

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Randy Dixon,

Complainant

against

Docket #FIC 2016-0427

Armando J. Perez, Chief, Police Department,
City of Bridgeport; Police Department,
City of Bridgeport; City of Bridgeport;
Commissioner, State of Connecticut,
Department of Correction; and
State of Connecticut, Department Correction,

Respondents

April 12, 2017

The above-captioned matter was heard as a contested case on January 12, 2017, at which time the complainant and the 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, 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 application sent to the Bridgeport respondents on May 11, 2016, the complainant requested “police reports, witness statements, arrest warrant, pretrial motions and forensic reports, transcripts of phone calls to the police department and all other information with regards [sic] to my case #10D-1457....”
3. By letter dated June 4, 2016, and filed with the Commission on June 8, 2016, the complainant appealed to this Commission, alleging that the Bridgeport respondents violated the FOI Act by failing to comply with the request, described in paragraph 2, above. Although the complainant named only the Bridgeport respondents in his complaint, the Commission subsequently named the Commissioner, Department of Correction (“DOC”) and the DOC as additional respondents in this matter. The case caption has been amended accordingly. The complainant requested the imposition of a civil penalty against the Bridgeport respondents.

4. Counsel for the Bridgeport respondents stated that they did not receive the request, described in paragraph 2, above, and became aware of it only when they received notice of the complaint in this matter from the Commission in late December, 2016.

5. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

[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 (1) inspect such records promptly during regular office or business hours . . . or (3) receive a copy of such records in accordance with section 1-212....

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

8. It is found that, after receiving the notice of complaint, and in response thereto, the Bridgeport respondents conducted a search and located the following responsive records: police incident reports, investigation/crime scene report narratives, affidavit and search warrant application, inventory of property seized, report of chief medical examiner, crime scene photos, photo arrays, telephone records, motor vehicle records, NCIC (National Crime Information Center) reports, fingerprints and related report, signed witness statements, video recordings of witness interviews, and an audio recording of 911 calls. It is found that the respondents do not maintain a written transcript of the 911 calls.

9. It is found that counsel for the Bridgeport respondents reviewed the records, described in paragraph 8, above, redacted certain information contained therein, and also withheld certain other pages, before providing a copy of the redacted version of the requested records to the complainant via Counselor Supervisor Washington, the DOC’s FOI liaison/administrator (“Washington”). It is found that the redacted version of the records received by Washington from the Bridgeport respondents consisted of approximately 254 pages.

10. It is found that, upon receipt of the records from the Bridgeport respondents, Washington also reviewed such records and determined that the photo arrays, and the CD containing the 911 calls were exempt from disclosure pursuant to §§1-210(b)(18), G.S., and that the NCIC reports¹ were exempt from disclosure in accordance with the appellate court's decision in Commissioner of Public Safety v. Freedom of Information Commission, 144 Conn. App. 821 (2013). Washington also redacted the name of the victim wherever it appeared in the records, pursuant to §1-210(b)(18), G.S. However, it is also found that Washington, with the complainant's consent, sent a copy of the photo array and the CD containing the 911 calls to the complainant's mother at her home. It is found that, thereafter, Washington forwarded a copy of the records, with these additional redactions, to the complainant, which copy consisted of approximately 200 pages.

11. At the hearing in this matter, counsel for the Bridgeport respondents claimed that the redacted information is exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(3)(A), 1-210(b)(3)(C) and 19a-411, G.S. No witness appeared at the hearing on behalf of the respondents to offer evidence in support of any of the claimed exemptions. The hearing officer ordered the Bridgeport respondents to submit the records they claimed are entirely or partially exempt from disclosure to the Commission for in camera inspection, and such records were provided to the Commission on February 7, 2017.

12. It is found that the in camera records consist of the records described in paragraph 8, above.² The Bridgeport respondents divided the in camera records into three groups, each with a separate index. On the indexes to the in camera records, the Bridgeport respondents claimed that certain records, or portions thereof, are exempt from disclosure pursuant to §§1-210(b)(3)(A), 1-210(b)(3)(C), 19a-411, 1-210(b)(27), 1-217(2), 54-142a, 53a-250 to 261, 1-210(b)(18)(G), G.S., and "Privacy Act/PII." The Bridgeport respondents no longer claimed that any of the records were exempt pursuant to §1-210(b)(1), G.S.

