

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT
18-20 Trinity Street Hartford, CT 06106
Telephone: (860) 566-5682
Toll-free (CT only): (866) 374-3617
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Bettina Drew,

Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-318

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

Respondent(s)

April 6, 2016

Transmittal of Proposed Final Decision Dated April 6, 2016

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 dated April 6, 2016 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, April 27, 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 April 15, 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, the Commission requests that an **original and fourteen (14) copies** be filed *on or before April 15, 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 April 15, 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: Bettina Drew
Assistant Attorney General Stephen Sarnoski

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Second Report of
Hearing Officer

Bettina Drew,

Complainant

against

Docket #FIC 2015-318

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

Respondents

April 6, 2016

The above-captioned matter was scheduled to be heard on September 15, 2015, at which time the respondents appeared, but the complainant did not appear to prosecute the case. On September 24, 2015, the hearing officer issued a written report, recommending that the Commission dismiss this matter for failure to prosecute. On January 13, 2016, at a regular meeting of the Freedom of Information Commission, the Commission considered the hearing officer's written report, and, after hearing oral argument from the complainant, voted to remand the case to a hearing officer for a reopened contested case hearing. On February 18, 2016, the complainant and the respondents appeared for the reopened hearing, 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, by letter dated April 2, 2015, the complainant requested that the respondents provide her with copies of all records concerning the disappearance of her father Thomas Drew. It is found that the complainant indicated that she was looking for records created between January 2012 and April 2015. It is further found that the complainant enclosed a check for \$16.00 payable to the respondents to cover the costs of the requested records.
3. By letter dated May 4, 2015 and filed May 7, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI")

Act by failing to provide her with copies of the requested records described in paragraph 2, above.

4. 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, printed, photostated, photographed or recorded by any other method.

5. Section 1-210(a), G.S., provides in relevant part that:

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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

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

8. For purposes of background, it is found that, by letter dated February 23, 2015, the complainant made a request for a copy of the records described in paragraph 2, above. It is found that the February 23rd request was directed to Sgt. James Thomas of the respondents’ Central District Headquarters in Meriden, Connecticut. It is found that, by email dated March 3, 2015, the complainant forwarded her February 23rd request to Ms. Christina Lussier of the respondents’ Legal Affairs Unit. It is found that, by letter dated March 4, 2015, the respondents acknowledged the February 23rd request, indicating that the Legal Affairs Unit would review the request and prepare a response. Thereafter, it is found that the complainant renewed her request by issuing the April 2nd request described in paragraph 2, above. It is found that, under cover of letter dated July 14, 2015, the respondents forwarded the complainant responsive records. See ¶ 10, below.

9. It is found that, on July 21, 2007, the complainant's ninety-one year old father disappeared from his home, leaving many unanswered questions for his daughter. According to the complainant, from 2007 through 2012, the investigation concerning the disappearance was handled by the respondents' Police Troop B, and then, in 2012, the investigation was transferred to the respondents' Central Connecticut Major Crimes Unit ("major crimes unit"). The complainant contends that, prior to the case being transferred, she made several FOI requests and received responsive records, which were lightly redacted and useful to her. However, once the case was transferred to the major crimes unit, the complainant contends that the respondents' responses to her FOI requests were consistently unhelpful and overly-redacted.

10. It is found that, in response to the instant request for records, the respondents have disclosed a total of two hundred and ten pages to the complainant (that is, two hundred and seven pages prior to the February 18, 2016 reopened contested case hearing, and three additional pages on the day of said hearing).

11. At the conclusion of her testimony, the complainant moved, without objection, to have the Commission conduct an in camera inspection of the responsive records. The hearing officer granted the complainant's motion and ordered that the records be submitted to the Commission, without redactions.

12. The respondents contend that the records, which have either been redacted in part or entirely withheld, are exempt from public disclosure pursuant to the following statutory provisions: 1) §1-210(b)(2), G.S., (invasion of personal privacy); 2) §1-210(b)(3), G.S., (signed witness statements); 3) §1-17a, G.S., (photographs connected to an identification card); 4) §19a-411(b), G.S., (autopsy records); 5) §28-28a, G.S., (E-911 subscriber information); 6) §29-164f (records received pursuant to the National Crime Prevention and Privacy Compact); and 7) 28 U.S.C. §534 (statutory provision dealing with records contained in national crime information databases).

