FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by | FINAL DECISION

Sophie Vaughan and Westport News,
Complainants

against | Docket #FIC 2018-0589

Chief, Police Department, Town of Westport; Police Department, Town of Westport; and Town of Westport,

Respondents | July 10, 2019

Prior to the hearing in the above-captioned matter, the Connecticut Coalition Against Domestic Violence moved to intervene in these proceedings in accordance with §1-21j-31, Regulations of Connecticut State Agencies. Such motion was granted by the hearing officer. This matter was heard as a contested case on January 31, 2019, at which time the complainants, the respondents, and the intervenor appeared. The complainants and the respondents stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The intervenor presented argument at the hearing, in accordance with §1-21j-31, Regulations of Connecticut State Agencies.

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 on a routine basis, the respondents provide the complainants with copies of a log of arrests in Westport organized by date, entitled "Custodial Arrest and Citation Report." It is found that, when the complainants examined such provided document for the period of September 28, 2018 to October 1, 2018 (hereinafter "the Report"), they discovered that the respondents had redacted two names, street addresses, and birthdates involving two particular arrests on September 30, 2018. It is further found that the remaining portions of the Report relating to such arrests were provided to the complainants.

3. It is found that, by email to the respondents dated October 2, 2018, the complainants requested the names of the two people who had been arrested on September 30, 2018, which names had been redacted. It is found that such names are the only

records at issue in this matter and shall hereinafter be referenced as the "requested records."

4. It is found that on October 8, 2018, the complainants again emailed the respondents and inquired as to whether they needed to complete a more formal request for the requested records.

5. It is found that, by return email to the complainants dated October 9, 2018, a lieutenant in the respondent department informed the complainants that their October 2, 2018 email was sufficient as a request. It is further found that such email states: "As discussed, in this incident the parties were both suspect, but also victims of a family violence crime as this was a dual arrest situation. Per C.G.S. 54-86e Confidentiality of Identities of Certain Victims, I am not permitted to release those names or addresses."

6. By email dated and filed on October 18, 2018, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with copies of the requested records.

7. 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.

8. 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, (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.

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. The type of copy provided shall be within the discretion of the public agency....The fee for any copy provided...shall not exceed...."

10. 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.

11. It is found that, at the time of the request and denial in this matter, criminal prosecutions of the individuals arrested and named in the Report were 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).

12. 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.
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> (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.
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> ....
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> (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.

13. It is found that the requested records, i.e., the names of the two individuals who were arrested, fall within the parameters of §1-215(a)(1), G.S., and are part of the "record of the arrest" of each of those individuals.

14. The respondents and the intervenor contend that §54-86e, G.S., provides a basis to withhold the requested records.

15. Section 54-86e, G.S., provides:

> The name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-70b, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53a-21, or of an attempt thereof, or family violence, as defined in section 46b-38a and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.
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> (Emphasis added.)

16. In turn, §46b-38a, G.S., provides the following definitions:

> (1) "Family violence" means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members. Verbal abuse or argument does not constitute family violence unless there is present danger and the likelihood that physical violence will occur.
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> (2) "Family or household member" means any of the following persons, regardless of the age of such person: (A) Spouses or former spouses; (B) parents or their children; (C) persons related by blood or marriage; (D) persons other than those persons described in subparagraph (C) of this subdivision presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship.

17. The respondents and the intervenor cite to §1-215(b), G.S., which provides that records of the arrest "shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210." The respondents and the intervenor contend that, since §1-210(a), G.S., states: "*Except as otherwise provided by any federal law or state statute*, all records maintained or kept on file by any public agency…shall be public records and every person shall have the right to …inspect…receive a copy…(emphasis added)," then it follows that a state statute, such as §54-86e, G.S., can operate through §1-210(a), G.S., to override the disclosure provisions of §1-215(b), G.S.

