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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Julio Burgos Torres,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0446

Chief, Police Department, City of Waterbury; Police Department,  
City of Waterbury; and City of Waterbury,  
Respondent(s)

April 11, 2017

### Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 10, 2017**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE April 28, 2017**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE April 28, 2017**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE April 28, 2017**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

W. Paradis  
Acting Clerk of the Commission

Notice to: Julio Burgos Torres;  
Attorney Gary S. Roosa; Attorney Kevin J. Daly;  
Attorney James Neil; and cc: Craig Washington

FIC# 2016-0446/Trans/wrbp/VRP//VDH/2017-04-11

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Julio Burgos Torres,

Complainant

against

Docket #FIC 2016-0446

Chief, Police Department, City of  
Waterbury; Police Department, City of  
Waterbury; City of Waterbury; and  
State of Connecticut, Department of  
Correction,

Respondents

April 10, 2017

The above-captioned matter was heard as a contested case on November 28, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2016-0533, Julio Burgos Torres v. Police Department, City of Waterbury et al. 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. By letter of complaint filed June 16, 2016, the complainant appealed to the Commission, alleging that the Waterbury respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records he requested.
3. It is found that the complainant made a June 8, 2016 request to the Waterbury Police Department for unredacted police reports concerning the arrest of Jose Pacheco.
4. It is found that the Waterbury respondents assembled 33 pages of records responsive to the complainant's request.
5. It is found that the Waterbury respondents redacted from the records the gang affiliation of the arrestee Pacheco, and any other gang references.

6. It is found that, after receiving payment for the records from the complainant, the Waterbury respondents mailed them, in redacted form, to the complainant's lawyer, at the complainant's request.

7. Section 1-200(5), G.S., defines "public records" as follows:

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, ...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:

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: "Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record."

10. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. The sole issue presented by the complainant at the hearing is that the Waterbury respondents improperly redacted the gang affiliation of the arrestee Pacheco. The complainant contends that he needs unredacted records for use in court.

12. It is found from the testimony at the hearing that the complainant believes that he knows Pacheco's gang affiliation. No witness contradicted the complainant's testimony in this regard.

13. The Waterbury respondents claim that the redacted information is exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., because they are concerned that release of gang affiliation could lead to violence against Pacheco.

14. Section 1-210(b)(3)(A), G.S., provides that disclosure is not required of:

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 (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 ....

15. The Waterbury respondents offered no evidence that Pacheco was either an informant or a witness not otherwise known.

16. Further, it is found that disclosing Pacheco's gang affiliation does not disclose his identity within the meaning of §1-210(b)(3)(A), G.S. Clearly, Pacheco's identity is disclosed in the redacted documents. Only his gang affiliation is at issue.

17. It is therefore concluded that the respondents violated §1-210(a), G.S., by failing to provide the redacted gang affiliation information.

18. The respondent Department of Correction claims that the withheld records are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides that disclosure is not required of:

Records, the disclosure of which the Commissioner of Correction...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... 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 ....

19. It is probable that the redacted gang affiliation would be withheld from the complainant pursuant to §1-210(b)(18), G.S., if the records were delivered to the Department of Correction. The Commission has had a substantial line of cases holding that records concerning security risk groups are exempt from mandatory disclosure. See FIC # 2013-541, Edwards v. Department of Correction; FIC # 2010-284, Dorlette v. Department of Correction; FIC # 2010-093, Barletta v. Department of Correction; and FIC # 2010-047, Calderon v. Department of Correction.

20. However, the redacted records were not delivered to a correctional institution by the Waterbury respondents, but to the complainant's lawyer.

21. The Department of Correction contends that §1-210(b)(18), G.S., applies not just to records delivered to the Department, but also to records delivered to third parties.

22. However, the plain language of §1-210(c), G.S., limits the Department's authority to withhold records to records that are delivered to the Department:

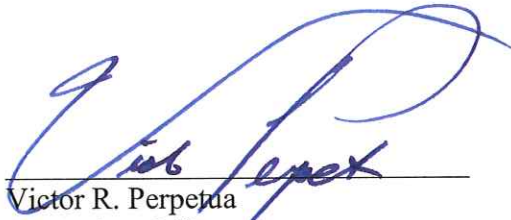
Whenever a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Division facility, for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Division facility 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 or Whiting Forensic Division facility. [Emphasis added.]

23. It is found that the Department of Correction did not withhold the requested records from the complainant, as they were not delivered to the Department.

24. It is therefore concluded that §1-210(b)(18), G.S., does not apply to the records in this case.

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

1. The Waterbury respondents shall forthwith provide the requested records to the complainant, without redaction of references to gangs or gang affiliation.
2. The case is dismissed as it relates to the Department of Correction.



Victor R. Perpetua  
as Hearing Officer

2016-0446/HOR/VRP/04102017