13. Evett Perez, who is a paralegal in the respondents' legal office and who reviewed and redacted the records in this case, appeared and testified at the reopened contested case hearing. In addition, Detective Tanya Compagnone also appeared at the reopened contested case hearing and was prepared to testify in this matter. However, as Detective Compagnone began to testify, the complainant became visibly upset and, as a result, the respondents determined that Detective Compagnone's testimony was not necessary.

14. On March 23, 2015, the respondents submitted the records at issue to the Commission for an in camera inspection (the "in camera records"). The in camera records, which will be referred to as IC-2015-318-1 through IC-2015-318-1055, are fairly described as various investigation records, compiled by the respondents in the years following the disappearance of the complainant's father.

15. In the index submitted with the in camera records, the respondents also claim, in addition to the exemptions raised at the reopened contested case hearing, that certain records are exempt from public disclosure pursuant to 1) §1-210(b)(3)(E), G.S., (record of a law

enforcement agency containing investigatory techniques not otherwise known to the general public); 2) §1-217, G.S., (residential address of a sworn law enforcement officer); 3) §14-10, G.S., (Connecticut motor vehicle record containing exempt information); and 4) §54-142a, G.S., (erased records).

16. The respondents first contend that 158 records are either entirely or partially exempt from disclosure pursuant to §1-210(b)(2), G.S.

17. Section 1-210(b)(2), G.S., provides, in relevant part, that nothing in the FOI Act shall require disclosure of “. . . personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy”

18. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993). The claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

19. It is found that none of the in camera records constitutes a “personnel” or “similar” file within the meaning of §1-210(b)(2), G.S. See Connecticut Alcohol & Drug Abuse Comm'n v. Freedom of Info. Comm'n, 233 Conn. 28, 41 (1995) (“CADAC”) (explaining that “a ‘personnel’ file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. If a document or file contains material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is ‘similar’ to a personnel file. Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered ‘similar’ to a personnel file for the purposes of [§1-210(b)(2)].”).

20. However, upon a careful review of the in camera records, it is found that IC-2015-318-658 through IC-2015-318-692 are “medical files” within the meaning of 1-210(b)(2), G.S. See CADAC, 233 Conn. at 41 (explaining that “a ‘medical’ file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual”).

21. It is found that the information contained in the records identified in paragraphs 20, above, are not matters of legitimate public concern and the disclosure of these records or portions thereof would be highly offensive to a reasonable person.

22. It is therefore concluded that such records are exempt from disclosure pursuant to §1-210(b)(2), G.S., and that the respondents did not violate the FOI Act by withholding these

records from the complainant.

23. It is found, however, that, other than the records described in paragraph 20, above, the respondents failed to prove that the remaining records do not pertain to a legitimate matter of public concern and that their disclosure would be highly offensive to a reasonable person. Accordingly, it is further concluded that the respondents violated the FOI Act by failing to disclose such records to the complainant.

24. The respondents next contend that the following in camera records are exempt from disclosure because they are signed written statements of witnesses, within the meaning of §1-210(b)(3)(C), G.S.: IC-2015-318-292 and IC-2015-318-293; IC-2015-318-295 through IC-2015-318-297; IC-2015-318-451 and IC-2015-318-452; IC-2015-318-507 and IC-2015-318-508; IC-2015-318-1021 and IC-2015-318-1022; IC-2015-318-1047; and IC-2015-318-1050 through IC-2015-318-1055.

25. Section 1-210(b)(3)(C) provides, in relevant part, that nothing in the FOI Act shall be construed to require the 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. . . (C) signed statements of witnesses. . . .

26. Based upon a careful review of the in camera records, it is found that all of the records identified in paragraph 24, above, are signed statements of witnesses, within the meaning of §1-210(b)(3)(C), G.S.

27. Accordingly, it is concluded that the records identified in paragraph 24, above, are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., and that the respondents did not violate the FOI Act by withholding these records from the complainant.

28. The respondents next contend that IC-2015-318-1020 is exempt from disclosure because it is photograph or computerized image of an individual, within the meaning of §1-17a, G.S.

29. Section 1-17a provides, in relevant part, as follows:

(b) No state agency may disclose to the public an individual's photograph or computerized image in connection with the issuance of an identification card or other document by such state agency, unless such individual has provided his or her express consent for such disclosure. Such consent shall not be required for disclosure in connection with any civil, criminal, administrative or arbitral proceeding in any court or

government agency or before any self-regulatory body, including the service of process, an investigation in anticipation of litigation, a law enforcement investigation, and the execution or enforcement of judgments and orders, pursuant to an order of any court provided the requesting party is a party in interest to such proceeding or pursuant to chapter 969.¹ (Emphasis supplied).