18. The respondents' argument misapprehends the express limitations on redaction set forth in §1-215(b), G.S. If the respondents and intervenor are correct, the unambiguous redaction limitations of §1-215(b), G.S., would be rendered meaningless and/or superfluous. It is axiomatic that statutes must be read so as to not render their provisions superfluous or meaningless. "It is also a general principle of statutory interpretation that every word [in a statute] has meaning regardless of the type of statute." State v. Brown, Jr., 49 Conn. Supp. 168, 865 A.2d 510 (Conn. Super. Ct. Nov. 2, 2004); see also State v. Szymkiewicz, 237 Conn. 613, 621, 678 A.2d 473 (1996) ("It is, however, equally understood that despite the nature of the statute, it must be construed, if possible, such that no clause, sentence or word shall be superfluous, void, or insignificant. . . .").

19. The first sentence in §1-215(b)(2), G.S., states: "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." The first clause of such sentence would be meaningless under the respondent's and intervenor's theory.

20. The second clause of the first sentence in §1-215(b)(2), G.S., "and except as otherwise provided in this section" clearly relates to the second sentence of the subparagraph: "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 …[and personal possessions of the arrested person under certain circumstances] (emphasis added)." Under the respondents' and the intervenor's theory, such limiting language would have no practical effect. For if indeed §54-86e, G.S., provides a basis to withhold additional information beyond the exceptions noted in §1-215(b)(1)(2) and (3), there would be no need for such language.

21. Furthermore, the respondents' and the intervenor's theory would render superfluous §1-215(e), G.S., which provides that §1-215, G.S., applies exclusively during the pendency of a prosecution, and that at all other times, the remaining disclosure provisions of the FOI Act govern. If the prosecutions of the arrests at issue were *not* pending at the time of the request and denial in this matter, then the records of the arrests at issue might be analyzed under the exemptions in the FOI Act, as well as any other federal law or state statute which might apply, as the respondents and the intervenor urge be done in this case, where the prosecutions *are* pending. However, if the respondents' and the intervenor's theory is correct, and outside statutes may be applied during the pendency of a prosecution, then there would be no need to distinguish the time frames, as the legislature did in §1-215(e), G.S.

22. Therefore, it is concluded that §1-215(b), G.S., clearly mandates, with expressly limited exceptions set forth therein, disclosure of all records 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 three specified in §1-215(b)(1)(2) and (3), G.S., and the records of personal possessions under certain circumstances, also set forth therein. It is also concluded that the references to §§1-212 and 1-210, G.S., in §1-215(b), G.S., simply require that disclosure must be made in accordance with those provisions, i.e., copying, inspection, and promptness rights, as well as allowing for public agencies to collect copying fees.

23. The complainants submitted a copy of the redacted Report that was provided to the complainants on or before October 2, 2018, as described in paragraph 2, above, which copy was marked as Complainants' Exhibit A. Such Report indicates that two individuals were arrested on the charge of "Breach of Peace: Fight/Cause/Capable of

Causing Minor Inj" on 9/30/2018. The Report also indicates the name of the arresting officer, the fact that one individual was male and one was female, and the ages of the individuals. The Report also indicates that both individuals reside in Westport, and finally, a statute lists in the entry for each individual: §53a-181(a)(1)(2).

24. Section 53a-181(a)(1)(2), G. S., provides:

> (a) A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assaults or strikes another....

25. The respondents contended that it is evident from the entire unredacted Report that the arrests were made due to an incident of family violence. The respondents provided an unredacted copy of the Report to the Commission for in camera inspection, which shall be identified as IC-2018-0589-1.

26. Upon careful review of IC-2018-0589-1, it is found that, contrary to the respondents' assertion, it is not evident that the arrests at issue were the result of family violence within the meaning of §46b-38a, G.S. Indeed, had the respondents provided the complainants with an unredacted copy of the Report, it would have been complete speculation to conclude that family violence had occurred. Rather, it was the respondents who identified the underlying matter as a "family violence crime" and a "dual arrest situation," in an email to the complainants as described in paragraph 5, above. Nevertheless, based on the respondents' credible testimony at the hearing in this matter, it is found that the underlying incident was a matter of family violence within the meaning of §46b-38a, G.S.

