

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Latone James,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-386

Chief, Police Department, City of Waterbury;
Police Department, City of Waterbury;
Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,
Respondent(s)

May 18, 2012

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, June 13, 2012**. 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 June 1, 2012**. 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 June 1, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE June 1, 2012**, 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: Latone James, Gary S. Roosa, Esq.
Kevin J. Daly, Esq., James Neil, Esq.
cc: Kristine Barone

5/18/12/FIC# 2011-386/Trans/wrbp/KKR//PSP

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Latone James,

Complainant

against

Docket #FIC 2011-386

Chief, Police Department, City of
Waterbury; and Police Department,
City of Waterbury; Commissioner,
State of Connecticut, Department of
Correction; and State of Connecticut,
Department of Correction,

Respondents

May 18, 2012

The above-captioned matter was heard as a contested case on March 15, 2012, and May 15, 2012, at which times the complainant and the respondents appeared¹ 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, 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 July 11, 2011, the complainant made a request to the respondent Police Department (together with Chief, Police Department, City of Waterbury, shall be referred to herein as "police respondents") for copies of police reports, warrants, witness statements, 911 tapes/transcripts and statements made to Det. Mike Ricci, related to "a murder that took place at 294 Mills Street, in Waterbury on February 26, 1995."
3. It is found that the police respondents received the request, described in paragraph 2, above, located 65 pages of records responsive to the request, and forwarded such records, unredacted, to the complainant, via the Department of Correction's freedom of information

¹ Only the Chief, Police Department, City of Waterbury, and Police Department, City of Waterbury, appeared at the March 15, 2012 hearing.

administrator. In addition, it is found that the police respondents withheld from the complainant approximately 36 pages of responsive records, consisting of witness statements, which it claims are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S. The police respondents submitted such records, prior to the hearing in this matter, for in camera review by the Commission.

4. By letter of complaint dated July 20, 2011, and filed on July 22, 2011, the complainant appealed to this Commission, alleging that the police respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the request described in paragraph 2, above.

5. It is found that the Department of Correction received the 65 pages of records, described in paragraph 3, above, from the police respondents, and that Counselor Treatment Officer Craig Washington reviewed such records to determine whether their disclosure would constitute a safety or security risk under §1-210(b)(18), G.S. It is found that, upon such review, CTO Washington determined that disclosure of certain names, addresses and phone numbers contained in the records, and four or five pages of records, consisting of a photograph lineup and fingerprints, would constitute a safety or security risk. He therefore withheld this information from the complainant, but provided the remainder of the records to him.

6. On April 10, 2012, at the request of the complainant, the Commissioner, State of Connecticut, Department of Correction and State of Connecticut, Department of Correction (collectively, the “DOC respondents”) were added as respondents, and the case caption was amended accordingly.

7. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. 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 . . . (3) receive a copy of such records in accordance with 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 found that, to the extent that the respondents maintain the records described in paragraph 2, above, such records are public records.

11. At the hearing in this matter, the complainant stated that he was dissatisfied with the records provided to him by the police respondents because certain pages were missing: page 2 of his arrest warrant application; page 1 of the supplemental report, and one page of the multiple-page property record list. The complainant also contested the withholding of the witness statements.

12. However, it is found that the police respondents conducted a thorough and diligent search for the records, described in paragraph 2, above. It is also found that: page 2 of the arrest warrant application is missing and cannot be located; the respondents did not locate any 911 tapes or transcripts pertaining to the incident in question, or any statements made to Det. Mike Ricci. It is further found that page 1 of the supplemental report and one page of the property record list were not provided to the complainant inadvertently. At the hearing in this matter, the police respondents stated that such pages would be promptly forwarded to the complainant.

13. With regard to the witness statements, §1-210(b)(3)(B), G. S., permits nondisclosure 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 ... signed statements of witnesses.”

14. It is found that the in camera records are records of law enforcement agencies not otherwise available to the public and were compiled in connection with the detection or investigation of crime, within the meaning of §1-210(b)(3)(B), G. S. It is also found that the in camera records are signed statements of witnesses, within the meaning of §1-210(b)(3)(B), G. S., and consequently, permissibly exempt from disclosure.

15. Based upon the findings in paragraphs 12 through 14, it is concluded that the police respondents did not violate §§1-210(a), and 1-212(a), G.S.

16. With regard to the information redacted or withheld by the DOC respondents, the complainant stated at the hearing that he did not contest the redaction of the names, addresses or phone numbers. However, the complainant argued that he should be entitled to copies of the photo lineup and the fingerprints, particularly because, he claimed, he had a copy of such photos at one time.

17. Section 1-210(b)(18), G.S. provides, in relevant part, that “[n]othing in the Freedom of Information Act shall be construed to require disclosure of:

Records, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or

the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction....

18. At the hearing in this matter, Counselor Supervisor Christine Barone, testified that disclosure of copies of the fingerprints and photos may result in a safety risk because such records could be used for retaliatory or intimidation purposes inside the facility.

19. As such reason does not appear to be “pretextual...or irrational,” it is found that such records are permissibly exempt from disclosure. See Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, Judicial District of New Britain, Docket No. CV-106006278S (April 5, 2012, Cohn, J.).

20. Accordingly, it is found that the DOC respondents did not violate the FOI Act as alleged in the complaint.

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.



Kathleen K. Ross
As Hearing Officer