30. Section 1-17a(a)(3), G.S., defines a “requesting party” as “a legitimate business or an agent, employee or contractor of a legitimate business.”

31. Based upon a careful review of the in camera records, it is found that IC-2015-318-1020 is a “photograph or computerized image,” which is connected to “the issuance of an identification card,” within the meaning of §1-17a, G.S. In addition, no evidence was presented at the reopened contested case hearing that the subject in the photograph or computerized image has provided “express consent” for the disclosure of such record. Finally, it is found that the complainant is not a “requesting party,” within the meaning of §1-17a (a)(3), G.S.

32. Accordingly, it is concluded that IC-2015-318-1020 is exempt from disclosure pursuant to §1-17a, G.S., and that the respondents did not violate the FOI Act by withholding this record from the complainant.

33. The respondents next contend that IC-2015-318-496 through IC-2015-318-499 are exempt from disclosure pursuant to §19a-411, G.S., as records created by the Office of the Chief Medical Examiner.

34. Section 19a-411, G.S. provides, in relevant part, that:

(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. Any person may obtain copies of such records upon such conditions and payment of such fees as may be prescribed by the [Commission on Medicolegal Investigations], except that no person with a legitimate interest in the records shall be denied access to such records, and no person may be denied access to records concerning a person in the custody of the state at the time of death..... (Emphasis supplied).

¹ Chapter 969 entitled, “Registration of Sexual Offenders,” is not relevant to the analysis concerning the disclosure of IC-2015-318-1020.

35. Based upon a careful review of the in camera records, it is found that IC-2015-318-496 through IC-2015-318-499 are reports of examinations conducted by the Chief Medical Examiner, and autopsy and other scientific findings, within the meaning of §19a-411, G.S.

36. Accordingly, it is concluded that the respondents do not have statutory authority to disclose IC-2015-318-496 through IC-2015-318-499 to the complainant. As a result, it is further concluded that the respondents did not violate the FOI Act by withholding these records from the complainant.

37. The respondents next contend that the following records are exempt from disclosure pursuant to §28-28a, G.S., as records containing E-911 subscriber information: IC-2015-318-324; IC-2015-318-331 and IC-2015-318-332; IC-2015-318-339 through IC-2015-318-344; and IC-2015-318-638 through IC-2015-318-647.

38. Section 28-28a, G.S., provides, in relevant part, as follows:

(a) A telephone company or voice over Internet protocol service provider, as defined in section 28-30b, shall forward to any public safety answering point. . . the telephone number and street address of any telephone used to place a 9-1-1 call. . . . Subscriber information provided in accordance with this subsection shall be used only for the following purposes: (1) Responding to emergency calls; (2) investigating false or intentionally misleading reports of incidents requiring emergency service, or (3) enabling emergency notification systems. Subscriber information provided pursuant to this subsection and any subscriber information or any telephone number, mailing address or electronic mail address provided to the state in order for the state to use such information in connection with an emergency notification system shall be confidential and shall not be subject to disclosure pursuant to the Freedom of Information Act. . . .

39. Based upon a careful review of the in camera records, it is found that all of the records identified in paragraph 37, above, are “subscriber information,” within the meaning of §28-28a (a), G.S.

40. Accordingly, it is concluded that the records identified in paragraph 37, above, are exempt from disclosure pursuant to §28-28a, G.S., and that the respondents did not violate the FOI Act by withholding these records from the complainant.

41. The respondents next contend that the following records are exempt from disclosure pursuant to §29-164f, G.S., as NCIC² records: IC-2015-318-285 and IC-2015-318-286; IC-2015-318-478 through IC-2015-318-482; IC-2015-318-516 and IC-2015-318-517; IC-2015-318-533; IC-2015-318-554 and IC-2015-318-555; IC-2015-318-848; IC-2015-318-1005; IC-2015-318-1023 through IC-2015-318-1032; and IC-2015-318-1049.

42. The respondents also contend that portions of the following records are exempt from disclosure pursuant to §29-164f, G.S., because they contain an NCIC identification number: IC-2015-318-456; IC-2015-318-477; IC-2015-318-515; IC-2015-318-531; and IC-2015-318-543.

43. Section 29-164f, G.S., provides, in relevant part, as follows:

The National Crime Prevention and Privacy Compact is hereby entered into and enacted into law with any and all of the states and the federal government legally joining therein. . . .

