Since 1975
FREEDOM OF INFORMATION
It's Your Right to Know

Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866) 374-3617 Tel: (860) 566-5682 Fax: (860) 566-6474 • www.ct.gov/foi • email: foi@ct.gov

James Torlai
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2016-0821

October 6, 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, October 25, 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 October 13, 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 October 13, 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 October 13, 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: James Torlai
Attorney Richard J. Scappini
Attorney Gary Roosa

FIC# 2016-0821/ITRA/TCB//LFS/WRBP/2017-10-6

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by | Report of Hearing Officer

James Torlai,

Complainant

against | Docket #FIC 2016-0821

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

Respondents | October 6, 2017

The above-captioned matter was heard as a contested case on May 1, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. By notice dated September 20, 2017, the hearing was reopened and a continued hearing was held on September 27, 2017 at 9:30 a.m., at which time the respondents appeared and presented additional testimony, exhibits and argument on the complaint. The complainant did not appear at the September 27, 2017 hearing on this matter.

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. By letter dated November 17, 2016 and filed on November 21, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his records request.

3. It is found that, by letter dated November 3, 2016, the complainant made the following request for records related to the arrest of Scott Basile which occurred on or around July 20, 2016:

a. the name of the person arrested;
b. the address of the person arrested;
c. the race of the person arrested;
d. the date and time of the arrest;
e. the place of the arrest;

f. a list of the charges;
g. the official report of the arrest including any supplemental reports;
h. any application for an arrest warrant and any affidavit prepared in support of the warrant and a report setting forth a summary of the circumstances that led to the arrest;
i. all recordings, such as audio and video recordings that depict the arrest or detention of the person arrested;
j. any other records you maintain related to the arrest such as witness statements, evidential reports, test results, video evidence, or other records;
k. all records maintained by the respondent that relate to Mr. Basile;
l. all records maintained by the respondents related to an accident involving a car Mr. Basile was using on or around January 7, 2016; and
m. any records maintained by the respondents that concern the identity of the person who was using the vehicle when it was involved in the accident in Stamford, CT on or around January 7, 2016.

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, 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.

5. 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.

6. 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."

7. It is concluded that, to the extent they exist, the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that by letter dated November 7, 2016, the respondents informed the complainant, in part, that his request had been received and would be reviewed to determine if the requested records exist and were disclosable under the FOI Act.

9. It is found that by email dated February 1, 2017, the respondents informed the complainant that they had located 166 pages of records responsive to items described in paragraph 3a through 3j, above; and CDs, which include two surveillance videos, and one containing evidence photographs. They also informed the complainant that they do not maintain any records responsive to his request described in paragraph 3k through 3m, above, but that such records would be maintained by the city of Stamford.

10. It is found that on or about February 8, 2017, the complainant was provided the records described in paragraph 9, above, free of charge. It is also found that the records were redacted.

11. At the May 1, 2017 hearing on this matter, the complainant contended that the records he was provided were inappropriately redacted because there was no applicable exemption in the FOI Act for withholding the birthdates, addresses, and cell phone numbers that were redacted. The complainant also contended that the respondents failed to promptly comply with his request but after hearing the testimony of the respondents' witnesses, he withdrew that portion of his complaint. Consequently, the alleged promptness violation will not be addressed herein.

12. With respect to the redactions, the respondents submitted an unredacted copy of the responsive records for in camera review which records have been identified as IC 2016-0821-01 through IC 2016-0821-08.[1]

13. It is found that the respondents redacted the month and day of the birth date of the complaining citizen, the accused, the witness and an uninvolved person, and the first six digits of their telephone numbers, contending that pursuant to §42-471, G.S., such redactions are required and that, alternatively, pursuant to §1-210(b)(2), G.S., such redactions are permissible.

14. Section 42-471(a), G.S., provides that "[a]ny person in possession of personal information of another person shall safeguard the data, computer files and documents containing the information from misuse by third parties, and shall destroy, erase or make unreadable such data, computer files and documents prior to disposal."

[1] It is found that no other redactions were made to the other 158 pages of records provided to the complainant in responsive to his request.

15. However, §42-471(f), G.S., provides that "the provisions of this section shall not apply to any agency or political subdivision of the state." Consequently, §42-471(a), G.S., is not applicable to the respondent city, or the respondent police department since it is an agency of the respondent city, and neither are required to withhold the redacted information under that provision.

16. With respect to the respondents claim that §1-210(b)(2), G.S., exempts the redacted information from disclosure, that section provides in relevant part that disclosure is not required of: "Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy[.]"

