

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Guy Gilmore,

Complainant

against

Docket #FIC 2016-0655

Dean Esserman, Chief, Police Department,
City of New Haven; Police Department,
City of New Haven; City of New Haven; and
State of Connecticut, Department of Correction,

Respondents

July 12, 2017

The above-captioned matter was heard as a contested case on April 19 and June 1, 2017, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The caption of the case has been modified to reflect the addition of the State of Connecticut Department of Correction as a respondent. This case was consolidated for hearing with Docket #FIC 2016-0656, Guy Gilmore v. Michael B. Smart et al. 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 September 12, 2016, the complainant appealed to the Commission, alleging that the New Haven respondents denied his August 11, 2016 request for certain public records.
3. It is found that the complainant made an August 11, 2016 request to the New Haven respondents for copies of records pertaining to the investigation, prosecution, and conviction of the complainant.

4. It is found that the New Haven respondents acknowledged the request on August 23, 2016.

5. It is found that the New Haven respondents conducted a diligent search for the requested records, and copied all the records from the appropriate case files in the detectives' bureau and in the evidence room.

6. It is found that the New Haven respondents then, in November or December 2016, mailed a request to the complainant for payment of \$10.00 for the records.

7. It is found that the complainant paid the \$10.00 copying fee between March 10 and March 16, 2017.

8. It is found that the respondent Department of Correction respondents received the requested records in mid-March 2016.

9. It is found that the respondent Department of Correction, after reviewing the redacted records, sent them to the complainant, without further redaction, by the end of April 2016.

10. 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.

11. 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 (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.

12. 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."

13. 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.

14. The New Haven respondents contended that the only redactions made to the requested records were to keep private the name of a confidential informant.

15. Section 1-210(b)(3)(A), G.S., provides that disclosure is not required of law enforcement records if disclosure of those records would result in the disclosure of “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”

16. It is found that information contained in one of the redacted records provided to the complainant, “Narcotics Unit Controlled Purchase Debrief,” is almost entirely redacted.

17. It is found that the information contained in the “Narcotics Unit Controlled Purchase Debrief” relates to a confidential informant’s controlled purchase of narcotics from a targeted individual such as the complainant.

18. It is found that none of the categories of information on the “Narcotics Unit Controlled Purchase Debrief” identifies an informant. Only four categories refer to the confidential informant at all: (1) “C/I Number,” (2) “C/I Meet Time,” (3) “C/I at Target,” and (4) “C/I Clear.” The categories “C/I Number” and “C/I Clear” have been left blank on the form before any redaction.

19. It is found that the respondents offered no evidence to prove that disclosure of the redacted information (which appear to be times of day) reported in the remaining two categories on the form that refer to the confidential informant, “C/I Meet Time” and “C/I at Target,” would result in the disclosure of the identity of the informant.

20. It is therefore concluded that the respondents failed to prove that disclosure of any of the redacted information on the “Narcotics Unit Controlled Purchase Debrief” would result in the disclosure of the identity of the informant.

21. It is therefore concluded that the information redacted from the “Narcotics Unit Controlled Purchase Debrief” is not permissibly exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., and that the New Haven respondents violated §1-210(a), G.S., by withholding it.

22. It is found that the only other record redacted by the respondents, the “Witness Identification Form,” identifies the confidential informant.

23. It is found that disclosure of the identity of the confidential informant, who cooperated in the controlled purchase of narcotics from individuals being investigated by the New Haven respondents, would endanger the informant or subject him or her to threat or intimidation.

24. It is therefore concluded that the information redacted from the "Witness Identification Form" is permissibly exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., and that the New Haven respondents did not violate the FOI Act by withholding it.

25. At the hearing, the complainant objected to the completeness of the unredacted records he was provided, and to the New Haven respondents' failure to provide any additional records.

26. It is found, however, that the New Haven respondents provided all the records in their custody that are responsive to the complainant's request.

27. It is therefore concluded that the New Haven respondents only violated the FOI Act with respect to the redactions made on the "Narcotics Unit Controlled Purchase Debrief."

28. It is also concluded that the Department of Correction, by promptly passing on all the records provided by the New Haven respondents without further redaction, did not violate the FOI Act.

29. At the hearing, the Department of Correction requested that the caption of the case be amended to omit it as a respondent. That request is denied.

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 as to the respondent Department of Correction.
2. The New Haven respondents shall forthwith provide to the complainant an unredacted copy of the Narcotics Unit Controlled Purchase Debrief for New Haven Police Department case number 14-48777.

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



Cynthia C. 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:

GUY GILMORE, #192329, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

DEAN ESSERMAN, CHIEF, POLICE DEPARTMENT, CITY OF NEW HAVEN; POLICE DEPARTMENT, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Kathleen Foster, City of New Haven, 165 Church Street, New Haven, CT 06450; **STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o Attorney James Neil, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia C. Cannata
Acting Clerk of the Commission