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FREEDOM OF INFORMATION



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Ramon Lopez,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-398

Chief, Police Department, City of Bridgeport; and
Police Department, City of Bridgeport,
Respondent(s)

February 1, 2016

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 24, 2016**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE February 11, 2016**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE February 11, 2016**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE February 11, 2016**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Ramon Lopez and Attorney Michael Brown
Attorney Richard G. Kascak
cc: Craig Washington

2016-02-01/FIC# 2015-398/Trans/wrbp/LFS/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ramon Lopez,

Complainant

against

Docket #FIC 2015-398

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

Respondents

January 12, 2016

The above-captioned matter was heard as a contested case on December 14, 2015, at which time the complainant and 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 Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, 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. By letter of complaint filed June 12, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the Commission order in Docket #FIC2014-402, Ramon Lopez v. Chief, Police Department, City of Bridgeport; and Police Department, City of Bridgeport (April 22, 2015), which required the respondents to search for records responsive to the complainant's request.

3. Section 1-200(5), G.S., defines "public records" as follows:

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

4. 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 ... receive a copy of such records in accordance with the provisions of section 1-212.

5. 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.”

6. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

7. The Commission takes administrative notice of its records and files in Docket #FIC2014-402, Ramon Lopez v. Chief, Police Department, City of Bridgeport; and Police Department, City of Bridgeport (April 22, 2015).

8. It is found that in Docket #FIC2014-402, the complainant requested records concerning six files with the following case numbers: O2D-194, 02D-128, 020202, 0200 30-252, 02-01546, and 020-0180.

9. The Commission found in Docket #FIC2014-402 that the respondents failed to comply with the request and provided inconsistent testimony about the scope and results of their search for records.

10. The Commission concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., and ordered the respondents to:

- a. Undertake a thorough search for responsive records;
- b. Execute an affidavit by the person or persons who performed such search, detailing the scope of the search and its results;
- c. Complete a redaction log of all responsive records, which log shall include a general description of each record withheld and the exemption relied upon.
- d. Provide a copy of such redaction log to the complainant, along with a copy of all non-exempt responsive records; and
- e. Provide notice of compliance with a) through d), above, to the Commission.

11. It is found that the respondents did not comply with the Commission’s order within the six-week period set by the Commission in its order. Indeed, the respondents did not comply at all until the respondents retained new counsel, who entered an appearance in this matter on August 12, 2015.

12. It is found that the respondents' new counsel then enlisted the services of a detective within the respondent police department, who performed a comprehensive and diligent search for responsive records. It is found that the detective searched the respondents' records room, the detective bureau and file storage area, the detective bureau crime scene unit, the cold file storage area, and the records storage archives. It is found that the detective also spoke with city and police department employees charged with the care, custody and control of records and evidence.

13. It is found that as a result of the detective's search, the respondents discovered case files for Case No. 02D-194, 02D-128, and 02D-180 (the latter is the correct number for the incorrectly transcribed "020-0180"), and records for an autopsy report 02-10546.

14. It is found that the respondents redacted the records in the case files and autopsy report, and provided the records to the complainant's attorney, along with a redaction log and, thereafter, an affidavit by the detective.

15. With respect to file numbers 020202, 0200 30-252, and 02-01546, referenced in paragraph 8, above, it is found that 020202 is an incomplete patrol division file number. It is found that the number indicates the year, month, and date of an incident about which the patrol division opened a file. It is found that the patrol division opened file 020202-018 concerning the complainant's case. It is found that when the detective bureau took over the case, the patrol file became 02D-194. It is found that 0200 30-252 is a non-existent file number. It is found that 02-01546 is the case number assigned to the autopsy report of the homicide victim in the complainant's case, 02D-194.

16. It is found that 02D-194 is a closed case, in that the complainant has been tried, convicted, and sentenced. It is found that 02D-128 and 02D-180 are "cold" cases but they remain open, meaning that they are unsolved homicides for which there is no statute of limitations and they are still under investigation by the respondents' detectives as time permits and evidence demands.

17. Turning first to 02D-194, the closed case, the respondents claim that §1-210(b)(3)(A) and (C), G.S., exempts most of the redacted information from disclosure.

18. Section 1-210(b)(3)(A) and (C), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of:

Records 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 said 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, ... (C) signed statements of witnesses [.]

19. It is found that the complainant was convicted after trial. It is found that the respondents failed to prove that the witnesses' identities are not otherwise known, based on the incident reports that indicate that the complainant was known to the victim and witnesses and in light of the fact that the complainant was convicted after trial.

