FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by FINAL DECISION

Omar Parra, Jr.,

Complainant

against Docket #FIC 2016-0236

Chief, Police Department, City of Stamford; Police Department, City of Stamford; City of Stamford; Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,

Respondents February 22, 2017

The above-captioned matter was heard as a contested case on July 11, 2016 at which time the complainant and the respondents Chief, Police Department, City of Stamford; Police Department, City of Stamford; and City of Stamford appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The hearing was continued and thereafter the Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and the State of Connecticut, Department of Emergency Services and Public Protection were added as respondents. The matter was reopened on October 6, 2016, at which time the complainant and all respondents appeared, stipulated to certain facts 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. It is found that, by letter dated March 10, 2016 to the respondents, the complainant made a request for certain records related to two case numbers identified by the complainant as #13-1227-0355 and 13-0521-0267. He requested that the fee for the copying costs be waived.

3. By letter dated March 17, 2016, and filed on March 21, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his March 10, 2016 request.

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 described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that, by letter dated June 10, 2016, the respondents sent some responsive records to the Department of Correction pursuant to §1-210(c), G.S., which department, after conducting its own review, forwarded the records to the complainant on July 8, 2016.

9. It is found that the records the respondents provided were related only to case number #13-0521-0267 and that they withheld all records related to case number #13-

1227-0355, claiming such records were exempt from disclosure pursuant to §1-210(b)(3), G.S.

10. At the hearing on this matter, however, the respondents claimed that all the records related to case number #13-1227-0355 were exempt from disclosure pursuant to §1-210(b)(19), G.S., claiming that the disclosure of the records would endanger the life of a confidential informant.

11. Section 1-210(b)(19), G.S., provides in relevant that:

> Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A)… (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency….

12. It is found that the Commissioner of the Department of Emergency Services and Public Protection ("DESPP"), after consultation with the respondent chief, concluded that there are reasonable grounds to believe that the release of those portions of the records that could reveal the identity of an informant may result in a safety risk to that individual or others" and directed the respondents to withhold such portions.

13. Pursuant to the October 27, 2016 order of the Commission, the respondent submitted the requested records to the Commission for in camera inspection (hereinafter "in camera records"). The in camera records consist of 25 pages, which have been designated as IC# 2016-0236-1 through 2016-0236-25 for identification purposes.

14. After careful review of the in camera records, it is found that if the redacted portions of IC# 2016-0236-1 through 2016-0236-25 were disclosed, the identity of a confidential informant would be revealed.

15. The respondent Police Department provided evidence to the Commissioner of DESPP and at the hearing on this matter, by way of an affidavit from the supervisor of the respondents' records retention Unit, Sergeant John Scalise, that the lives of the informant or informants used in the police operation in which the complainant was apprehended would be endangered if the records were disclosed.

16. However, the complainant contended that he knew who the informant was and insisted he had no intention of harming the person.

17. Notwithstanding the fact that the complainant may know who the informant or informants are, it is found that the Commissioner had reasonable grounds to believe that disclosure of the redacted portions of IC# 2016-0236-1 through 2016-0236-25 may result in a safety risk, particularly a risk of harm to any person under §1-210(b)(19), G.S.

18. It is therefore found that only the redacted portions of IC# 2016-0236-1 through 2016-0236-25 are subject to the exemption. It is concluded, therefore, that the respondents violated the disclosure provisions of the FOI Act by failing to disclose to the complainant those portions of the in camera records that are not subject to the exemption found in §1-210(b)(19), G.S.

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

1. Forthwith the respondents shall provide the complainant with a copy of all records related to case number #13-1227-0355, free of charge.

2. In comply with the order in paragraph 1, above, the respondents may redact any information contained in said records that may reveal the identity of any informant. Such information shall be carefully and consistently redacted throughout all of the records.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 22, 2017.

Cynthia A. Cannata
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:

Omar Parra, Jr. #308407
Osborn Correctional Institution
335 Bilton Road
Somers, CT 06071

Chief, Police Department, City of Stamford; Police Department, City of Stamford; City of Stamford;
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Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection
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Cynthia A. Cannata
Acting Clerk of the Commission

FIC/2016-0236/FD/cac/2/22/2017