



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

Jon Schoenhorn,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-339

Jack Daly, Chief, Police Department, Town of
Southington; and Police Department, Town of
Southington,

Respondent(s)

April 9, 2015

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 13, 2015**. 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 May 1, 2015**. 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 May 1, 2015**. **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 May 1, 2015**, 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: Jon Schoenhorn
Jack Daly, Chief, Police Department, Town of Southington
Police Department, Town of Southington

2015-04-09/FIC# 2014-339/Trans/wrbp/MS/PSP/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jon Schoenhorn,

Complainant

Docket # FIC 2014-339

against

Jack Daly, Chief, Police Department,
Town of Southington; and Police
Department, Town of Southington,

Respondents

April 8, 2015

The above-captioned matter was heard as a contested case on January 2, 2015, at which time the complainant and respondents appeared, stipulated to certain facts 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 letter dated May 29, 2014, the complainant made a request to the respondents for copies of “[a]ll documents regarding Marci Jill Montas (DOB 12/14/1975) for an incident leading to an arrest that occurred on June 14, 2012, including any and all reports and warrants.”
3. It is found that, by letter dated May 30, 2014, the respondents informed the complainant that, per the Bristol Superior Court, the requested records, described in paragraph 2, above, were nondisclosable until an unspecified court date in July 2014. The respondents also informed the complainant that he could obtain records from the Bristol Superior Court after all court proceedings.
4. By letter filed on June 2, 2014, the complainant appealed to this Commission, alleging that the respondents failed to provide copies of the records, described in paragraph 2, above, in violation of the FOI Act. The complainant also requested the assessment of civil penalties against the respondents.
5. Section 1-200(5), G.S., defines “public records or files” as:

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:

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

8. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

9. It is found that an arrest was made in connection with the June 14, 2012 incident, described in paragraph 2, above, and that, at the time of the complainant's May 29, 2014 request, there was a pending criminal case concerning the June 14th incident.

10. At the hearing, the respondents testified that upon receipt of a request for records relating to an active criminal case, their procedure is to contact the town attorney and prosecutors handling the criminal matter to inquire as to whether they can release the requested records. They testified that, upon receipt of the complainant's May 29th request, they contacted both the town attorney and the court, and were directed by prosecutors not to release any information because there was an ongoing criminal matter concerning the June 14th incident. The respondents also testified that, even though they did not provide the complainant with documents responsive to his May 29th request during the pending criminal matter, they did, per their protocol, post an arrest log (including the date and time of arrest, name, age and address of the person arrested, offense for which the individual was arrested, date of court appearance and bond information) on their Facebook page for distribution to news outlets and the public. The respondents further testified that they would have provided the complainant with responsive records once the case was adjudicated and closed, but they were informed by the Court that the criminal matter was dismissed (on July 30, 2014) and attached to the file was a note indicating

“no dissemination” “no public record”. The respondents did not testify as to whether Connecticut’s erasure statute, §54-142a, G.S., applied to the records at issue.¹

11. In a 2014 Supreme Court decision, the Court held that law enforcement agencies’ disclosure obligations under the FOI Act during pending prosecutions remain exclusively governed by §1-215, G.S. See Commissioner of Public Safety v. Freedom of Information Commission, et. al., 312 Conn. 513, 545 (2014) *affirming* Commissioner of Public Safety v. Freedom of Information Commissions, et. al., 137 Conn. App. 307 (2012).

12. Conn. Gen. Stat. §1-215, G.S., provides, in relevant part:

(a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, 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, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1-210....

(b) For the purposes of this section, “record of the arrest” means (1) the name 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) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person.

¹ Section 54-142a(a), G.S., provides in relevant part:

Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken....

Section 54-142a(e), G.S., provides in relevant part:

...any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record ...information pertaining to any charge erased under any provision of this section....[Any] person charged with the retention and control of such records ... shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records...

13. In Commissioner of Public Safety v. Freedom of Information Commission, et. al., a request was made for access to a police report concerning the arrest of an individual who was charged with assault and attempted murder in connection with an incident that had occurred in Derby, CT. The Department of Public Safety denied the request claiming that the entire police report was exempt from disclosure pursuant to §1-215, G.S, and provided the requester with only a copy of a press release. After an administrative hearing, the Commission concluded that the Department had violated the FOI Act. The Department then appealed. On appeal, the Commission asserted that §1-215, G.S., required the disclosure of “the record of arrest” and that, if an agency sought to withhold other police records, it must establish that such records were exempt from disclosure pursuant to the provisions of §1-210(b)(3), G.S.² The Court, however, found that the Department’s disclosure of the press release to the requester satisfied the requirements of §1-215, G.S., and that the Department was not obligated to make the full police report available during the pending criminal prosecution. The Court held that while a criminal prosecution is pending, §1-215, G.S., requires only that the Department of Public Safety disclose basic “police blotter” information about the arrest (*i.e.*, the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested) and either an arrest report, incident report, news release or other similar report of the arrest, designated by the agency.

14. It is found that, as of the January 2, 2015 hearing in this matter, the respondents had not provided the complainant with any records responsive to his May 29th records request. It is found that, at the time of such request, the respondents should have provided the complainant with at least basic “police blotter” information and an arrest report, incident report, news release or other similar report, as required pursuant to Commissioner of Public Safety v. Freedom of Information Commission, et. al.

15. Under the facts and circumstances of this case, it is therefore concluded that the respondents violated the disclosure provisions of the FOI Act.

² Section 1-210(b)(3), G.S., provides that:

Nothing in the Freedom of Information Act shall be construed to require disclosure 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, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216....

16. With respect to the complainant's request for civil penalties, §1-206(b)(2), G.S., provides in relevant part:

[U]pon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

17. The respondents testified that they did not willfully violate the FOI Act when they did not provide the complainant with records responsive to his May 29th request. Rather, they were adhering to their practice regarding the release of records relating to an active criminal case, and at the direction of the prosecutors as described in paragraph 10, above.

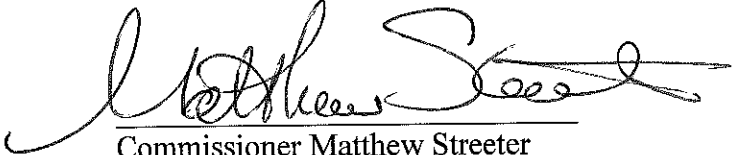
18. After consideration of the record in this case, the Commission declines to consider the imposition of civil penalties against the respondents.

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 copies of any records responsive to the complainant's May 29th request to which Connecticut's erasure statute, §54-142a, G.S., does not apply.

2. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

3. The respondents shall contact the Commission within 30 days of the mailing of the Notice of Final Decision in this matter to schedule an educational workshop to be conducted by a member of the Commission's staff.



Commissioner Matthew Streeter
as Hearing Officer