44. In Commissioner of Public Safety v. FOIC, et al., 144 Conn. App. 821, 827 (2013), the Appellate Court clarified that, “the compact provides that the NCIC database is to be used for limited purposes authorized by law, such as background checks, and that NCIC records may only be used for official purposes.” The Court concluded that §29-164f, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S. Id. at 831.

45. Based upon a careful review of the in camera records, it is found that all of the records identified in paragraph 41, above, and the portions of the records described in paragraph 42, above, are NCIC records or contain NCIC information, within the meaning of §29-164f, G.S.

46. Accordingly, it is concluded that records identified in paragraph 41, above, and the portions of the records described in paragraph 42³, above are exempt from disclosure pursuant to §29-164f, G.S., and it is further concluded that the respondents did not violate FOI Act by withholding such records or portions of records from the complainant.

47. The respondents also contended that records that are exempt pursuant to §29-164f, G.S., are also exempt pursuant to 28 U.S.C. §534. 28 U.S.C. §534 deals with the exchange of federal records, including records contained in national crime information databases, between federal and state authorities. However, because the analysis pursuant to §29-164f, G.S., is sufficient to address the respondents’ concerns with regard to records containing federal criminal history information, the Commission need not address the arguments raised pursuant to 28 U.S.C. §534.

² NCIC stands for the “National Crime Information Center,” a computerized database of criminal history information, which is maintained by the Federal Bureau of Investigation.

³ The Commission notes that IC-2015-318-861 also contains an NCIC identification number which, while not claimed as exempt on the index to the in camera records, may also be redacted.

48. In the index to the in camera records, the respondents contend that the following records are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., because they reveal investigatory techniques of a law enforcement agency not otherwise available to the general public: IC-2015-318-58 through IC-2015-318-76; IC-2015-318-534 through IC-2015-318-541; IC-2015-318-544 through IC-2015-318-552; IC-2015-318-861 through IC-2015-318-873; IC-2015-318-917 through IC-2015-318-951; and IC-2015-318-955 through 1001.

49. Section 1-210(b)(3)(E) provides, in relevant part, that nothing in the FOI Act shall be construed to require the 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. . . (E) investigatory techniques not otherwise known to the general public. . . .

50. Based upon a careful review of the in camera records, it is found that all of the records identified in paragraph 48, above, are record of a law enforcement agency which were compiled in connection with the detection of investigation of crime and which contain investigatory techniques not otherwise known to the general public, within the meaning of §1-210(b)(3)(E), G.S.

51. Accordingly, it is concluded that the records identified in paragraph 48, above, are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., and that the respondents did not violate the FOI Act by withholding these records from the complainant.

52. In the index to the in camera records, the respondents also contend that a portion of the following record is exempt from disclosure pursuant to §1-217, G.S., because it contains the residential address of a law enforcement officer: IC-2015-318-696.

53. Section 1-217, G.S., entitled, "Nondisclosure of residential addresses of certain individuals," provides, in relevant part, as follows:

(a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency: . . . (2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Environmental Protection

54. Based upon a careful review of the in camera records, it is found that IC-2015-318-696 contains the residential address of a law enforcement officer, within the meaning of §1-217, G.S.

55. Accordingly, it is concluded that the portions of IC-2015-318-696 that contain the residential address of a law enforcement officer are exempt from disclosure pursuant to §1-217, G.S., and that the respondents did not violate the FOI Act by withholding the portions of this record from the complainant.

56. In the index to the in camera records, the respondents also contend that portions⁴ of the following records are exempt from disclosure pursuant to §14-10, G.S., as information contained in a Connecticut Department of Motor Vehicles record which may not be disclosed: IC-2015-318-294; IC-2015-318-797 and IC-2015-318-798; IC-2015-318-819 and IC-2015-318-820; IC-2015-318-847; and IC-2015-318-857.

57. Section 14-10(c)(2), G.S., provides, in relevant part, as follows:

[b]efore disclosing personal information pertaining to an applicant or registrant from such motor vehicle records or allowing the inspection of any such record containing such personal information in the course of any transaction conducted at [the] . . . main office, the commissioner shall ascertain whether such disclosure is authorized under subsection (f) of this section, and require the person or entity making the request to (A) complete an application that shall be on a form prescribed by the commissioner, and (B) provide personal identification satisfactory to the commissioner. . . .

