

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Herbert Clark,

Complainant,

Docket # FIC 2017-0545

against

James P. Wardwell, Chief,
Police Department, City of
New Britain; and Police
Department, City of New
Britain,

Respondents

August 8, 2018

The above-captioned matter was heard as a contested case on July 3, 2018, at which time the complainant and 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 two letters dated August 25, 2017, the complainant requested that the respondents provide him with copies of all records related to his case 2008 case# 08-40539, including, but not limited to:
 - a - surveillance images;
 - b - field reports;
 - c - tips and leads from unknown sources;
 - d - crime scene photographs;
 - g - field notes;
 - k - contradictory or inconsistent statements of fact;
 - l - mutually contradictory or inconsistent statements of fact contained in witness statements; and

p - medical reports of the victim's injuries, including all test results.

3. By letter dated September 8, 2017, and filed on September 11, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records he had requested. The complainant also requested the imposition of civil penalties against the respondents.

4. Section 1-200(5), G.S., defines "public records or files" as:

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 . . . (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 "any 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, to the extent the respondents maintain the requested records, such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that, under cover letter dated October 13, 2017, the respondents provided the complainant with copies of responsive records, free of charge.

9. At the hearing in this matter, the complainant acknowledged that he had received records from the respondents, but testified that he was not provided with the records set forth in paragraph 2a, 2b, 2c, 2d, 2g, 2k, 2l, and 2p.

10. It is found that the respondents do not maintain the records described in paragraph 2a, 2b, 2c, 2d, 2g, and 2k. Accordingly, the respondents did not violate the FOI Act by failing to provide such records to the complainant.

11. With respect to the request described in paragraph 2l and 2p, it is found that the respondents maintain signed witness statements and certain medical records, but did not provide such records to the complainant.

12. With respect to signed witness statements, the respondents contend that §1-210(b)(3), G.S., provides a basis to withhold such records.

13. Section 1-210(b)(3), G.S., exempts from mandatory disclosure:

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....

14. It is found that the requested signed statements of witnesses described in paragraph 2l, above, constitute law enforcement records compiled in connection with the detection or investigation of crime, the disclosure of which would not be in the public interest, within the meaning of §1-210(b)(3)(C), G.S. Accordingly, it is concluded that such records are exempt from mandatory disclosure, and that the respondents did not violate the FOI Act by withholding such records from the complainant.

15. With respect to the medical records described in paragraph 2p, above, at the hearing in this matter, the respondents contended that they did not provide the complainant with such records since the authorities at the correctional institution (DOC) where the complainant is housed informed them that the DOC would not provide such records to the complainant. The respondents did not claim an exemption from disclosure for such records.

16. Section 1-210(b)(18), G.S., exempts from mandatory disclosure:

Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, 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 or Whiting Forensic Division facilities. Such records shall include, but are not limited to:

- (A) Security manuals, including emergency plans contained or referred to in such security manuals;
- (B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;

- (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;
- (F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and
- (H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers.

17. Section 1-210(c), G.S., provides:

Whenever a public agency receives a request from any person confined in a correctional institution or facility ...for disclosure of any public record under the Freedom of Information Act, the public agency shall... promptly notify the Commissioner of Correction...of such request, in the manner prescribed by the... commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility....

18. The law thus establishes a process whereby a public agency alerts the Commissioner of Correction to public records requests made by individuals housed in correctional facilities, prior to compliance with such requests. When such records are delivered to the correctional

facilities, the Commissioner may make a judgment, based on his or her expertise, as to whether there are reasonable grounds to believe that disclosure of such records within the correctional facility would result in a safety risk. Thereafter, the Commissioner may withhold such records.

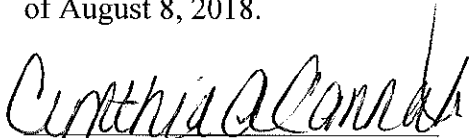
19. It is found that the respondents properly notified the Commissioner of Correction of the complainant's request, as required under §1-210(c), G.S. However, the respondents were also required to deliver the records described in paragraph 2p, above, to the complainant at the DOC, unless the respondents believed that an exemption applied to such records, which they failed to do.

20. It is concluded therefore that the respondents violated §1-210(c), G.S., by failing to deliver the requested records described in paragraph 2p, above, to the complainant at the DOC.

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 deliver to the complainant the records described in paragraph 2p, of the findings, above, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 8, 2018.


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:

HERBERT CLARK, #187886, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

JAMES P. WARDWELL, CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN; AND POLICE DEPARTMENT, CITY OF NEW BRITAIN, c/o Attorney Joseph E. Skelly, Jr., City of New Britain, Corporation Counsel, 27 West Main Street, New Britain, CT 06051



Cynthia A. Cannata
Acting Clerk of the Commission