27. As concluded in paragraph 22, above, the statute relied upon by the respondents and the intervenor, §54-86e, G.S., is inapplicable by operation of §1-215(b), G.S. Moreover, even if the statute *did* operate through §1-215(b), G.S., as the respondents contend, under the facts of this case, it is concluded that such statute does not apply to the records of the respondents, as discussed below.

28. Section 54-86e, G.S., set forth in paragraph 15, above, is located within chapter 961 of the General Statutes, titled "Trial and Proceedings After Conviction." The statute provides that the names and addresses of victims of certain enumerated crimes, including sexual assault and family violence, shall be confidential and shall be disclosed only upon order of the Superior Court. The Appellate Court has concluded that the statute applies to confidentiality in court proceedings. See State v. Bennett-Gibson, 84 Conn. App. 48, 69 (2004) ("The purpose underlying §54-86e is clear ...to protect victims of sexual assault by reducing unnecessary harassment and embarrassment *in court*, and by encouraging the disclosure of sexual assaults. (Emphasis added)"

29. The Superior Court has found that the restrictions set forth in §54-86e, G.S., can also apply in civil court proceedings. Doe v. Minor Female One, Memorandum of Decision, 33 Conn. L. Rptr. 359, Docket CV 02-0466081 (Oct. 25, 2002) (Silbert, J.) Jane Doe v. Gregory Firn et. al, Memorandum of Decision, CV 065001087-S (Sept. 22, 2006) (Fischer, J.). The respondents contend that such decisions support their position that the disclosure restrictions therein are not limited to judicial proceedings and can be applied to the respondents' records. However, the Commission can find no case law which extends the restrictions to disclosure of records by municipal police departments.

30. It is found that nothing in the statute itself references law enforcement records. Certainly, had the legislature meant to bring the records of law enforcement departments within the parameters of the §54-86e, G.S., it could have easily done so, and it has done so in the past. For example, the erasure provisions of §54-142a, G.S., clearly apply both to court and police records by the terms of that statute.

31. The legislative history of §54-86e, G.S., is also instructive. The law was enacted in 1981 as Public Act 81-488, specifically to apply to court proceedings. The underlying bill, House Bill 7363, "An Act Concerning Disclosure of Address and Telephone Number by Victims of Sexual Assault or Injury, Or Risk of Injury to A Minor" was discussed on March 24th of that year in the Judiciary Committee. In his testimony, Commissioner Shealy stated: "We deplore the situation where a witness on a witness stand has to give out her address and telephone number, and they know they are the subject to much harassment on the basis of this...." Legislative History, Judiciary Committee, March 24, 1981, page 1218.

32. Amendment A was incorporated into that same House Bill 7363, which added language to the FOI Act to specifically provide that the names and the addresses of victims of sexual assault, injury or risk of injury or impairing or attempting to impair morals, would also be exempt under the FOI Act's law enforcement exemption, currently codified at §1-210(b)(3)(G), G.S. Such amendment would not have been necessary were it clear that the provisions of §54-86e, G.S., apply outside of a court setting. See Remarks of Senator Skowronski, June 2, 1981, Legislative History, pages 5702-5703, "...What House Amendment A does is amend our Freedom of Information Law to specifically forbid disclosure of the name and address of the victim of a sexual assault under the Freedom of Information Act...."

33. The 1981 law has been amended numerous times over the years, including by Public Act 2015-211, which added the reference to family violence. At such time, however, the FOI Act was not similarly amended to include the addition of victims of family violence to the law enforcement exemption.

