

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant

against

Docket #FIC 2018-0624

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

Respondents

May 8, 2019

The above-captioned matter was heard as a contested case on January 30, 2019, 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 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 October 10, 2018, the complainant requested from the respondents a copy of “all incident reports in cases where James Smith was the arresting officer...involving driving under the influence and refusal of chemical/alcohol test.”
3. It is found that, by letter dated October 16, 2018, the respondents acknowledged the request, described in paragraph 2, above.
4. It is found that, by email dated October 19, 2018, an assistant in the police department’s records division informed the complainant that there were 41 reports responsive to his request. However, on October 26, 2018, the assistant informed the complainant that there were only four reports responsive to his request. Then, by letter dated October 29, 2018, the police department’s Director of General Services (“director”) informed the complainant that there was only one report responsive to his request, that the charges in that case had been dismissed, and that therefore “no public record exists.”
5. It is found that, by email dated October 31, 2018, the complainant, having received conflicting information about the number of responsive records, questioned the October 29,

2018 response, and whether the responsive records were “erased.” In addition, he reiterated his request for the records described in paragraph 2, above.

6. By letter dated November 1, 2018, and filed with the Commission on November 5, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide to him a copy of the records, described in paragraph 2, above.

7. Section 1-200(5), G.S., provides:

“[p]ublic 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.

8. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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.

9. 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.”

10. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that, by email dated November 2, 2018, the director informed the complainant that there may have been some confusion regarding the records he was seeking and asked the complainant to clarify that he was seeking “DUI arrests by James Smith where a refusal of alcohol or chemical tests was involved.”

12. It is found that, by email dated November 13, 2018, the complainant responded: “in order reduce the confusion, I am making a second FOI request...for all of the incident reports for Officer Smith’s DUI arrests” (emphasis added). It is found that, by letter dated November 13, 2018, the complainant did, in fact, make this second records request to the respondents.¹

¹ The alleged denial of the second request is the subject of a separate appeal to the Commission.

13. It is found that, by letter dated January 9, 2019, the director informed the complainant that a search for all DUI arrests by Sergeant Smith resulted in total of 46 reports. Enclosed with that letter, the director provided a copy of seven reports, only four of which were responsive to the request at issue in this case (i.e. involving arrests for DUI by Sergeant Smith in which the person arrested refused an alcohol/chemical test). At the hearing in this matter, the director was unable to recall whether, or how many, responsive reports had been withheld.²

14. On February 20, 2019, the hearing officer ordered the respondents to submit for in camera inspection a copy of all responsive reports that were withheld. The respondents submitted the in camera records, and an index identifying the exemptions claimed, to the Commission on March 13, 2019. It is found that such in camera records total 559 pages, and generally consist of police incident reports, motor vehicle records and reports, inventory forms, and printouts from law enforcement databases (criminal background information). Such records shall be referred to herein as IC-2018-0624-001 through IC-2018-0624-559.

15. The respondents claimed that all of the in camera records have been erased, pursuant to §54-142a, G.S., and therefore may not be disclosed. Alternatively, the respondents claimed that certain portions of the in camera records are exempt from disclosure pursuant to §§29-164f, and 1-210(b)(2), G.S. The complainant argued that some of the records may not be erased and therefore copies of those records should be provided to him. In his post-hearing brief, the complainant also argued that the respondents could simply redact the name of the person who was arrested from the incident reports and disclose the redacted reports without violating §54-142a(e)(1), G.S. However, the complainant did not cite any court decision or provision of law in support of such claim.

16. Section 54-142a, G.S., provides, in relevant part:

(a) 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. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.

....

² By email dated February 21, 2019, counsel for the respondents represented that 18 responsive reports had been withheld.

(c)(1) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased....

....

(e)(1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, 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, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

....

(3) Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

....

(g) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any information or indictment containing more than one count (1) while the criminal case is pending, or (2) when the criminal case is

disposed of unless and until all counts are entitled to erasure in accordance with the provisions of this section, except that when the criminal case is disposed of, electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section....For the purposes of this subsection, "electronic record" means any police or court record or the record of any state's attorney or prosecuting attorney that is an electronic record, as defined in section 1-267, or a computer printout.

17. After careful in camera inspection, it is found that the following records are police and court records pertaining to criminal charges that have been dismissed or nolle, pursuant to §54-142a(a), or (c), G.S: IC-2018-0624-001 through 025, IC-2018-0624-035 through 053, IC-2018-0624-059 through 079, IC-2018-0624-083 through 102, IC-2018-0624-108 through 124, IC-2018-0624-130 through 164, IC-2018-0624-170 through 201, IC-2018-0624-209 through 229, IC-2018-0624-240 through 244, IC-2018-0624-325 through 340, IC-2018-0624-349 through 360, IC-2018-0624-366 through 387, IC-2018-0624-391 through 416, IC-2018-0624-431 through 450, IC-2018-0624-464 through 480, IC-2018-0624-492 through 499, IC-2018-0624-508 through 515, and IC-2018-0624-517 through 533. Accordingly, it is found that such in camera records are erased and may not be disclosed to the complainant.

