

Freedom of Information Commission
of the State of Connecticut

In the Matter of a Complaint by)
Shipman & Goodwin, Complainant) Report of Hearing Officer
against) Docket #FIC 76-71
City and Town of New Haven and) June 3, 1976
the New Haven Police Department,
Respondents)

The above captioned matter was heard as a contested case on May 7, 1976, 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:

1. The respondents are public agencies.
2. The complainant represents the estate of one Bruce Williams who died while in the custody of the respondent police department. Pursuant to 7-465, C.G.S., the complainant filed a notice of intention to commence action with the respondent city on November 26, 1975.
3. On April 9, 1976, the complainant requested access to inspect or copy all law enforcement agency records of the respondent police department prepared in connection with the arrest, incarceration and death of one Bruce Williams on October 2, 1975.
4. The respondents having failed to comply with this request, the present complaint was filed with this Commission on April 22, 1976.
5. At the hearing on this complaint, it was disclosed that the respondent police department has in its possession several documents which fall within the complainant's request. One such document is the report by the arresting officer. This report was made available to the complainant and is therefore no longer in issue herein.
6. A second report on a form entitled "South Central Region Case/ Incident Report," with supporting statements, was prepared by, and is in the possession of, the respondent police department. This second category of documents was prepared and compiled in order to determine whether any internal departmental action should be taken as a result of the death of Bruce Williams.
7. The respondents contend that the records described in paragraph 6, above, are exempt from disclosure pursuant to §§2(b)(2)(b) and (c) and 2(b)(3) of P.A. 75-342. These claims of exemption will be treated seriatim below.

8. The exemption from disclosure provided by § 2(b)(2)(b) is premised, in part, upon whether the information sought is to be used in a prospective law enforcement action and if the disclosure of same would be prejudicial to such action. In this case, there was no showing that the records would be used in a prospective law enforcement action of any kind. The documents were prepared before the filing of the notice referred to in paragraph 2, above, for the stated purpose of determining whether internal departmental action should be taken. No evidence was adduced as to whether such action has been taken or is being contemplated. Therefore, it is concluded that § 2(b)(2)(b) does not exempt the requested records from disclosure in this case. To find otherwise would defeat the public policy underlying P.A. 75-342 because there would be no limitation to the withholding of public records on the mere assertion that there may be prospective law enforcement actions.


9. There was no evidence in these proceedings that the requested records would disclose investigatory techniques not otherwise known to the general public. Consequently, it is concluded that §2(b)(2)(c) of P.A. 75-342 does not exempt the requested records in this case.

10. § 2(b)(3) of P.A. 75-342 exempts from disclosure records pertaining to pending claims and litigation to which the public agency is a party. It is the respondents' contention that the notice referred to in paragraph 2, above, places the requested records within the "pending claims and litigation" exemption of § 2(b)(3). It is found that the statutory notice filed by the complainant herein pursuant to 7-465 C.G.S., does not, per se, activate the § 2(b)(3) exemption. No demand or claim for damages or other relief has been filed with the respondents or any court concerning the subject of the requested documents. Furthermore, the complainant maintains that it is not seeking any attorney work product. It is therefore concluded that the documents requested in this case are not exempt from disclosure pursuant to § 2(b)(3) of P.A. 75-342.

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 access to inspect or copy the records described in paragraph 3, above, and more particularly described in paragraph 6, above, in accordance with P.A. 75-342.

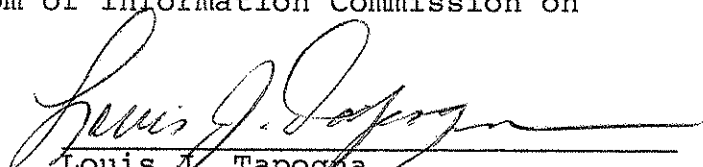
2. This opinion is limited to the facts herein presented and shall not be construed as interpreting § 2(b) of P.A. 75-342 except as hereinabove provided.



Commissioner Judith A. Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on
June 9, 1976.



Louis J. Tapogna
Clerk of the Commission