

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jeane Simpson,

Complainant

against

Docket #FIC 2017-0429

Chief, Police Department, City of West  
Haven; Police Department, City of West  
Haven; and City of West Haven,

Respondents

January 24, 2018

The above-captioned matter was heard as a contested case on November 1, 2017, 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. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, on July 4, 2017, the complainant requested records from the respondents concerning their investigation of a motor vehicle accident in which the complainant's husband was killed.
3. By letter filed July 28, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the requested records.
4. 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

5. 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, ... or (3) receive a copy of such records in accordance with section 1-212. (Emphasis added.)

6. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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

8. It is found that the respondents’ investigatory file contains records received from a health facility of the U.S. Department of Veterans Affairs. The respondents claim that such records, which are a subset of all the records in the investigatory file, are confidential pursuant to federal law, 38 U.S.C. §7332.

9. 38 U.S.C. §7332 provides in pertinent part:

(a)(1) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia which is carried out by or for the Department under this title shall, except as provided in subsections (e) and (f), be confidential ...

10. It is concluded that 38 U.S.C. §7332 requires the confidentiality of certain Veterans Affairs medical records of the identity, diagnosis, or treatment of any patient for drug or alcohol abuse, HIV, or sickle cell anemia, except by special written consent of the patient.

11. By after-filed exhibit, accepted and marked as Exhibit 3, the respondents submitted evidence to support their claim that they received records protected by 38 U.S.C. §7332 pursuant to special written authorization signed by the subject of the records. It is found that disclosure was permitted only to the West Haven Police Major Accident Squad. It is found that the authorization did not permit the West Haven Police to re-disclose the records to a member of the public, or even to the complainant as a person of special interest in the incident.

12. Accordingly, it is concluded that §1-210(a), G.S., prohibits the disclosure of the records that the respondents received from the Department of Veterans Affairs hospital pursuant to the signed authorization.

13. It is found that Exhibit 3 also includes a letter, dated March 26, 2014, from the Department of Veterans Affairs to the West Haven Police Department detective assigned to the investigation, concerning records that would show “the time methadone was dispensed.” The letter advised the detective that “[t]his information is not contained in the medical record (provided to the respondents pursuant to the patient’s written authorization) and is being processed under the [federal] FOI Act.” In other words, the Department of Veterans Affairs would not disclose the record containing information about “the time methadone was dispensed” pursuant to the patient’s written authorization; instead, the detective’s request was being treated as a request pursuant to the federal FOI Act. The letter also stated that the requested record (concerning the time methadone was dispensed) was enclosed, redacted in accordance with the federal FOI Act.

14. It is found, therefore, that the record that would show “the time methadone was dispensed” is not a confidential medical record protected by 38 U.S.C. §7332. It is also found that the complainant expressed keen interest in receiving such information, but the respondents failed to prove that they provided to the complainant the “non-medical record” they received from the Department of Veterans Affairs pursuant to the federal FOI Act, described in paragraph 13, above.

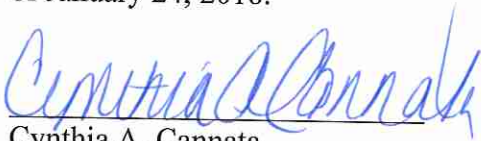
15. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S.

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

1. Forthwith, the respondents shall provide a copy of the record enclosed with the March 26, 2014 letter received from the Department of Veterans Affairs, described in the paragraphs 13 and 14 of the findings of fact, above.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of January 24, 2018.



Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**JEANE SIMPSON**, c/o Papcsy Janosov Roche, 53 East Avenue, Norwalk, CT 06851

**CHIEF, POLICE DEPARTMENT, CITY OF WEST HAVEN; POLICE DEPARTMENT, CITY OF WEST HAVEN; AND CITY OF WEST HAVEN**, c/o Attorney Henry C. Szadkowski, City of West Haven, Office of the Corporation Counsel, 355 Main Street, West Haven, CT 06516



Cynthia A. Cannata  
Acting Clerk of the Commission