



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Lauren Sievert, Mike Savino and the
Meriden Record Journal,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0438

Commissioner, State of Connecticut, Department of
Emergency Services and Public Protection; and State of
Connecticut, Department of Emergency Services and
Public Protection,
Respondent(s)

November 10, 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, December 7, 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 November 22, 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 November 22, 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 November 22, 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: Lauren Sievert and Mike Savino
Assistant Attorney General Stephen R. Sarnoski

FIC# 2016-0438/Trans/wrbp/LFS//PSP/2016-11-10

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lauren Sievert, Mike Savino and the
Meriden Record Journal,

Complainants

against

Docket #FIC 2016-0438

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

November 9, 2016

The above-captioned matter was heard as a contested case on September 21, 2016, at which time the complainants 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 on March 30, 2016, the complainant Sievert ("Sievert") requested "a copy of all reports, arrest warrants, search warrants and any other available information regarding the arrests of Ricardo Adorno ... and Michael Concepcion ... on or about March 28, 2016." It is found that the complainant sent her request by email to the respondents' Public Information Officer ("PIO").
3. It is found that the PIO forwarded Sievert's request to the respondents' Legal Affairs Unit, which sent a form-letter acknowledgement to the complainant on April 1, 2016.
4. It is found that on May 11, 2016, the Legal Affairs Unit sent a copy of a Case Incident Report for each of the two men about whom the complainant requested records. It is found that such Case Incident Report is a printout displaying the "call type," such as "narcotics violation," the date, time, and location of the incident, and the primary officer involved in the incident. It is found that the Legal Affairs Unit informed Sievert that if she wanted copies of any of the investigative reports pertaining to the cases listed on the Incident Report, then she needed to direct a request to the respondents' "Reports and Records Unit," and pay \$16.00 per search pursuant to §29-10b, G.S.

5. It is found that on or about June 7, 2016, the complainant presented a completed copy of the respondents' "Request for Copy of Report" form to the Reports and Records Unit, as directed by the Legal Affairs Unit. It is found that the complainant also presented a check for \$16.00, which the respondents accepted.

6. It is found that on June 8, 2016, Sievert received a "Response to Request for Report." It is found that in the form, the respondents denied the complainant's request for a copy of the report on Adorno and Concepcion, and stated that the reason was "Due to a pending criminal prosecution, permission for release of this report must be obtained in writing from the prosecuting attorney." It is found that the form included the prosecuting attorney's phone number, indicating that the complainant should call the prosecuting attorney herself.

7. By letter filed June 14, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the records requested.

8. 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.

9. 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.

10. 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."

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

12. It is found that on June 14, the complainant Savino communicated by email with the respondents' PIO for comment to be used in a news story he was writing concerning Sievert's request for records and the respondents' direction to Sievert to ask the prosecuting attorney for permission. It is found that in the course of the email exchange, the PIO provided a summary of the Adorno/Concepcion arrest.

13. It is found that the PIO told Savino that incident reports pursuant to arrests are customarily written by the arresting trooper at his or her troop or unit, and that the troops normally release the reports without going through the PIO. However, the PIO added, the "PIO can access and release them when they are requested by media..."

14. It is found that in late July and early August, the Legal Affairs Unit provided to the complainants the Criminal Information Summary, which provided blotter information and a one paragraph summary of the incident resulting in the Adorno/Concepcion arrest. It is found that such Summary was dated March 21, 2016 by Investigating Trooper Wilkinson and signed by a supervisor, Sgt Benechhi, on June 15, 2016.

15. It is found that on September 8, 2016, the Legal Affairs Unit provided additional records: the investigation report dated March 28, 2016, and the related search warrant application and warrant, dated March 21, 2016. It is found that the Investigation Report was redacted to conceal the names of minor children.

16. The complainants claim that the respondents violated the FOI Act when they failed to produce any records in response to their June 7, 2016 request, and instead, directed them to contact the prosecuting attorney.

17. Section 1-215, G.S., provides:

(a) For the purposes of this section, "record of the arrest" means (1) the name, race 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) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person 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. No law

enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (3) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.

18. It is concluded that §1-215, G.S., sets forth the information that a law enforcement agency is required to disclose from the time of an arrest until a prosecution is no longer pending against the person arrested.