17. It is found, however, that the responsive records include the following: an arrest warrant application; an arrest warrant affidavit; an accident report; and an incident report. It is found that none of the responsive records are personnel or medical or similar files within the meaning of §1-210(b)(2), G.S., but rather that such records, and the information therein, are related to the arrest of an individual and not a "medical" file for which one of the principal purposes is to furnish information for making medical decisions regarding that individual or a "personnel" file for which one of its principal purposes is the furnishing of information for making personnel decisions regarding the individual involved.

18. Consequently, it is concluded that §1-210(b)(2), G.S., is not applicable, and that the redacted information is not permissibly exempt under that statute.

19. At the September 27, 2017 hearing on this matter, the respondents' witness, Sgt. Francis Manahan, testified credibly that the date of birth and the telephone numbers of the complaining citizen, the accused, the witness and the uninvolved person could have been obtained from the Department of Motor Vehicles ("DMV") through the Connecticut On-Line Law Enforcement Communications Teleprocessing ("COLLECT") System because, in his experience, an officer obtains a person's operating license number which number, when typed into a report, generates the date of birth, telephone number and last known address of the person from the COLLECT system. He testified that, upon his review of the police report at issue, it appeared to him that the date of birth and the telephone numbers were generated from the COLLECT system.[2] He testified that based on his experience and review of the police report, he determined that it was better to err on the side of caution and redact the information pursuant to §14-10(f) and (g), G.S., which strictly prohibits the re-disclosure of such personal information obtained from the DMV.

20. Section 14-10(a)(3), G.S., provides that:

---

[2] It is found that the police report at issue was computer generated and has certain fields for information that appear as squares in the report. It is found that when an officer completing the report inputs a person's motor vehicle operating license number into the appropriate field, all of their personal information (the date of birth, telephone number and last known address) automatically appears which information comes from the COLLECT system.

> "Personal information" means information that identifies an individual and includes an individual's photograph or computerized image, Social Security number, operator's license number, name, address other than the zip code, telephone number, electronic mail address, or medical or disability information, but does not include information on motor vehicle accidents or violations, or information relative to the status of an operator's license, registration or insurance coverage.

21. Section 14-10(f)(1), G.S., provides that the Commissioner of DMV "may disclose personal information from a motor vehicle record to … [a]ny federal, state or local government agency in carrying out its functions or to any individual or entity acting on behalf of any such agency."

22. Section 14-10(g), G.S., provides that:

> [a]ny person receiving personal information or highly restricted personal information from a motor vehicle record pursuant to subsection (f) of this section shall be entitled to use such information for any of the purposes set forth in said subsection for which such information may be disclosed by the commissioner. No such person may resell or redisclose the information for any purpose that is not set forth in subsection (f) of this section, or reasonably related to any such purpose.

23. It is found that the redacted dates of birth and the telephone numbers are personal information within the meaning of §14-10(a)(3), G.S., and that such information is subject to the provisions of §14-10(g), G.S., and cannot be redisclosed by the respondents to the complainant.

24. It is concluded, therefore, that the respondents did not violate the FOI Act by failing to disclose the dates of birth and the telephone numbers to the complainant.

25. It is found that the respondents redacted the criminal charges contending that the charges had been nolled and, therefore, exempt from disclosure pursuant to §54-142a, G.S.

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

> (a) Whenever in any criminal case…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….

...
(c)(1) Whenever any charge in a criminal case has been nolled in the Superior Court...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....

(c)(2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which there has been no prosecution or other disposition of the matter, the charge shall be construed to have been nolled as of the date of termination of such thirteen-month period...
...

(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...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...shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records... (emphasis added).

27. It is found that the charge for which Scott Basile was arrested was nolled and that thirteen months have elapsed since such nolle.

28. It is found that the redacted portions and the omitted pages of the arrest file contain information subject to the erasure provisions of §54-142a(c), G.S.

29. It is concluded that the erasure provisions of §54-142a(c), G.S., supersede the disclosure requirements of the FOI Act and that the redacted portions and the omitted pages of the arrest file are not required to be disclosed under the FOI Act.

30. It is concluded, therefore, that the respondents did not violate the FOI Act by failing to disclose the redacted portions and the omitted pages of the arrest file to the complainant.

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

1. The complaint is dismissed.

Attorney Tracie C. Brown
as Hearing Officer

FIC2016-0821/hor/tcb/20171006