



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-653

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

April 26, 2016

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 25, 2016**. 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 13, 2016**. 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 13, 2016**. **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 13, 2016**, 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: Attorney Irene J. Kim
Attorney Cynthia Lauture

2016-04-26/FIC# 2015-653/Trans/wrbp/VDH//TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jon Schoenhorn,

Complainant

against

Docket #FIC 2015-653

Chief, Police Department, City of
Hartford; Police Department, City
of Hartford; and Police Department,
City of Hartford,

Respondents

March 17, 2016

The above-captioned matter was heard as a contested case on December 22, 2015, at which time the complainant and the 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 September 16, 2015, the complainant requested that the respondents provide him with a copy of the following records:
 - a. All computerized-generated data, either by dispatcher or mobile data terminal computer systems, pertaining to an investigation at 40 Waters Avenue, Rocky Hill, CT on June 16, 2015 between approximately 6:00 PM and continuing to about 9:00 PM involving a Volvo V70 with [a particular Connecticut registration];
 - b. A complete computer assisted data ("CAD") transmission report for June 16, 2015 between the hours of 6:00 PM and 11:00 PM, including all times called into dispatch and/or requested information concerning a Volvo V70 with [a particular Connecticut registration], as well as all radio communication, recorded telephone calls, text and e-mail communication concerning the

investigation, and any/all communication between the Hartford Police Department and the Rocky Hill Police Department concerning the investigation of the Volvo V70 in question or concerning a person identified as Carl Rodgers; and

- c. All incident reports, memoranda, DMV data searches, proof of NCIC check on either the aforementioned Volvo V70 or an individual identified as Carl Rodgers, or other written or electronic data concerning the above generated on or after June 16, 2015.

3. It is found that, by letter dated September 21, 2015, the respondents acknowledged the complainant's request, informing him that they would begin to search for responsive records and, thereafter, would contact him.

4. By letter dated and filed October 1, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the requested records described in paragraph 2, above. In connection with the complaint, the complainant requested that the Commission consider the imposition of a civil penalty.

5. 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.

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, (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.

7. 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.”

8. 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.

9. It is found that the complainant first made a request for the records described in paragraph 2, above, on July 8, 2015. It is found that, by letter dated July 15, 2015, the respondents acknowledged the July 8th request with the same language as was used in the September 21, 2015 acknowledgement referred to in paragraph 3, above.

10. At the contested case hearing, the complainant contended that use of identical language in the acknowledgement letters, in which the respondents represent that they would begin to search for responsive records, evidences that the respondents never actually looked for or collected the records after the first record request. In response to questions about the scope of the request, the complainant clarified that, while the request in paragraph 2.b, above, seemed to be requesting all CAD transmissions for June 16, 2015 between the specified time frame regardless of the subject matter, the complainant was only seeking transmissions with regard to the incident on June 16, 2015 involving the Volvo V70 described in the request.

11. The respondents’ FOI Liaison, Detective Omayra Martinez-Baidy (the “detective”), appeared and testified at the contested case hearing.

12. It is found that when the detective received the September 16, 2015 request for records she determined that the records were part of a special investigation. It is found that the detective contacted the special investigation division, determined which officer had handled the underlying law enforcement matter, and inquired of him as to whether the case was open or closed. It is found that the detective was informed that the requested records were part of an open, ongoing criminal investigation.

13. It is found that, once the status of the case was determined, by letter dated October 8, 2015, the respondents informed the complainant that the requested records were part of an ongoing investigation. It is found that the respondents also informed the complainant that, once the investigation was completed, the records would be made available.

14. At the contested case hearing, the respondents contended that all of the records responsive to the request are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S. (the identity of minor witnesses) and §1-210(b)(3)(H), G.S., (uncorroborated allegations subject to destruction).

15. At the conclusion of the testimony, the complainant made a motion, without objection, to have the Commission conduct an in camera inspection of the requested records. The complainant’s motion was granted.

16. On January 8, 2016, the respondents submitted the records at issue to the Commission for an in camera inspection. The in camera records, which may be referred to as IC-2015-653-1 through IC-2015-653-4¹, which are fairly described as one police investigation report; IC-2015-653-5 through IC-2015-653-7, which are fairly described as a three-page dispatch summary report; IC-2015-653-8 through IC-2015-653-9, which are fairly described as two separate signed witness statements; and IC-2015-653-10, which is fairly described as one CD containing 15 minutes of audio communications, including the original 911 call to the respondent police department as well dispatch communications.

17. Section 1-210(b)(3)(B), (C)², and (H), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require disclosure 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. . . (B) the identity of minor witnesses, (C) signed statements of witnesses, . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216[.]

18. Section 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.

19. It is found that the underlying matter, which was criminal in nature, was closed on December 18, 2015.

20. It is found that such matter involves an initial act of indecent exposure perpetrated against a juvenile, followed by a subsequent act of indecent exposure perpetrated against another juvenile and an adult. Specifically, it is found that a juvenile against whom the initial

¹ The Commission notes that the in camera records were submitted for inspection without page numbers. Accordingly, the numbers that the Commission refers to in this report—that is, IC-2015-653-1 through IC-2015-653-10, are numbers that the Commission has penciled in on the bottom corner of each record.

