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FREEDOM OF INFORMATION

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David Desroches and WNPR
Complainant(s)
against

Chief, Police Department, Town of Greenwich; Police Department, Town of Greenwich; and Town of Greenwich
Respondent(s)

Notice of Meeting

Docket #FIC 2017-0070

September 8, 2017

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, lst floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, September 27, 2017.** 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 September 15, 2017.*** 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 September 15, 2017.*** **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 September 15, 2017*** 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Attorney Daniel J. Klau
Attorney Valerie Maze Keeney

FIC# 2017-0070/ITRA/PSP//TAH/WRBP/2017-09-8

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by — Report of Hearing Officer

David DesRoches and WNPR,

Complainant — Docket # FIC 2017-0070

against

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

Respondents — September 6, 2017

The above-captioned matter was heard as a contested case on June 8, 2017, at which time the complainants 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 January 18, 2017, the complainant David DesRoches, on behalf of the complainants, requested from the respondents "access to and copies of any surveillance video imagery of Christopher von Keyserling interacting with a woman whom von Keyserling is alleged by Greenwich Police to have 'pinched…in the groin area' on December 8, 2016 in a building owned by the Town of Greenwich." Mr. DesRoches further requested that "if the Greenwich Police Department finds it necessary to protect the identities of the alleged victim or the witnesses, we ask that you sufficiently blur the images of the alleged victim and/or the witnesses using whatever editing tool that would still allow the image of von Keyserling to be discernible."

3. It is found that by email dated January 27, 2017, the respondents denied the complainants' request, described in paragraph 2, above, on the grounds that the requested video recording "is an item of evidence associated with a prospective law enforcement action, the release of which may be prejudicial to such action…." The respondents also cited to section 24 of Public Act 15-211 "protecting the confidentiality of the name and address and such other identifying information pertaining to victims of sexual assault under 53a-73a and others."

4. It is found that by email dated February 2, 2017, Mr. DesRoches sought clarification as to the basis for denying the complainants' January 18th request.

5. By letter of complaint, dated February 2, 2017, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with a copy of the video recording described in paragraph 2, above.

6. 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.

7. 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.

8. 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."

9. At the hearing in this matter and in their post-hearing brief, the respondents claimed that the requested video recording was not a "record of the arrest" subject to disclosure pursuant to §1-215, G.S., which governs a law enforcement agency's disclosure obligations during pending criminal prosecutions. The respondents contended that the video recording was not subject to disclosure during the pending prosecution because it was part of the respondents' investigative file compiled in connection with the investigation of a crime resulting in an arrest and tagged as "evidence" in such prosecution. In the alternative, the respondents claimed that the video recording was exempt from disclosure pursuant to §§1-210(b)(2), 1-210(b)(3)(D), 1-210(b)(3)(G), and 54-86e, G.S.

10. After the hearing, pursuant to an order of the hearing officer, the respondents submitted the video recording to the Commission for in camera review, which has been marked as IC-2017-0070-CD 1. On the in camera index, the respondents claimed that the video recording is exempt from disclosure pursuant to §§1-210(b)(2), 1-210(b)(3)(D), 1-210(b)(3)(G), 1-215 and 54-86e, G.S.

11. With respect to the respondents' claim that the video recording is not a "record of the arrest" subject to disclosure during a pending prosecution, §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.
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> (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.
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> (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.

12. In Commissioner of Public Safety v. Freedom of Information Commission, et. al., 312 Conn. 513 (July 15, 2014), the Supreme Court interpreted §1-215, G.S., and ruled that during the pendency of a criminal prosecution, a law enforcement agency must disclose no more than basic police blotter information and one other piece of information, designated by the law enforcement agency: either a press release, the arrest or incident report, or other similar report of the arrest of a person. The legislature responded to Public Safety by enacting Public Act 15-164, *An Act Concerning the Disclosure of Arrest Records During a Pending Prosecution under the Freedom of Information Act*, which amended §1-215, G.S., by increasing law enforcement agencies' disclosure obligations under §1-215, G.S. Public Act 15-164, however, did not reverse the Public Safety decision.[1] Accordingly, §1-215, G.S., continues to exclusively govern law enforcement agencies' disclosure obligations under the FOI Act during pending criminal prosecutions.

13. It is found that during a pending criminal prosecution, a law enforcement agency must disclose only a "record of the arrest" within the meaning of §§1-215(a) and 1-215(b), G.S., and a record that "documents or depicts the arrest or custody of a person" in accordance with §§1-210, 1-212 and 1-215(c), G.S.

14. It is found that Mr. von Keyserling was arrested by warrant on January 11, 2017, and charged with one count of violating Conn. Gen. Stat. §53a-73a (*i.e.*, sexual assault in the fourth degree). It is found that the respondents released to the public a form titled "Criminal Information Summary" which contained certain information concerning such arrest. In addition,

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[1] The Commission notes that the underlying bill, House Bill 6750, *An Act Expanding the Requirement for Disclosure of Arrest Records during a Pending Prosecution under the Freedom of Information Act*, as originally proposed, sought to reverse the Public Safety decision. The raised bill required that during the pendency of a criminal prosecution, a law enforcement agency must disclose at least basic blotter information and one other piece of information, without redaction. All other records were required to be disclosed unless they fell within the FOI Act's "law enforcement exemption" in §1-210(b)(3) of the FOI Act. House Bill 6750 was subsequently amended.

it is found that at the time of the hearing in this matter, the criminal prosecution of Mr. von Keyserling was still pending.

15. It is found that the requested video recording did not constitute a "record of the arrest" within the meaning of §§1-215(a) and 1-215(b), G.S., nor did it document or depict the arrest or custody of Mr. von Keyserling within the meaning of §1-215(c), G.S. Accordingly, it is found that the respondents were not required to disclose the video recording to the complainants during the pending prosecution of Mr. von Keyserling.

16. Based upon the specific facts of this case, it is concluded that the respondents did not violate the disclosure requirements contained in §§1-210(a), 1-212(a) and 1-215, G.S.[2]

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

1. The complaint is hereby dismissed.

Paula S. Pearlman
as Hearing Officer

FIC/2017-0070/HOR/PSP/09062017

[2] In view of the conclusion in paragraph 16, above, there is no need to address any further exemptions from disclosure.