58. "Personal information," as that term is used in §14-10(c), G.S., is defined as ". . . information that identifies an individual and includes an individual's photograph or computerized image, Social Security number, operator's license number, name, address other than the zip code, telephone number, electronic mail address, or medical or disability information, but does not include information on motor vehicle accidents or violations, or information relative to the status of an operator's license, registration or insurance coverage." See §14-10(a)(3), G.S.

59. "Motor vehicle record," as such term is used in §14-10(c), G.S., is defined as "any record that pertains to an operator's license, instruction permit, identify card, registration, certificate of title or any other document issued by the Department of Motor Vehicles." See §14-10(a)(2), G.S.

⁴ The Commission notes that the respondents have highlighted in yellow those portions of the in camera records that they claim are exempt from disclosure.

60. Subsection 14-10(f), G.S., provides, in relevant, part:

The commissioner [of motor vehicles] may disclose personal information from a motor vehicle record to. . . (2) Any individual, organization or entity that signs and files with the commissioner, under penalty of false statement as provided in section 53a-157b, a statement on a form approved by the commissioner, together with such supporting documentation or information as the commissioner may require, that such information will be used for any of the following purposes: (A) In connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories. . . .

61. Based upon a careful review of the in camera records, it is found that portions of the records identified in paragraph 56, above, do contain information that pertains to an operator's license, instruction permit, identify card, registration, or certificate of title, within the meaning of §14-10(c), G.S., and therefore such portions are "motor vehicle records."

62. Accordingly, it is concluded that portions of the records identified in paragraph 56, above, are exempt from disclosure pursuant to §14-10, G.S., and that the respondents did not violate the FOI Act by withholding such portions of the records from the complainant.

63. Finally, in the index to the in camera records, the respondents also contend that portions⁵ of the following records are exempt from disclosure pursuant to §54-142a, G.S., as erased records: IC-2015-318-30, and IC-2015-318-1014 through IC-2015-318-1019.

64. Section 54-142a, G.S., entitled "Erasure of Criminal Records," provides, in relevant part, as follows:

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. . . .

. . . .

(e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of

⁵ The Commission notes that the respondents have highlighted in yellow those portions of the in camera records that they claim are exempt from disclosure.

the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

65. Section 54-142c, G.S., further provides, in relevant part, as follows:

(a) The clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter.

66. For purposes of §54-142c, G.S., a “criminal justice agency” is defined as including “any . . . government agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice.”

67. It is found that the respondent agency is a criminal justice agency, within the meaning of §54-142c, G.S.

68. However, because no evidence was offered at the contested case hearing to support this exemption, and because it was not apparent from the face of the records that the identified portions were exempt pursuant to §54-142c, G.S., by order dated March 30, 2016, the hearing officer issued an order directing the respondents to submit an affidavit indicating the steps that they took to confirm that the indicated portions of the records identified in

paragraph 62, above, have been erased.

69. On April 5, 2016, the respondents filed their affidavit with the Commission.

70. It is found that, in order to confirm whether certain criminal arrest information contained in the in camera records had been erased, the respondents first checked the Judicial Branch's website for pending cases or convictions for the named individual. Upon finding no information on the Judicial Branch's website, it is found that the respondents next requested that the State Police Bureau of Identification (the "SPBI") conduct a criminal history search for the named individual. It is found that the search conducted by the SPBI revealed no criminal history information whatsoever concerning the named individual. It is therefore found that, based on the results of the SPBI's search, the respondents were able to determine that the information contained in the in camera records had been erased.

71. Based upon the evidence contained in the respondents' affidavit, it is found that portions of the records identified in paragraph 63, above, contain information that has been erased, within the meaning of §54-142c, G.S.

72. Accordingly, it is concluded that portions of the records identified in paragraph 63, above, are exempt from disclosure pursuant to §54-142c, G.S., and that the respondents did not violate the FOI Act by withholding such portions of the records from the complainant.

73. Finally, it is concluded that with regard to the records claimed exempt from disclosure pursuant to §1-210(b)(2), G.S., as an invasion of personal privacy, other than those records specifically identified in paragraph 20, above, the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by denying the complainant access to the 158 records described in paragraph 16, 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 the complainant with a copy of the 158 records referred to in paragraph 16, of the findings, above, free of charge. In complying with this order, the respondents may withhold the records identified in paragraph 22, of the findings, above. The respondents may also, consistent with this Commission's precedent, redacted from these records social security numbers and personal bank account and routing numbers.



Valicia Dee Harmon
as Hearing Officer