34. Section 54-86e, G.S., has been claimed seven times over the years in contested cases at the Commission involving the disclosure of records by local or state police departments. In six of those matters, the Commission either did not address such claims for various reasons, or concluded that the respondents failed to prove the applicability of §54-86e, G.S., to the particular records at issue: Docket # FIC 2006-469;

Kimberly Lazzari and Anthony Lazzari v. Chief, Police Department, City of New Haven (March 28, 2007); Docket # FIC 2006-655; David Grant v. State of Connecticut, Department of Public Safety (Nov. 14, 2007); Docket # FIC 2015-161; Cindy L. Robinson v. Chief, Police Department, Town of Trumbull; Police Department, Town of Trumbull; and Town of Trumbull (Jan. 27, 2016); Docket # FIC 2017-0070; David DesRoches and WNPR v. Chief, Police Department, Town of Greenwich; Police Department, Town of Greenwich; and Town of Greenwich (Sept. 27, 2017); Docket # FIC 2017-0623; Dave Altimari and Hartford Courant v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (Sept. 26, 2018); Docket # FIC 2017-0682; David DesRoches and WNPR v. Chief, Police Department, Town of Greenwich; Police Department, Town of Greenwich; and Town of Greenwich (Aug. 22, 2018).

35. In only one case, Docket # FIC 2001-133; Joan Coe v. Peter N. Ingvertsen, Chief, Police Department, Town of Simsbury (June 25, 2001), the Commission concluded that the records at issue therein were exempt by virtue of §54-86e, G.S. However, there are many factors which differentiate the Coe decision from this matter:

a. the Coe decision pre-dates the decision by the Appellate Court in State v. Bennett-Gibson, *supra*;

b. §54-86e, G.S., has been amended five times since the Commission issued the Coe decision and was markedly different at that time;

c. the Coe decision involved a victim of sexual assault, not of family violence;

d. the Commission's determination in Coe was based solely upon an in camera review, and the Commission did not analyze whether records held by police departments fall within the parameters of §54-86e, G.S., either in that case, or in any of the cases referenced in paragraph 34, above; and

e. §1-215, G.S., was not at issue in the Coe decision.

36. It is concluded that the Coe decision is distinguishable on the facts and the law from this matter.

37. The respondents also contended that the Connecticut Constitution is pertinent. Specifically, the Article First, Section 8(b) – Rights of Victims of Crime provides: "In all criminal prosecutions, a victim, as the general assembly may define by law, shall have the following rights: 1. The right to be treated with fairness and respect throughout the criminal justice process;..." Without question, the Commission respects

the Constitution, but it is concluded that the provision set forth herein does not explicitly mandate the confidentiality of the requested records.

38. Finally, the intervenors contended that Public Act 18-5, which amended §46b-38a, G.S., to provide local police departments with more discretion in the context of family violence crimes, particularly with respect to the issue of dual arrests, evidences a legislative intent that victims of family violence deserve protection under the law. The Commission does not disagree, but nowhere in §46b-38a, G.S., as amended by Public Act 18-5, does the statute prohibit the release of the name of an arrested individual, even in the context of an arrest for a family violence crime.

39. Based on the foregoing, it is concluded that the requested records are not exempt from mandatory disclosure pursuant to §54-86e, G.S. Accordingly, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., in this matter, by failing to comply with the requirements of §1-215, G.S.

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

1. The respondents shall forthwith provide the complainant with a copy of the Report without redaction of the requested records, as described in paragraph 3 of the findings, above.

2. Henceforth, the respondents shall strictly comply with the requirements of §1-215 G.S., when releasing records of the arrest.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 10, 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:

SOPHIE VAUGHAN AND WESTPORT NEWS, c/o Attorney Diego Ibarguen, Hearst Corporation, Office of General Counsel, 300 West 57th Street, New York, NY 10019

CHIEF, POLICE DEPARTMENT, TOWN OF WESTPORT; **POLICE DEPARTMENT, TOWN OF WESTPORT; AND TOWN OF WESTPORT**, c/o Attorney Eileen Lavigne Flug, Berchem Moses P.C., 1221 Post Road East, Westport, CT 06880

FOR THE INTERVENORS
CONNECTICUT COALITION AGAINST DOMESTIC VIOLENCE, c/o Attorney Mark J. Sommaruga, Pullman & Comley, LLC, 90 State House Square, Hartford, CT 06103

Cynthia A. Cannata
Acting Clerk of the Commission

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