

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gregory Slate,

Complainant

against

Docket #FIC 2015-615

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

Respondents

July 13, 2016

The above-captioned matter was heard as a contested case on November 30, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.¹ The respondents submitted eight pages of records for in camera inspection.

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 of complaint filed September 17, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his request for certain public records, and by failing to deny his request within four business days of the request.
3. It is found that the complainant made a September 8, 2015 request by hand delivery and email to the respondent Westport Police Department to inspect or receive a copy of all records pertaining to Adam Faillace, property at 323 Main Street, Westport, Connecticut, and other records related to Mr. Faillace and the property at 323 Main Street.
4. It is found that the Westport Police Department acknowledged the request on the same day, and indicated that it might take as long as two weeks to process the request.

¹ The complainant, who is an attorney with an address in Baltimore, Maryland, was “represented” at the hearing by Adam Faillace, who is not an attorney, and who is the subject of many of the requested records. Mr. Faillace filed an appearance, and also presented testimony, exhibits and argument on the complaint.

5. It is found that the Westport Police Department informed the complainant on September 11 that it had forwarded the requested records to assistant town attorney Gail Kelly for review.

6. It is found that the Westport Police Department informed the complainant on September 16, 2015 that:

- a. The respondents had prepared the records in both printed and electronic forms and were available for inspection both during regular hours of business, and after regular hours;
- b. The Police Department was researching the 9-1-1 tape and would burn a CD and/or email the sound files; and
- c. The records of one prospective law enforcement action would be withheld under §1-210(b)(3), G.S., because disclosure would be prejudicial to such action.

7. It is found that the Police Department emailed 14 files comprising the requested records, except for the one open investigation, on September 16, 2015.

8. It is found that the complainant, by email dated September 16, 2015, noted that the records provided referenced photographs and “other records” that would be responsive to his request.

9. It is found that the Police Department responded that day, indicating that it was still putting together the 9-1-1 tapes and photographs, and would produce them within a reasonable time.

10. It is found that the Police Department, on November 20, 2015, provided a copy of the previously withheld records of the open case described in paragraph 6.c, above, but redacted information “that is not subject to disclosure under C.G.S. §1-210(b)(3)(A) and to eliminate information obtained through the COLLECT database which is also not subject to disclosure under C.G.S. §1-210(a).”

11. The respondents submitted for in camera inspection an unredacted copy of the records it had redacted as described in paragraph 10, above.

12. 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.

13. 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, (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.

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

15. The complainant maintained that the respondents violated §1-206, G.S., by not asserting a denial based on §1-210(b)(3), G.S., until six business days had elapsed following his request.

16. Section 1-206, G.S., provides in relevant part:

(a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission.

17. It is concluded that the failure of the respondents to deny the request within four business days means, pursuant to §1-206(a), G.S., that the request was deemed to be denied, and that the complainant was therefore entitled to file a complaint pursuant to §1-206(b)(1), G.S.

18. It is concluded that failure to deny a request within four business days is not itself a denial of a right under the FOI Act.

19. The complainant maintained that there are other documents that he would assume were part of a law enforcement action, such as phone records and communications with other law enforcement agencies.

20. It is found that neither the complainant's September 8, 2015 request nor any of the subsequent communications between the parties indicate that the complainant was seeking the kinds of records described in paragraph 19, above.

21. It is found that the respondents provided all the records responsive to the complainant's September 8, 2015 request, except for the redactions described in paragraph 10, above.

22. The respondents maintained that the information redacted from the one open case file provided to the complainant, described in paragraphs 10 and 11, above, is exempt from disclosure pursuant to §§1-210(b)(3)(A) and (D), G.S., and as information collected from the Connecticut Online Law Enforcement Communication Teleprocessing ("COLLECT") System.

23. The complainant maintained that the failure of the respondents to raise statutory exemptions to his request within four days of his request amounted to an "explicit waiver" of their right to raise a statutory exemption subsequently.

24. It is concluded that the complainant's claim of a purported waiver is without merit.

25. Section 1-210(b)(3)(A), G.S., provides that disclosure is not required of "the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known"

26. Section 1-210(b)(3)(D), G.S., provides that disclosure is not required of "information to be used in a prospective law enforcement action if prejudicial to such action"

27. It is found that a confidential informant is named, along with identifying information, and information describing the informant's activities, in the in camera records.

28. It is additionally found that disclosure of information related to the activities of the confidential informant, even if not specifically identifying the informant, would be prejudicial to a prospective law enforcement action.

29. It is concluded that the names, identifying information, and descriptions of the activities of the confidential informant are exempt from disclosure pursuant to §1-210(b)(3)(A) and (D), G.S.

30. The respondents maintain that the remaining redactions are of information obtained from the COLLECT system.

31. It is found that the information redacted pertained to requested records of license plate checks, registration checks, and driver's license checks.

32. It is found that the information redacted from the in camera records was obtained from the national Crime Information Center ("NCIC") computerized database.

33. It is concluded that records obtained from the NCIC computerized data base are exempt from disclosure pursuant to §29-164f, G.S., (The National Crime prevention and Privacy Compact), as well as 42 U.S.C. §14616. See, Commissioner of Public Safety v. FOIC, 144 Conn. App. 821, 76 A.3d 185 (2013). See also Commissioner of Correction v. FOIC; United States of America v. FOIC, 307 Conn. 53, 52. A3d 636 (2012); Docket #FIC 2013-562, Michael Anania v. University of Connecticut et al.

34. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 13, 2016.

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:

Gregory Slate
1832 West Fayette Street
Baltimore, MD 21223

Adam Faillace
323 Main Street
Westport, CT 06880

Chief, Police Department, Town of Westport;
Police Department, Town of Westport;
and Town of Westport
c/o Gail Kelly, Esq.
Berchem, Moses and Devlin, P.C.
1221 Post Road East
Westport, CT 06851

Cynthia A. Cannata
Acting Clerk of the Commission