20. It is found, therefore, that the respondents did not prove that the §1-210(b)(3)(A), G.S., applies as claimed by the respondents on "Redaction Log – Section One (Folder One).

21. With respect to §1-210(b)(3)(C), G.S., however, it is found that such exemption applies to witness statements as claimed by respondents on the redaction log.

22. The respondents claim that one page is exempt as "corrections records/information identifying inmate status," pursuant to §1-210(b)(18)(G), G.S., which permits an agency to withhold "[I]logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities" where the Commissioner of Correction has determined that disclosure of such records may result in a safety risk.

23. It is found that the respondents did not provide evidence to support such claim of exemption.

24. The respondents also claim that several pages are exempt as records of the National Crime Information Center. It is concluded that records obtained from the National Crime Information Center (NCIC) computerized database, are exempt from mandatory disclosure pursuant to §29-164f, G.S., as well as 42 U.S.C. §14616. Commissioner of Public Safety v. FOI Commission, 144 Conn. App. 821 (2013); see also Commissioner of Correction v. FOIC; United States of America v. FOI Commission, 307 Conn. 53 (2012).

25. Page 15 of the Redaction Log – Section One (Folder One) states that the redaction is to an erased record. Section 54-142a(e)(1), G.S., provides: "any law enforcement agency having information contained in ... erased records shall not disclose to anyone ... information pertaining to any charge erased under any provision of this section." It is concluded that §54-142a(e)(1), G.S., prohibits the respondents from disclosing records that are deemed to be erased.

26. It is found that the records identified in the Redaction Log for 02D-104 as exempt pursuant to §§1-210(b)(3)(A) and 1-210(b)(18), G.S., are instead "non-exempt responsive records" within the meaning of the Commission's order in Docket #FIC-2014-402, and the respondents should have provided such records to the complainant.

27. With respect to the records in file number 02-01546, the autopsy report, §19a-411, G.S., provides in relevant part:

(b) The report of examinations conducted by the Chief Medical Examiner, Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner, and of the autopsy and other scientific findings may be made available to the public only through the

Office of the Chief Medical Examiner and in accordance with this section, section 1-210 and the regulations of the commission [Commission on Medicolegal Investigations].

28. It is found that the records in file number 02-01546, are reports of examinations conducted by the Chief Medical Examiner, of the autopsy and other scientific findings, within the meaning of §19a-411, G.S. Accordingly, it is concluded that the respondents do not have the statutory authority to disclose such records, and did not violate the FOI Act by not providing them to the complainants.

29. With respect to the unsolved homicides in case numbers 02D-128 and 02D-180, the respondents claimed at the hearing in this matter that §1-210(b)(3)(C) and (D), G.S., exempts such records from mandatory disclosure.

30. Section 1-210(b)(3)(D), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of:

Records 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 said records would not be in the public interest because it would result in the disclosure of ... (D) information to be used in a prospective law enforcement action if prejudicial to such action[.]

31. The respondents' submitted oral testimony that these cases remain active, and that detectives review the evidence gathered in the investigation of the homicides as time permits and as new evidence is discovered. The respondents' detective testified that disclosure of records of their investigations, including the nature of their evidence, could put the respondents at a considerable disadvantage in solving the homicides.

32. It is found that the respondents proved that disclosure of the investigatory files in the open homicide cases would result in the disclosure of information to be used in a prospective law enforcement action and that such disclosure would be prejudicial to such action, within the meaning of §1-210(b)(3)(D), G.S.

33. It is found that §1-210(b)(3)(D), G.S., exempts such records from disclosure. It is also found that §1-210(b)(3)(C), G.S., exempts any signed witness statements from disclosure.

34. It is found that the respondents complied with the Commission's order in Docket #FIC2014-402, except for failing to provide a copy of all "non-exempt responsive records," as described in paragraph 26, above.

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 to the complainant, through his attorney, copies of all non-exempt responsive records, described in paragraph 26 of the findings of fact, above.

2. With respect to the record withheld as erased, on page 15 of the Redaction Log – Section One (Folder One) (see paragraph 25 of the findings of fact, above), the respondents shall verify whether the redacted information indicates a charge that was erased pursuant to §54-142a, G.S. If not, the respondents shall disclose such information.

3. Henceforth, the respondents shall comply with §§1-210(a) and 1-212(a), G.S.



Lisa Fein Siegel
as Hearing Officer