² While the respondents did not raise §1-210(b)(3)(C), G.S., as an exemption to disclosure in this case, nothing prevents this Commission from acknowledging an exempt record when such exemption is obvious on the face of the record.

act was committed came forward to the respondent police depart to report what had happened (the “first complaint”). It is found that, subsequent to this initial complaint, two other individuals—one of whom was a juvenile and the other of whom was an adult—came forward and reported a separate instance of similar behavior (the “second complaint”). It is found that the underlying criminal activity reported in the second complaint is alleged to have occurred within hours of the criminal activity reported in the first complaint. It is found that, in connection with each of the complaints, the respondents were provided with a description of the Volvo V70 and the driver of said vehicle. It is further found that, in connection with the complaints, the respondents were also provided with the registration connected to the same Volvo V70. It is found that the respondents consolidated first complaint and the second complaint into one case for purposes of their investigation. It is found, however, that no criminal charges were ever filed in connection with the investigation. It is further found that the complainant in this case is seeking a copy of the records which comprise the joint investigation.

21. Upon a careful review of the in camera records, it is found that they are records of a law enforcement agency, not otherwise available to the public, which were compiled in connection with the detection or investigation of a crime.

22. It is further found that certain portions of in camera records IC-2015-653-1 through IC2015-653-7 (the police investigation report and the dispatch summary report) reveal the identity of two minor witnesses, including their names, dates of birth, and/or residential addresses. In addition, with regard to IC-2015-653-10 (the CD), it is found that, in the initial 911 call to the respondent police department, the caller identifies one of the minor witnesses by describing her relationship to such child. Accordingly, it is found that disclosure of the 911 caller’s statements to the respondent police department, other than the description of the alleged criminal activity, would inadvertently reveal the identity of a minor witness.

23. It is therefore concluded that the portions of the in camera records described in paragraph 22, above, are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S.

24. With regard to IC-2015-653-8 and IC-2015-653-9, it is found that such records are signed witnesses statements. Accordingly, it is concluded that IC-2015-653-8 and IC-2015-653-8 are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

25. Finally, the respondents contend that, because criminal charges where not filed in this case, the allegations that were investigated are therefore “uncorroborated,” within the meaning of §1-210(b)(3)(H), G.S., and thus the requested records are exempt in their entirety.

26. In Rachel Gottlieb and The Hartford Courant v. State of Connecticut, Department of Public Safety, Division of State Police, Docket #FIC 94-291 (May 24, 1995) (“FIC 94-291”) the Commission found that Black's Law Dictionary, Sixth Edition (1990), defines “corroborate” as “to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence.” Ballentines Law Dictionary, Third Edition (1969) defines

corroborate as “to state facts tending to produce confidence in the truth of a statement made by another.” Funk & Wagnall New Standard Dictionary of the English Language (1946) defines corroborate as “to give increased support to; make more sure or evident.”

27. In FIC 94-291, the Commission found that “the reports contain similar accounts relayed to the respondent by different interviewees concerning the allegations under investigation.” The Commission went on to find that “the requested reports contain allegations which were corroborated.”

28. In this case, as in FIC 94-291, it is found that the in camera records contain similar accounts of incidents told to the respondents by different individuals, and information that tends to strengthen, add weight and support allegations which were made.

29. It is found that allegations may be corroborated without rising to the level of probable cause that a crime has been committed. See Torres v. Chief, Police Department, City of New London, Docket #FIC 2005-553 (May 10, 2006) (allegations were corroborated, although the State’s Attorney declined to prosecute because it would be difficult for the State to sustain its burden of proof).

30. Based upon careful review of the in camera records, it is found that such records do not contain uncorroborated allegations within the meaning of §1-210(b)(3)(H), G.S.

31. Consequently, it is concluded that the disclosure of the in camera records would not result in the disclosure of uncorroborated allegations.

32. It is further concluded that, other than those portions of the in camera records found to be exempt from disclosure in paragraph 22, above, and the two records found to be exempt in their entirety in paragraph 24, above, the respondents violated the FOI Act by declining to disclose the requested records to the complainants.

33. With regard to IC-2015-653-10 (the CD), the Commission notes that this record will need to be transcribed before it can be redacted in accordance with the last sentence of paragraph 22, above. The Commission further notes that transcription of this record will be complicated because, at times, there are simultaneous communications between certain police officers in the field and dispatch, and certain police officers in the field and their sergeant. The complainant has not contended that he is indigent, nor can such a finding be made on the administrative record in this case. Accordingly, the fee for the transcription of IC-2015-653-10 must be borne by the complainant. See §1-212(a)(2)(B) (“If any copy provided in accordance with said Freedom of Information Act requires a transcription, or if any person applies for a transcription of a public record, the fee for such transcription shall not exceed the cost thereof to the public agency.”).

34. Based on the facts and circumstances of this case, the Commission declines to consider the imposition of a civil penalty.

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 to the complainant a copy of all requested records, except for those portions of the in camera records specifically identified in paragraphs 22, and the records specifically identified in paragraph 24 of the findings, above. The requested records, other than a transcript of the CD, shall be provided to the complainant free of charge.



Valicia Dee Harmon
as Hearing Officer