13. Section 1-210(b)(3), G.S., provides, in relevant part, that disclosure is not required 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 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

¹"The National Crime Information Center, or NCIC, has been called the lifeline of law enforcement—an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day, 365 days a year. It helps criminal justice professionals apprehend fugitives, locate missing persons, recover stolen property, and identify terrorists. It also assists law enforcement officers in performing their duties more safely and provides information necessary to protect the public." Source: <https://www.fbi.gov/services/cjis/ncic>

²The Bridgeport respondents' in camera submission included an unredacted and redacted version of all responsive records, not just the records they claimed are exempt from disclosure.

endangered or who would be subject to threat or intimidation if their identity was made known...[or] (C) signed statements of witnesses....

14. The Bridgeport respondents claimed, on the indexes, that the “identity of witness[es] not otherwise known,” contained in the in camera records, including the 911 calls and the video of witness interviews, are exempt from disclosure pursuant to §1-210(b)(3)(A), G.S. After careful inspection of the in camera records, it is found that such records are “records of law enforcement agencies not otherwise available to the public [that] were compiled in connection with the...investigation of crime.” However, it is further found that the Bridgeport respondents failed to prove that disclosure of those portions of the in camera records consisting of the identity of witnesses “would result in disclosure of the identity of informants not otherwise known or witnesses whose identity is not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known.”

15. Accordingly it is concluded that the portions of the in camera records, described in paragraph 14, above, are not exempt from disclosure, pursuant to §1-210(b)(3)(A), G.S., and that the Bridgeport respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records or portions thereof, from the complainant.

16. The Bridgeport respondents also claimed, on the indexes, that some of the in camera records are signed witness statements, exempt from disclosure pursuant to §1-210(b)(3)(C), G.S. After careful inspection of the in camera records, it is found that the following records, or portions thereof, claimed on the indexes to be exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., are “records of law enforcement agencies not otherwise available to the public [that] were compiled in connection with the...investigation of crime,” and that such records are signed witness statements: Index 1 – IC 2016-04270022 and 023; Index 2 – IC 2016-0427-117 and 118.

17. Accordingly, it is concluded that the signed witness statements, described in paragraph 16, above, are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

18. With regard to the claim that the autopsy report and autopsy photos are exempt from disclosure, §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.... (Emphasis added).

19. After careful inspection of the autopsy report and photos,³ (Index 2 – IC 2016-0427-012 through 027, and IC 2016-0427-038 through 043; Index 3 – autopsy photos on flash drive), it is found that the autopsy report was prepared by a medical examiner in the Office of the Chief Medical Examiner, and that the photos are part of the autopsy report.

20. In Galvin v. Freedom of Information Commission, 201 Conn. 448 (1986), the Supreme Court concluded that autopsy reports are not subject to disclosure under the FOI Act; but rather, may be obtained only from the Office of the Chief Medical Examiner. Accordingly, it is concluded that the Bridgeport respondents did not violate the FOI Act by withholding the autopsy report, including the photos, described in paragraph 19, above, from the complainant.⁴

21. With regard to the Bridgeport respondents' claim that certain residential addresses contained in the in camera records, including one of the 911 calls, are exempt from disclosure pursuant to §1-217(2), G.S. The Commission assumes the Bridgeport respondents intended to claim §1-217(a)(2), G.S., which provides:

[n]o 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 Energy and Environmental Protection.... (Emphasis added).

22. After careful inspection of the in camera records, it is found that such records are not “personnel, medical or similar files.” It is therefore concluded that the residential addresses contained therein are not exempt from disclosure pursuant to §1-217(a)(2), G.S., and that the Bridgeport respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such addresses from the complainant. However, at the Commission meeting of April 12, 2017, the complainant indicated that he was not seeking the addresses of police officers.

23. The Bridgeport respondents also claimed that certain portions of the in camera records are exempt from disclosure pursuant to §54-142a, G.S.

24. Section 54-142a, G.S., provides, in relevant part:

(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

³ The Bridgeport respondents submitted for in camera inspection both a digital and hard copy of the autopsy photos.

⁴ Although the Bridgeport respondents claimed that the autopsy photos also are exempt from disclosure pursuant to §1-210(b)(27), G.S., the Commission need not address such claim in light of the findings and conclusions set forth in paragraphs 19 and 20, above.

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. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect....

(c) (1) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased....

