions of §54-142a, G.S.

unspecified issues with the respondents' archiving system. It is also found that, with the assistance of a co-worker, he was able to locate the records after approximately one month. The typist further testified, and it is found, that the records were in paper form and that he had to scan them into the respondents' computer system in order to use the respondents' redaction software. Based upon the typist's testimony, it is found that it took him approximately one week to scan the records and then another two to three months to review and redact the 550 pages of records, several of which were duplicates.

41. It is found that it took the respondents a total of approximately four and a half months to search for, locate, scan, review and redact the records responsive to the complainant's May 16, 2023 request. However, it is found that the respondents did not provide the redacted records to the complainant until almost nine months after his May 16, 2023 request and offered no specific evidence regarding the cause of the extra four plus months of delay.

42. Accordingly, it is found that the respondents failed to provide prompt access to the requested records. It is therefore concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., under the facts and circumstances of this case.

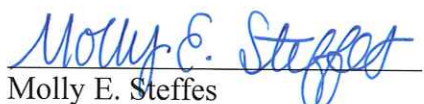
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith and within 30 days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with an unredacted copy of all of the in camera records, or portions thereof, identified in paragraphs 14 and 23, of the findings above, free of charge.

2. In complying with paragraph 1 of the order above, the respondents may withhold the personally identifiable information referenced within such records, in accordance with paragraph 13 of the findings, above.

3. Henceforth, the respondents shall strictly comply with the disclosure and promptness requirements of §§1-210 and 1-212, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 22, 2024.


Molly E. Steffes
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:

GERARDO TORRES, 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


Molly E. Steffes
Acting Clerk of the Commission