

NO. CV 106005786S : SUPERIOR COURT
CHIEF, POLICE DEPARTMENT, CITY :
OF HARTFORD, ET AL. : JUDICIAL DISTRICT OF
v. : NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION :
ET AL. : JANUARY 7, 2011

MEMORANDUM OF DECISION

The court heard oral argument on this appeal on January 5, 2011. As stated at the conclusion of the oral argument, the court dismisses the appeal with the following modifications to the May 20, 2010 final decision of the defendant freedom of information commission (FOIC):

1. The plaintiff, Chief, Police Department, correctly determined when Constantinos Antonaras, the complainant,¹ made his request on May 19, 2009 (Return of Record, ROR, p. 133), in reliance on the plaintiff's reading of the NCIC print-out (ROR, in-camera Exhibit 6), and the print-out from the Superior Court (ROR, in-camera exhibit 9), that the Hartford police file was subject to General Statutes § 54-142a (c) (1). This statute provides in part: "Whenever any charge in a criminal case has been nolle . . .all

¹ While served as a defendant, the complainant did not enter an appearance or participate in this appeal.

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police . . . records . . . pertaining to such charge shall be erased.”

That is, when the plaintiff chief responded initially to the complainant on July 2, 2009 (ROR, p. 138) that the requested records were not disclosable², he had replied in good faith to the complainant. Initially, therefore, the plaintiff met his duty to respond promptly as required by the Freedom of Information Act (FOIA), § 1-206 (a). In addition, § 1-206 (a) does not require that the plaintiff search into the accuracy of the NCIC notations in making its initial response to those seeking public records retained by him. Indeed, the record supports that due to the volume of requests to the plaintiff's office, it would be unrealistic to impose such an additional burden on the plaintiff in response to an initial inquiry. (See ROR, pp. 80-81).

2. Once this matter was brought by the complainant on July 2, 2009 (ROR, p. 4) as an appeal to the FOIC from the denial of the right to inspect or copy his records, § 1-206 (b) (1), the FOIC had the right to determine whether the plaintiff's actions should be confirmed or “provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act.” See § 1-206 (b) (2).

In this matter, the hearing officer and subsequently the FOIC itself in its May 20,

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“[A]fter an extensive search, it was determined that [the Hartford Police file] was not prosecuted and that nine pages of documents exist.” The plaintiff attached a police report relating to this police file in its denial letter to the complainant.

2010 final decision, by factual findings, concluded that the NCIC notations were erroneous. The facts, to which the court must defer when based, as here, on substantial evidence, *Dept. of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010), indicate that a nolle was not entered on the Hartford police criminal charges. (ROR, Findings 18, 20, p. 198). Rather, the state's attorney, by substituted information, merged the Hartford charges along with other charges into a several count information dated April 12, 2007. (ROR, pp.112-114). Since the record supports that a nolle did not in fact enter here and § 54-142 (c) (1) was the only claimed exemption, the FOIC correctly ordered in point one of the final decision that the police file #04-25934³ be disclosed to the complainant, subject to the redactions of point two. (ROR, p. 199).

3. The third point of the FOIC order in the final decision—that the respondents strictly comply with the FOIA—is upheld, subject to the modifications set forth herein.

The appeal is dismissed with modification.



Henry S. Cohn, Judge

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The plaintiff and the FOIC agreed at oral argument that in-camera Exhibits # # 6-8 relate to the NCIC report and the notations thereon and are not to be included the disclosure of file # 04-25934.