18. After careful in camera inspection, it is found that IC-2018-0624-245 through 257, IC-2018-0624-259 through 269, IC-2018-0624-295 through 297, IC-2018-0624-299 through 311, IC-2018-0624-314 through 324, and IC-2018-0624-534 through 555, are police and court records of the arrests of two different individuals on criminal charges. It is found that, although such police and court records pertain to the criminal charges, it is also found that each of the criminal information summaries charging these individuals contain more than one count, and that not all counts are entitled to erasure. Therefore, pursuant to §54-142a(g), G.S., IC-2018-0624-245 through 257, IC-2018-0624-259 through 269, IC-2018-0624-295 through 297, IC-2018-0624-299 through 311, IC-2018-0624-314 through 324, and IC-2018-0624-534 through 555 are not erased.

19. With regard to the records identified in paragraph 18, above, the respondents claimed, alternatively, that certain information they characterized as "medical information" is exempt from disclosure pursuant to §1-210(b)(2), G.S. That provision states that disclosure is not required of "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

20. After careful in camera inspection of the records identified in paragraph 18, above, however, it is found that such records and the information contained therein are not personnel, medical or similar files, and therefore are not exempt from disclosure pursuant to §1-210(b)(2), G.S.

21. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the in camera records identified in paragraph 18, above, from the complainant.

22. After careful in camera inspection, it is found that IC-2018-0624-026 through 033, IC-2018-0624-054 through 058, IC-2018-0624-080 through 082, IC-2018-0624-103 through 107, IC-2018-0624-125 through 129, IC-2018-0624-165 through 169, IC-2018-0624-202 through 208, IC-2018-0624-230 through 239, IC-2018-0624-270 through 294, IC-2018-0624-312 through 313, IC-2018-0624-341 through 348, IC-2018-0624-361 through 365, IC-2018-0624-388 through 390, IC-2018-0624-417 through 430, IC-2018-0624-451 through 463, IC-2018-0624-482 through 491, IC-2018-0624-500 through 505, IC-2018-0624-507, IC-2018-0624-516, and IC-2018-0624-556 through 559, are not police and court records pertaining to criminal charges, but rather, are printouts from the Department of Motor Vehicles and law enforcement databases (COLLECT³, NCIC⁴, NLETS⁵, PRAWN⁶). It is further found that such records are not within the scope of the request, described in paragraph 2, above, for “incident reports,” and shall not be further considered herein.

23. After careful in camera inspection of IC-2018-0624-034, IC-2018-0624-258, IC-2018-0624-481, and IC-2018-0624-506, it is found that such records are “motor vehicle records,” as that term is used in §14-10(a)(2), G.S., which records contain “personal information” and “highly restricted personal information,” as those terms are defined in §§14-10(a)(3) and (4), G.S. It is further found that such records are not within the scope of the request, described in paragraph 2, above, for “incident reports,” and shall not be further considered herein.

24. Moreover, after careful in camera inspection, it is found that IC-2018-0624-289 is not within the scope of the request, described in paragraph 2, above, for “incident reports,” and shall not be further considered herein.

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 in camera records identified in paragraph 18, above, to the complainant, free of charge.

2. In complying with paragraph 1 of the order, the respondents may redact all social security numbers or motor vehicle driver’s license numbers contained in such records.

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

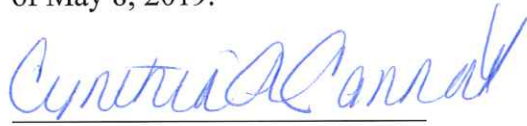
³ Connecticut On-line Law Enforcement Telecommunications System.

⁴ National Crime Information Center.

⁵ National Law Enforcement Telecommunications System.

⁶ Paperless Re-arrest Warrant Network.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 8, 2019.



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:

ROBERT CUSHMAN, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

CHIEF, POLICE DEPARTMENT, TOWN OF GREENWICH; POLICE DEPARTMENT, TOWN OF GREENWICH; AND TOWN OF GREENWICH, c/o Attorney Aamina Ahmad, Town of Greenwich, Greenwich Town Attorney's Office, 101 Field Point Road, Greenwich, CT 06830



Cynthia A. Cannata
Acting Clerk of the Commission