

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Lindsay Boyle and The Day,

Complainants

against

Docket #FIC 2018-0678

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

Respondents

August 28, 2019

The above-captioned matter was heard as a contested case on February 14, 2019 at which time the complainants and the respondents appeared, stipulated to certain facts 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 November 13, 2018, the complainants requested that the respondents email them “a copy of the arrest report associated with the Sunday arrest of 34-year-old Sarah Starkey of Waterford” pursuant to the Freedom of Information (“FOI”) Act.
3. It is found that, thereafter, the complainants and the respondents communicated about the request through email, text and telephone.
4. It is found that, by email dated November 26, 2018, the complainants reiterated their request for the arrest report described in paragraph 2, above, and informed the respondents that, if such report was not provided by day’s end, then the complainants would file a complaint with the FOI Commission.
5. Having failed to receive the requested arrest report, by email filed November 27, 2018, the complainants appealed to the Commission and alleged that the respondents violated the FOI Act by failing to provide them with a copy of the arrest report described in paragraph 2, above.

6. 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.

7. 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.

8. 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.”

9. It is found that the requested arrest report, as described in paragraph 2, above, is maintained or kept on file by the respondents and is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that, as of the date of the request and denial in this matter, the underlying criminal court case was pending. During a pending criminal prosecution, a law enforcement agency’s disclosure obligations under the FOI Act are governed exclusively by §1-215, G.S. Commissioner of Public Safety v. Freedom of Information Commission, 312 Conn. 513 (2014).

11. Section 1-215, G.S., provides, in relevant part, as follows:

(a) For the purposes of this section, "record of the arrest" means (1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report

that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

- (b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (3) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

....

- (e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.¹

12. It is found that the requested record is part of the "record of the arrest" within the meaning of §1-215(a), G.S.

13. It is found that, subsequent to the complainants' filing of this appeal, by email dated December 4, 2018, the respondents provided the blotter information and a brief summary of the

¹ The Commission notes that, subsequent to the hearing in this matter, Public Act 19-43 was enacted by the General Assembly, which law makes changes to the requirements of §1-215, G.S. Such changes, which are not pertinent to the facts of the instant matter, become effective October 1, 2019.

circumstances leading to the arrest to the complainants.

14. It is found that the complainants replied to the respondents by email dated December 6, 2018, objected to the respondents' failure to disclose the arrest report, and claimed that the information provided in the respondents' December 4 email did not meet the minimum requirements of the FOI Act.

15. It is found that the respondent chief contacted two Assistant State's Attorneys with respect to the request for the arrest report, who advised that the arrest report should not be released. The respondent chief testified that neither official gave a reason as to why the arrest report should not be released, but he believed that such attorneys thought it would be prejudicial to the pending prosecution. The respondent chief further testified that he would not have denied the release of the arrest report if not for the decision of the State's Attorneys, stating that, post arrest, the "State's Attorney has to have a say in the case."

16. At the hearing, the respondents contended that they complied with the FOI Act by providing information about the arrest, and were permitted to withhold the arrest report because its release would prejudice the pending prosecution.

17. At the conclusion of the hearing, the respondents submitted copies of records related to the arrest to the Commission for in camera review. The in camera records have been marked by the Commission and are hereinafter identified as IC-2018-0678-01 through 54. Upon careful inspection of the in camera records, it is found that only IC-2018-0678-01 and IC-2018-0678-02 are responsive to the request at issue. It is found that the other records submitted for in camera inspection are outside the scope of the request in this matter and will not be further addressed herein.

18. With respect to IC-2018-0678-01 and 02, on the in camera index, the respondents contended that such records are exempt from disclosure pursuant to §§1-210(b)(3), 1-217, 14-227a, and 54-56g, G.S. The in camera index also includes the following statement after the above descriptions are provided: "If arrest report in its entirety is found not to be exempt then social security number, driver's license number, date of birth, home address and phone number should be redacted pursuant to section 1-217 and the practice of the FOIC."

19. However, it is concluded that §1-215(b), G.S., clearly mandates, with expressly limited exceptions set forth therein, disclosure of the record of the arrest during the pendency of a prosecution, notwithstanding what any other provision of the general statutes might state. The only exceptions to disclosure are those set forth in §1-215, G.S. Accordingly, it is concluded that the respondents violated the FOI Act by withholding from the complainants a copy IC-2018-0678-01 and 02, at the time of the request in this matter.

20. Nevertheless, it is found that, at the time of the contested case hearing, the court had sealed the file for the underlying criminal case. The complainants conceded this fact and testified that they understood that the Commission is precluded from ordering disclosure of the requested records at this time. See §1-215(b)(3), G.S. (judicial sealing provides statutory basis to withhold arrest records).

21. At the hearing, the complainants requested further clarification from the Commission regarding disclosure practices related to arrest records. However, such issues were not fairly raised in the complaint and, therefore, such questions may not be addressed herein.

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

1. Henceforth the respondents shall strictly comply with the requirements of §1-215, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 28, 2019.



Cynthia A. Cannata
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:

LINDSAY BOYLE AND THE DAY, 47 Eugene O'Neill Drive, P.O. Box 1231, 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., PO Box 391, 22 Courthouse Square, Norwich, CT 06360



Cynthia A. Cannata
Acting Clerk of the Commission