

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Claire Bessette and the Day,

Complainants

against

Docket #FIC 2018-0003

Chief, Police Department, City of
Norwich; and Police Department,
City of Norwich,

Respondents

July 11, 2018

The above-captioned matter was heard as a contested case on April 9, 2018, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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 email dated December 13, 2017, the complainants requested from the respondents a copy of a particular incident report (“incident report”).
3. It is found that, by email dated December 13, 2017, the respondents denied the request, described in paragraph 2, above, on the ground that the incident report contains “uncorroborated allegations,” pursuant to §1-210(b)(3)(H), G.S.
4. It is found that, by email dated December 13, 2017, the complainants disputed the applicability of the cited exemption and requested, via email, that the respondents reconsider such denial. It is found that the respondents did not immediately respond to the complainants’ request for reconsideration, and therefore, by email dated January 3, 2018, the complainants again requested that the respondents provide them with a copy of the incident report.
5. It is found that, by email dated January 3, 2018, the respondents again denied the request, described in paragraph 2, above.
6. By letter dated and filed January 3, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with their request for a copy of the incident report.

7. 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 section 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:

[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 inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 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 the incident report is a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that, approximately one week prior to the date of the hearing in this matter, the respondents provided the complainants with a redacted copy of the incident report. A redacted copy of the report was marked as an exhibit in this matter.

12. It is found that the incident report, consisting of three pages, pertains to an investigation on December 8, 2017, of a suspected misdemeanor violation of operating a motor vehicle under the influence of drugs or alcohol. According to the report, Patrol Officer Desmond initially was dispatched to the scene of a suspicious vehicle on the side of the road. Officer Desmond determined that the vehicle was not running, the hood was cold to the touch, and that the keys were not in the ignition. He recognized the individual sitting in the driver’s seat of the vehicle as a city official, and when that individual opened the door to the vehicle, Officer Desmond reported that he smelled the odor of alcohol coming from the vehicle. Officer Desmond then called his supervisor, Sergeant Rankin, who thereafter arrived on the scene.

13. According to the narrative prepared by Sergeant Rankin, Sergeant Rankin also observed the vehicle parked on the side of the road and confirmed the observations of Officer

Desmond, described in paragraph 12, above. Sergeant Rankin also observed no damage to the vehicle.

14. According Sergeant Rankin's account of the investigation, the individual under investigation ("subject to") admitted to drinking alcohol and feeling unsafe to drive. Sergeant Rankin further reported that another individual (name redacted) arrived at the scene and transported the subject home. Sergeant Rankin indicated in the report that he was "unable to prove operation or BAC during operation....case closed, lack of probable cause at this time."

15. It is clear from a review of the redacted report that the following information was redacted: all identifying information of the subject, including motor vehicle information, and the name of the individual who transported the subject home. At the hearing in this matter, the complainants contended that the report is improperly redacted.

16. Section 1-210(b)(3)(H), 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... uncorroborated allegations subject to destruction pursuant to section 1-216.

17. Section 1-216, G.S., provides that:

...records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

18. The Commission has interpreted the term "corroborate" as "to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence;" "to state facts tending to produce confidence in the truth of a statement made by another;" "to give increased support to; make more sure or evident." See e.g., Rachel Gottlieb and the Hartford Courant v. State of Connecticut, Department of Public Safety, Docket #FIC 94-291 (May 24, 1995).

19. Although Officer Desmond's and Sergeant Rankin's accounts of the incident are factually consistent, it is found that no other witness or evidence corroborated the allegation that the subject had engaged in criminal activity. Accordingly, it is found that the allegation that the subject was operating a motor vehicle under the influence of drugs or alcohol was uncorroborated. It is further found that the uncorroborated allegation is contained in a record of

a law enforcement agency not otherwise available to the public, which record was compiled in connection with the detection or investigation of crime.

20. At the hearing in this matter, the complainants questioned whether the respondents conducted a thorough investigation and suggested that the respondents determined not to arrest the subject because she is a city official. However, it is not for this Commission to “review the actions of the law enforcement agency to see if the agency, in the opinion of the Commission, has conducted a sufficient investigation in order to obtain such corroboration.” Bona v. Freedom of Information Commission, 44 Conn. App. 622, 635 (1997).

21. Based upon the foregoing, it is concluded that the incident report is exempt from disclosure pursuant to §1-210(b)(3)(H), G.S., and that the respondents did not violate the FOI Act by withholding the redacted portions from the complainants.¹

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 11, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

¹ The Commission consistently has concluded that the entirety of a record of an investigation of uncorroborated allegations of criminal activity is exempt from disclosure pursuant to §1-210(b)(3)(H), G.S. Therefore, although the respondents provided a redacted copy of the incident report to the complainant, they were not required to do so.

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:

CLAIRE BESSETTE AND THE DAY, 47 Eugene O'Neill Drive, New London, CT 06320

CHIEF, POLICE DEPARTMENT, CITY OF NORWICH; POLICE DEPARTMENT, CITY OF NORWICH; AND CITY OF NORWICH, c/o Attorney Michael E. Driscoll, Brown Jacobson, P.C., 22 Courthouse Square, PO Box 391, Norwich, CT 06360



Cynthia A. Cannata
Acting Clerk of the Commission