

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Meryl Anne Spat,

Complainant

against

Docket #FIC 2018-0663

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

Respondents

September 11, 2019

The above-captioned matter was heard as a contested case on February 22, 2019, at which time the complainant 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 October 12, 2018, the complainant requested that the respondents provide her with copies of Computer Aided Dispatch (“CAD”) transmission information pertaining to investigation report CFS#15-00220457 (“October 12th request”).
3. It is found that, by letter dated October 31, 2018, the respondents provided the complainant with records responsive to her October 12th request, described in paragraph 2, above. It is found that, among other records, the respondents provided the complainant with redacted CAD remarks. The respondents informed the complainant that such CAD remarks were redacted pursuant to §29-164f, G.S., and 28 USC §534 (NCIC/Collect records). Subsequently, the complainant was informed by the respondents that they have a 90 day retention policy and any audio CAD transmissions were destroyed.
4. By letter dated and filed November 16, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to comply with her October 12th request.
5. 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.

6. 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.

7. 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.”

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

9. At issue in this matter are the redactions made by the respondents to the CAD remarks (as reflected in Complainant’s Exhibit A) and the respondents’ failure to preserve the audio CAD transmissions for a “meaningful period of time.”

10. With respect to the preservation of audio CAD transmissions, it is found that the respondents have a 90 day retention policy for such records. It is also found that, as of the time of the October 12th request, such records no longer existed. It is further found that the laws pertaining to retention and destruction of public records are a matter over which the state’s Public Records Administrator has jurisdiction and is not within the jurisdiction of the Commission. Accordingly, it is concluded that the Commission lacks jurisdiction over the issue of the retention and destruction of the audio CAD transmissions.

11. With respect to the CAD remarks, at the hearing, the respondents claimed that certain information contained in Complainant’s Exhibit A (sections titled “RECEIVED FROM NATIONAL LETS” and “CONNECTICUT PERSON/VEHICLE FILE”) was exempt from disclosure pursuant to 28 USC §534. The respondents testified that such information consists of federal criminal history information obtained through the National Crime Information Center (“NCIC”).

12. In addition, in an affidavit¹ submitted pursuant to an order of the hearing officer, Attorney Alison Rau attested, in part:

[a] The “National LETS” system is the International Justice and Public Safety Network, although the acronym for the previous system it replaced is still used as an identifier (namely, the National Law Enforcement Telecommunications System). NLETS is the communication line or highway that allows the Department to obtain National Crime Information Center (NCIC) information. [NCIC] is a branch of the FBI database for federal information.

[b] When NLETS information is identified, it indicates that NCIC information from another state was obtained. Information from other states obtained from NLETS is restricted from dissemination because one needs the other’s [sic] states’ permission to disseminate their information for purposes other than criminal justice. The information does not belong to CT and is therefore properly redacted under the NCIC exemption 28 USC §534.

[c] The identified Connecticut Person/Vehicle File information was also correctly redacted under the NCIC exemption 28 USC §534, since the information derived from a Person query to NCIC.

13. Subsequent to the hearing in this matter, the respondents submitted seven pages of records for in camera inspection, along with an in camera Index. Such records have been marked as IC-2018-0663-1 through IC-2018-0663-7. On the Index, the respondents claim that certain information contained in such records is exempt from disclosure pursuant to §§14-10(f), 14-10(g), and 29-164f, G.S., and 28 USC 534, respectively.

14. On the in camera Index, the respondents claim that IC-2018-0663-3 (Op Id line), IC-2018-0663-4 (Op Id line) and IC-2018-0663-7 (Op Id line) contain “driver’s license number” information and is exempt from disclosure pursuant to §29-164f, G.S. It is found, however, that such information has already been publicly disclosed in Complainant’s Exhibit A.

15. On the in camera Index, the respondents also claim that IC-2018-0663-5 (whole section) contains “CT DMV information” and is exempt from disclosure pursuant to §§14-10(f) and 14-10(g), G.S. It is found, however, that such information has already been publicaly disclosed in Complainant’s Exhibit A.

¹ Attorney Rau’s affidavit has been marked as Respondents’ Exhibit 1 (after-filed).

16. In addition, the respondents claim that they withheld information obtained through NLETS and NCIC, respectively, which is exempt from disclosure pursuant to 28 U.S.C. §534.

17. 28 U.S.C. §534 is a federal statute that deals with the exchange of federal records, including records contained in national crime information databases, between federal and state authorities. The Connecticut Legislature has recognized the agreement (or compact) between the federal government and the state government concerning the exchange of criminal information in §29-164f, G.S.

18. Section 29-164f, G.S., provides, in relevant part, as follows:

The National Crime Prevention and Privacy Compact is hereby entered into and enacted into law with any and all of the states and the federal government legally joining therein. . . .

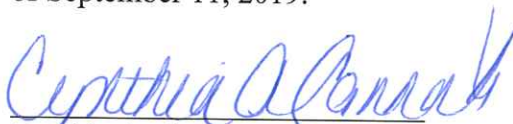
19. In Commissioner of Public Safety v. FOIC, et al., 144 Conn. App. 821, 827 (2013), the Appellate Court clarified that “the compact provides that the NCIC database is to be used for limited purposes authorized by law, such as background checks, and that NCIC records may only be used for official purposes.” The Court concluded that §29-164f, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S. Id. at 831.

20. Based upon the evidence in the record, and under the facts and circumstances of this case, it is found that the respondents withheld from the complainant information consisting of NLETS and NCIC information. Accordingly, it is concluded that such information is exempt from disclosure pursuant to §29-164f, G.S., and 28 U.S.C. §534. It is further concluded that the respondents did not violate FOI Act by withholding such information from 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 11, 2019.



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:

MERYL ANNE SPAT, Law Office of Meryl Anne Spat, 27 First Avenue, Waterbury, CT 06710

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, Legal Affairs Division, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission