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Cathy Kohut,
Complainant(s)
against

Chief, Police Department, Town of Stratford;
and Police Department, Town of Stratford,
Respondent(s)

Notice of Meeting

Docket #FIC 2013-071

August 14, 2013

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, September 11, 2013.** 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 August 30, 2013.*** 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 August 30, 2013.*** **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 **fourteen (14) copies** be filed ***ON OR BEFORE August 30, 2013,*** 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: Cathy Kohut, Esq.
Christopher Smedick, Esq.

8/14/13/FIC# 2013-071/Trans/wrbp/CPH/MES/KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Gerald Pinto,

Complainant

against

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

Respondents

Report of Hearing Officer

Docket #FIC 2013-071

August 14, 2013

The above-captioned matter was heard as a contested case on July 9, 2013, at which time the complainant and the respondents appeared and presented exhibits and argument on the complaint. At the hearing, the parties agreed that the case caption should be changed to reflect that Gerald Pinto is the actual complainant in this matter. Such change is reflected above.

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 letter dated September 4, 2012, the complainant requested that the respondents provide him with (a) copies of all internal affairs records and related records for the preceding twenty-four months, and (b) copies of all police records related to incidents at 130 Honeyspot Road for calendar year 2011.

3. It is found that on September 11, 2012, the respondents acknowledged the request described in paragraph 2, above. It is found that thereafter, the parties communicated regarding the request, and that the respondents estimated that the requested copies would approximate 2000 pages. It is further found that, on November 24, 2012, the complainant paid a fee of $1,000 for the copies, and that the parties agreed on a timetable for providing the records.

4. It is found that, in January 2013, the complainant again contacted the respondents seeking the requested copies. It is further found that, on January 23, 2013, the respondents informed the complainant that certain of the requested copies were exempt from mandatory disclosure by virtue of §1-210(b)(3), G.S.

5. By letter of complaint, dated February 4, 2013 and filed February 13, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of

Information (FOI) Act by failing to comply with the request for records 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 . . . (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. At the July 9, 2013, hearing, the parties agreed that the only records remaining at issue in this matter are 21 pages that the respondents maintain, which are responsive to the request described in paragraph 2(b), above.

10. The respondents provided copies of the records described in paragraph 9, above, for in camera inspection. Such copies are hereinafter described as IC-2013-071-1 through IC-2013-071-21. Such records consist of a police report, application for arrest warrant, search and seizure warrants, witness statements, and various related police forms.

11. The respondents contend that IC-2013-071-1 through IC-2013-071-21 are exempt from mandatory disclosure by virtue of §1-210(b)(3)(G), G.S., because such documents contain uncorroborated allegations of criminal activity.[1]

12. Section 1-210(b)(3)(H), G.S., provides, in relevant part, that nothing in the FOI Act shall require the disclosure of:

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[1] The Commission notes that the exemption for uncorroborated allegations is now set forth in §1-210(b)(3)(H), G.S., pursuant to Public Act 13-311. Accordingly, the Commission will address the exemption as currently codified.

> 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 . . . uncorroborated allegations subject to destruction pursuant to section 1-216 . . . .

13. In turn, §1-216, G.S., provides:

> Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

14. Based upon careful review of the in camera records, it is found that such records are records of a law enforcement agency, not otherwise available to the public, which were compiled in connection with the detection or investigation of crime, and which contain uncorroborated allegations subject to destruction pursuant to §1-216, G.S.

15. The Commission has consistently concluded that the entirety of the record of an investigation of uncorroborated allegations of criminal activity is exempt from disclosure, pursuant to §1-210(b)(3)(G), G.S., now §1-210(b)(3)(H), G.S. See, e.g., Docket # 2009-782, O'Meara v. Legal Affairs Unit, State of Connecticut, Department of Public Safety (all records including incident report and witness statements exempt under §1-210(b)(3), G.S.); Docket #FIC2006-049, Otto v. Chief, Police Department, Town of Greenwich (all 48 pages of police report exempt from disclosure under §1-210(b)(3)(G), G.S.); Docket #FIC 2005-031, Bosco v. Chief, Police Department, Town of Wethersfield (all 22 pages of investigation report comprised of incident report; supplemental reports; statements of the complainant, the suspect and another individual; case closure report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 2003-462, Kosinski v. Department of Public Safety (all 25 pages of investigation report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 2003-218, Chalecki v. Department of Public Safety (entirety of investigation report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 2000-291, Damato v. Records Supervisor, Police Department, Town of Glastonbury (all four pages of investigation report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 1999-493, Peruta v. Chief, Police Department, Town of Wethersfield et al. (all three pages of investigation exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 1999-296, Hartford Courant et al. v. Chief, Police Department, City of Torrington et al. (all 317 pages of investigation report exempt under §1-210(b)(3)(B) and (G), G.S.).

16. It is concluded that IC-2013-071-1 through IC-2013-071-21 are exempt from mandatory disclosure by virtue of §1-210(b)(3)(H), G.S. Accordingly, it is also concluded that the respondents did not violate the FOI Act by withholding such documents from the complainant.

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

1. The complaint is hereby dismissed.

Commissioner Christopher P. Hankins
as Hearing Officer

FIC/2013-071/HOR/cph/mes/08/14/2013