19. It is found that the prosecutions against Adorno and Concepcion were pending at the time of Sievert's initial request on March 30, 2016, and also when she paid \$16.00 for the investigative records, on June 7, 2016.

20. It is concluded that §1-215(b), G.S., requires a law enforcement agency to disclose the "record of the arrest," which, in the case of an arrest not pursuant to an arrest warrant (as in this matter), means blotter information (name, race and address of the person arrested, the date,

time and place of arrest, and the offense for which the person was arrested) and the *official* arrest, incident or similar report (see §1-215(a), G.S.).

21. It is concluded that §1-215(b), G.S., permits the law enforcement agency to make certain specific redactions to the official arrest, incident or similar report prior to disclosure: the identity of witnesses, and/or specific information about the commission of the crime, the disclosure of which the law enforcement agency reasonably believes may prejudice the pending prosecution.

22. It is concluded that nothing in §1-215(b), G.S., permits a law enforcement agency to refuse to disclose the record of the arrest while the criminal case is pending or to direct a member of the public to call the prosecuting attorney for permission to disclose the record of the arrest.

23. It is found that the respondents' form that they supplied to Sievert on June 8, 2016, which denied her request for records because the prosecution was pending and directed her to ask the prosecuting attorney for permission to receive a copy of such records (see paragraph 6, above), does not comport with the directives of §1-215, G.S.

24. It is found that on June 8, 2016, the respondents denied Sievert's request and failed to provide the "record of the arrest," within the meaning of §1-215, G.S.

25. It is concluded, therefore, that the respondents violated the FOI Act on June 8, 2016.

26. It is found that the respondents did provide the record of the arrest to the complainants at the end of July or in early August.

27. The respondents' claim in their brief that the delay was due in part because the complainants asked for records concerning the arrest of Adorno and Concepcion "on or about March 28, 2016," although the arrest actually occurred on March 21, 2016. It is found, however, that even if the respondents were confused about the date of the arrest, by May 11, 2016, when the Legal Affairs Unit provided the Criminal History Summary, the respondents knew the accurate arrest date. Moreover, it is found that Sievert stated the accurate arrest date in her Request for Copy of Report that she filed on June 7, 2016.

28. It is found that the delay – from June 7, 2016 to late July or early August, 2016 – in providing the requested record of the arrest was not reasonable under the circumstances. It is found that such records were not produced promptly.

29. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the requested record of the arrest in a prompt manner.

30. The Commission observes that the complainants should have received the record of the arrest shortly after Sievert requested it on March 30, 2016.¹ Based on the PIO's duties and

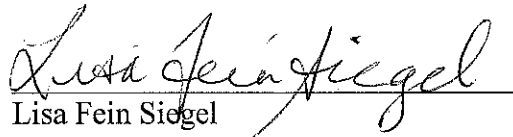
¹ This issue, however, is beyond the Commission's subject matter jurisdiction to adjudicate: Any complaint alleging a violation of a right conferred by the FOI Act must be filed within 30 days after the alleged denial of such right. See §1-206(b)(1), G.S.

Sievert's past experience, it was reasonable for a member of the media such as Sievert to request records from the PIO. As the PIO indicated in the email to Savino, the PIO can access and release records created by the troop when requested by the media. Instead, the PIO provided no information on March 30, 2016, did not contact the troop that made the arrest, and sent the request to Legal Affairs, which did not provide any records until May 11, 2016, when it provided only minimal information about the arrests and told Sievert that she needed to make a request from Reports and Records for both the record of the arrest and other records related to the arrests.

31. The Commission also observes that the respondents have since changed the language in their Response to Request for Report form. Instead of directing a requester to the prosecuting attorney for permission, the form now states the following explanation as a checkbox option for denial: "The case you have requested is pending prosecution and the full report is not subject to public disclosure at this time. Enclosed please find a copy of the record of the arrest." Section 1-215(c), G.S., provides that during the pendency of a criminal prosecution, records that document or depict an arrest (other than the "record of the arrest") *shall* be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes. Nothing in the FOI Act authorizes a blanket exemption for records depicting the arrest during the pendency of a criminal prosecution.

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

1. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a), 1-212(a), and 1-215, G.S.


Lisa Fein Siegel
as Hearing Officer