

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gary Levine,

Complainant

against

Docket #FIC 2018-0356

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

Respondents

January 9, 2019

The above-captioned matter was heard as a contested case on August 30, 2018, at which time the complainant 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 June 26, 2018, the complainant requested from the respondents all records, including notes, audio and video, pertaining to a complaint lodged with the respondents against him by Walgreens of Norwich on June 20, 2018 (“requested records”).
3. It is found that, by email dated June 27, 2018, the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that his request was being processed.
4. By undated letter filed with the Commission on July 9, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to disclose the requested records to him.
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 section 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 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 . . . (3) receive a copy of such records in accordance with section 1-212.

7. 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.”

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

9. It is found that, after the filing of the complaint in this matter, the respondents provided three pages of responsive records to the complainant, consisting of an incident report and a call log. It is found the respondents redacted from the incident report certain identifying information pertaining to the complainant, and all identifying information pertaining to the victim. It is also found that the respondents redacted certain information from the call log.

10. At the hearing in this matter, the complainant contended that the respondents should maintain additional records which were not provided to him, and he further contended that the redactions were improper.

11. It is found that the respondents conducted a thorough search for the requested records and that they provided all responsive records they maintain to the complainant.

12. With regard to the incident report, it is found that the respondents redacted the following information pertaining to the complainant: whether or not the complainant had served in the military, social security and phone numbers, driver’s license number, FBI number, and ethnicity. It is also found that the respondents redacted all identifying information of the victim, including the victim’s name, address, date of birth, gender, race, ethnicity, age, social security and phone number, and driver’s license number.

13. At the hearing in this matter, the respondents did not claim any legal basis for the redactions pertaining to the complainant’s identity. Rather, the respondents represented that it is their policy to redact personal information from police reports. With the exception of the

driver's license number and social security number,¹ it is concluded that the respondents impermissibly redacted the complainant's identifying information from the incident report.

14. With regard to the victim's identifying information, the respondents claimed such information is exempt from disclosure pursuant to §§1-210(b)(3)(A) and 1-210(b)(3)(D), G.S.

15. Section 1-210(b)(3) 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 endangered or who would be subject to threat or intimidation if their identity was made known... (D) information to be used in a prospective law enforcement action if prejudicial to such action....

16. The respondents' witness testified that, on June 20, 2018, the complainant threatened physical violence against the victim, a pharmacy technician at Walgreens; that on numerous prior occasions, the complainant had come into the store swearing and belittling staff members; and that the complainant is well known to the respondent police department.

17. In the opinion of the respondents' witness, the victim would be in danger or subject to threat or intimidation by the complainant if the victim's identifying information was disclosed, and that therefore, such information was redacted from the incident report.

18. It is found that the incident report is 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. It is also found that, although the respondents' witness' testimony that the respondents are concerned about the safety or intimidation of the victim is credible, it is also found that the identity of the victim is known to the complainant, who testified that he knows the victim by sight, as well as the victim's first name and place of employment. Accordingly, it is found that the victim's identity is not "not otherwise known" as that phrase is used in §1-210(b)(3)(A).

19. The respondents also claimed that the victim's identifying information is exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

20. The respondents' witness testified that, with respect to the June 20, 2018 incident, the victim elected not to pursue criminal charges against the complainant, and therefore, the complainant was not arrested. Rather, the victim requested that the complainant "be trespassed"

¹ The Commission historically has declined to order the disclosure of driver's license numbers and social security numbers.

from Walgreens. The witness testified that this phrase means that, in the event the complainant returned to Walgreens, he could be arrested for first degree criminal trespass, pursuant to §53a-107(a), G.S. According to the respondents, the possibility that the complainant could be arrested if he attempted to return to Walgreens constitutes a “prospective law enforcement action” under §1-210(b)(3)(D), and that, if the complainant was charged with criminal trespass in the future, the incident report would be used in a prospective law enforcement action. Even if the Commission were to accept that the phrase “prospective law enforcement action” was broad enough to include a possible, but not yet materialized future arrest of the complainant for criminal trespass, it is found that the respondents offered no evidence that disclosure of the incident report would be prejudicial to any such prospective law enforcement action.


21. With respect to the call log, at the hearing in this matter, the respondents were unable to identify the information that was redacted from such record and therefore conceded that they could not prove that such information was exempt from disclosure.

22. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by redacting the complainant’s and the victim’s identifying information from the incident report, with the exception of social security numbers and driver’s license numbers, and by redacting the call log.

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 provide a copy of the requested records, free of charge, to the complainant.
2. In complying with paragraph 1 of the order, above, the respondents may redact only social security numbers and driver’s license numbers from the incident report.
3. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 9, 2019.


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:

GARY LEVINE, 108 Washington Street, Unit 201, Norwich, CT 06360

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 06332



Cynthia A. Cannata
Acting Clerk of the Commission