

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Frank A. Bailey,

Complainant

against

Docket # FIC 2023-0470

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

Respondents

September 11, 2024⁵

The above-captioned matter was heard as a contested case on April 17, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. On July 29, 2024, the undersigned hearing officer issued a Report of Hearing Officer in this matter. On August 13, 2024, the hearing officer withdrew that First Report and notified the parties, on August 16, 2024, that the hearing officer intended to revise the caption in this matter to reflect that the underlying request in this matter was made by an attorney on behalf of a minor client. Thereafter, without objection from the parties, the case caption was amended 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 August 11, 2023, the complainant requested that the respondents provide him with a copy of “any police report, incident report, complaint, investigation, and any other documentation/material regarding [a certain minor (hereinafter “the minor”)].”
3. It is found that, on August 19, 2023, the complainant sent the August 11, 2023 request described in paragraph 2, above, to the respondents via the respondents’ online portal known as GOVQA, as requested by the respondents.
4. It is found that, on August 19, 2023, the respondents acknowledged the request.
5. By letter dated and emailed September 15, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with a copy of the requested records.

6. It is found that, on November 28, 2023, the respondents sent an email to the complainant through the GOVQA system informing him that the respondents determined that the requested records concerned uncorroborated allegations subject to destruction pursuant to §1-216, G.S., and therefore such records were exempt from disclosure pursuant to §1-210(b)(3)(H), G.S.¹

7. 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.

8. 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.

9. 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.”

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

11. It is found that the complainant is an attorney representing the minor, who is a young child who attended preschool at the YMCA in Waterbury in May 2023. It is found that, on or about May 26, 2023, the minor’s grandmother reported to the respondent police department that she believed that one of the minor’s male teachers at the YMCA had inappropriately touched the minor.

12. It is found that the respondent police department construed the allegations of the minor’s grandmother described in paragraph 11, above, as possible criminal conduct. It is found that, in response to such allegations, the respondent police department conducted an investigation, which included interviewing the grandmother and the Child Development Director for the Waterbury YMCA (the “Director”) as well as referring the minor to Safe Haven of

¹ In their November 28, 2023 letter described in paragraph 6, above, the respondents cited “C.G.S. §1-210(b)(H),” but it is clear, based upon the Administrative Record and testimony, that the respondents intended to cite §1-210(b)(3)(H), G.S.

Greater Waterbury ("Safe Haven"), a social service resource for victims of sexual crimes, for an initial assessment. It is found that the respondent police department prepared a case/incident report in connection with the department's investigation of the allegations described in paragraph 11, above.

13. At the contested case hearing, the respondents contended that the requested records contain uncorroborated allegations and are therefore exempt from disclosure pursuant to §1-210(b)(3)(H), G.S. The complainant disputed this contention.²

14. At the contested case hearing, a detective in the Criminal Investigations Bureau Special Victims Unit (the "Detective") for the respondent police department and a lieutenant who, at the time of the complainant's August 11, 2023 request had served as the head of the Records Division for the respondent police department (the "Lieutenant"), testified on behalf of the respondents.

15. Based upon the Detective's testimony, it is found that the respondent police department partners with Safe Haven to conduct initial evaluations of alleged minor victims and, if a minor discloses a potentially criminal act or certain other preliminary criteria are met, a professional from Safe Haven or other trained professional will conduct a forensic interview of such child. It is found that a supervisor at Safe Haven, who is a Child and Family Advocate/Counselor Specialist (the "Supervisor"), met with and conducted an initial evaluation of the minor. It is found that the Supervisor relayed to the Detective statements the minor made to the Supervisor. It is further found that the Supervisor informed the Detective that "there was no disclosure of criminal activity." At the hearing in this matter, the Detective testified, and it is found, that he also determined that, based upon the minor's statements made to the Supervisor, the complainant did not disclose a criminal act.

16. It is found that the respondent police department reported the incident to the Department of Children and Families, which did not accept and investigate the report. Further, the Detective testified, and it is found, that the Director informed the Detective that the YMCA reported the allegations to the Connecticut Office of Early Childhood, which determined that the case was unsubstantiated.