(g) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any information or indictment containing more than one count (1) while the criminal case is pending, or (2) when the criminal case is disposed of unless and until all counts are entitled to erasure in accordance with the provisions of this section, except that when the criminal case is disposed of, electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section. Nothing in this section shall require the erasure of any information contained in the registry of protective orders established pursuant to section 51-5c. For the purposes of this subsection, "electronic record" means any police or court record or the record of any state's attorney or prosecuting attorney that is an electronic record, as defined in section 1-267, or a computer printout.

25. After careful inspection of the in camera records, it is found that it is not evident, on the face of such records, that the charges referenced in such records were dismissed or nolle. As noted in paragraph 11, above, the Bridgeport respondents did not bring a witness to the hearing in this matter to testify regarding the status of the criminal charges nor did they provide other credible evidence to support this claim.

26. Accordingly, it is concluded that the Bridgeport respondents failed to prove that the in camera records, claimed on the indexes to be exempt from disclosure pursuant to §54-142a,

G.S., are so exempt, and it is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

27. With regard to the Bridgeport respondents' claim that one page of the in camera records is exempt from disclosure pursuant to §1-210(b)(18)(G), G.S., that provision states, in relevant part, that disclosure is not required of:

[r]ecords, 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....Such records shall include, but are not limited to: (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities....

28. After careful inspection of the in camera record, described in paragraph 27, above, it is found that, although such record describes the movement of an inmate, the Bridgeport respondents failed to prove that the Commissioner of the DOC has reasonable grounds to believe that disclosure of such record may result in a safety risk in a correctional institution or facility under the supervision of the DOC.

29. Accordingly, it is concluded that the Bridgeport respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the record, described in paragraph 27, above, from the complainant.

30. The Bridgeport respondents also claimed, on the indexes, that certain information contained in the in camera records, specifically, dates of birth, home addresses and phone numbers of certain individuals, are exempt from disclosure pursuant to "Privacy Act/PII." Although the statutory basis for this claim was not indicated on the indexes, the Commission presumes the Bridgeport respondents intended to reference the Privacy Act of 1974, 5 USC §552a, as the basis for withholding the information. However, it is concluded that the Privacy Act applies only to agencies of the federal government. Because the in camera records are not records of an agency of the federal government, it is concluded that the Privacy Act does not apply.

31. At the hearing in this matter, the DOC respondents claimed that the photo array, the CD containing the 911 call, and the name of the victim, are exempt from disclosure pursuant to §1-210(b)(18), G.S.

32. Based upon the testimony provided by Washington at the hearing in this matter, it is found that the Commissioner of the DOC has reasonable grounds to believe that disclosure of the photo arrays, the CD containing the 911 call, and the name of the victim, to the complainant, may result in a safety risk in the correctional facility.

33. Accordingly it is concluded that the information, described in paragraph 32, above, is exempt from disclosure pursuant to §1-210(b)(18), G.S.

34. With regard to the NCIC reports, it is concluded that such records are exempt from disclosure pursuant to §1-210(a), G.S., and the Appellate Court's decision in Commissioner of Public Safety.⁵

35. Accordingly, it is concluded that the DOC respondents did not violate the FOI Act by withholding the NCIC reports from the complainant.

36. The Commission declines to consider the imposition of a civil penalty against the Bridgeport respondents.

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 against the DOC respondents.
2. Forthwith, the Bridgeport respondents shall provide a copy of the in camera records, to the complainant, via the DOC's FOI liaison/administrator.
3. In complying the paragraph 2, of the order, above, the respondents may withhold/redact the following in camera records: signed witness statements, identified in paragraph 16, of the findings, above; autopsy report, including autopsy photos, identified in paragraph 19 of the findings, above; and NCIC reports (Index 1 – IC 2016-0427-001 through 003; IC 2016-0427-062 through 073; and Index 2 – IC 2016-0427-011; IC 2016-0427-096 through 098). In addition, the respondents may withhold the residential addresses of any police officers, as referenced in paragraph 22 of the findings, above.
4. Henceforth, the Bridgeport respondents shall strictly comply with the disclosure requirements in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 12, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

⁵ Although the Bridgeport respondents initially did not withhold the NCIC reports when they provided the responsive records to the complainant via the DOC's FOI liaison, they subsequently claimed, on the indexes to the in camera records, that the NCIC reports are exempt from disclosure pursuant to §§54a-250 to 261, G.S.


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:

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