17. On April 17, 2024, pursuant to an order of the hearing officer, the respondents submitted the requested records for in camera inspection, along with an in camera index. The in camera records are fairly described as a six-page Case/Incident Report (the "Police Report"). On the in camera index, the respondents contended that certain lines of the Police Report are exempt from disclosure pursuant to §1-210(b)(3)(H), G.S. At the hearing, the respondents claimed that the entire Police Report is exempt from disclosure pursuant to §1-210(b)(3)(H), G.S., and Bona v. Freedom of Info. Comm'n, 22 Conn. App. 622, 627-28 (1997) ("Bona") (holding that the entirety of a record containing uncorroborated allegations of criminal activity is exempt from disclosure).

² At the hearing on this matter, the complainant also claimed that the respondents' response to the complainant's records request was not prompt. However, in light of the Commission's determination herein that the respondents did not violate the FOI Act, the Commission need not analyze whether the records were promptly disclosed to the complainant.

18. 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.

19. 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.

20. 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, Rachel Gottlieb and the Hartford Courant v. State of Connecticut, Department of Public Safety, Docket #FIC 94-291 (May 24, 1995).

21. It is found that the respondent police department construed and investigated the allegations of the minor’s grandmother described in paragraph 11, above, as allegations of possible criminal activity.

22. After a careful in camera inspection of the Police Report, and after consideration of the testimony and other evidence provided at the hearing, it is found that the Police Report is a record of a law enforcement agency not otherwise available to the public which record was compiled in connection with the detection or investigation of a crime.

23. It is found that there are no similar accounts of the underlying events like those determined to exist in Gottlieb.

24. In addition, it is found that the allegations of the minor’s grandmother were uncorroborated because the department determined that the minor’s statements to Safe Haven did not disclose a criminal act. See Braasch v. Freedom of Info. Comm’n, 218 Conn. App. 488, 504–05 (2023) (holding that the Commission properly determined that the exemption in §1-

210(b)(3)(H), G.S., applied to records of a police investigation of potential criminal activity, the results of which demonstrated that the alleged conduct did not ultimately constitute criminal conduct).

25. At the hearing on this matter, the complainant challenged the scope and thoroughness of the respondent police department's investigation. However, the FOI Act does not authorize the Commission to consider, and make determinations concerning, whether the respondent police department conducted a sufficient investigation in order to obtain corroboration of the respective allegations. See Bona, 44 Conn. App. at 635 (holding that the Commission lacks authority "to review the actions of the law enforcement agency to see if the agency, in the opinion of the [C]ommission, has conducted a sufficient investigation in order to obtain ... corroboration.")

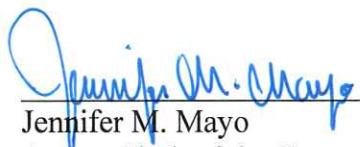
26. It is found that the Police Report contains uncorroborated allegations of criminal activity subject to destruction under §1-216, G.S., and that the requested Police Report is exempt from disclosure in its entirety pursuant to §§1-210(b)(3)(H) and 1-216, G.S., as well as Bona.

27. Accordingly, it is concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., by withholding the Police Report from the complainant.

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 September 11, 2024.

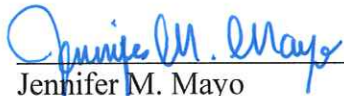

Jennifer M. Mayo
Acting Clerk of the Commission

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:

FRANK A. BAILEY, Tremont Sheldon PC, 64 Lyon Terrace, Bridgeport, CT 06604

CHIEF, POLICE DEPARTMENT, CITY OF WATERBURY; POLICE DEPARTMENT, CITY OF WATERBURY; AND CITY OF WATERBURY, c/o Attorney Richard J. Scappini, City of Waterbury, Office of Corporation Counsel, 235 Grand Street, 3rd Floor, Waterbury, CT 06702



Jennifer M. Mayo
Acting Clerk of the Commission