

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
Andrew Houlding, Complainant) Report of Hearing Officer
)
against) Docket #FIC77-205
)
Board of Police Commissioners of) January 11, 1978
the City and Town of New Haven,)
Respondents)
)

The above captioned matter was heard as a contested case on November 3, 1977, at which time the complainant and the respondent board appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found:

1. The respondent board is a public agency within the meaning of §1-18a(a), G.S.
2. By letter dated October 7, 1977, the complainant requested access to inspect or copy certain exhibits of the respondent board that were filed during the course of public hearings it held concerning alleged illegal wiretapping.
3. By same letter, the complainant further requested the transcript of all sworn testimony given to special counsel for the respondent board prior to the aforesaid hearings.
4. By letter dated October 13, 1977, the respondent board denied the complainant's request as to those exhibits which were sealed at the aforesaid hearings and to the entire transcript.
5. From such denial, the complainant filed the present complaint with the Commission on October 18, 1977.
6. The exhibits here in issue contain information relating to, or retrieved from, persons who were the suspects of crime or the subjects of wiretapping. Much of this information was obtained by wiretapping.
7. The exhibits also contain information which would result in the disclosure of the identity of informants not otherwise known.
8. The respondent board first contends that all such sealed exhibits are exempt from disclosure under §1-19(b)(3)(C), G.S. as constituting investigatory techniques not otherwise known to the general public within the meaning of that exemption.

9. It is found that all of the wiretap technology indicated at the hearing herein as relating to the above exhibits is not classified as secret and is available to the general public. §1-19(b)(3)(C), G.S., therefore does not provide an exemption to required disclosure.

10. The respondent board cited various other provisions under §1-19(b)(3), G.S. as further support for its decision denying access to the requested sealed exhibits.

11. Only those portions of the requested exhibits containing information which if disclosed, would result in the disclosure of the identity of informants not otherwise known are exempt under §1-19(b)(3)(A), G.S. The suspects of crimes or the subjects of wiretaps are not informants within the meaning of that exemption to disclosure.

12. Further, the respondent board did not prove that any of the information contained in the sealed exhibits was to be used in and would be prejudicial to a prospective law enforcement action under §1-19(b)(3)(B), G.S.

13. The sealed exhibits are found to be public records as defined by §§1-18a(d) and 1-19(a), G.S. exclusive of that information contained therein which relates to, and would result in, the disclosure of the identity of informants not otherwise known.

14. The requested transcript contains the testimony of police officers concerning their wiretap activities relative to specific investigations. Some of these officers were reprimanded as a result of these activities.

15. The respondent board contended that the transcript was exempt from disclosure as constituting a personnel file or similar file within the meaning of §1-19(b)(2), G.S.

16. It was not proved that the aforesaid transcript or any part thereof was placed in the personnel files of the men so disciplined.

17. Further, the respondent board's contention ignores that the requested transcript has a function distinct from the recording of data for personnel purposes. This function relates to the police officers' activities in the investigation of crime relative to a police internal affairs investigation.

18. It is found that this function relates directly to the conduct of the public's business and such records are therefore public records within the meaning of §§1-18a(d) and 1-19(a) and are not exempt from disclosure under §1-19(b)(2), G.S.

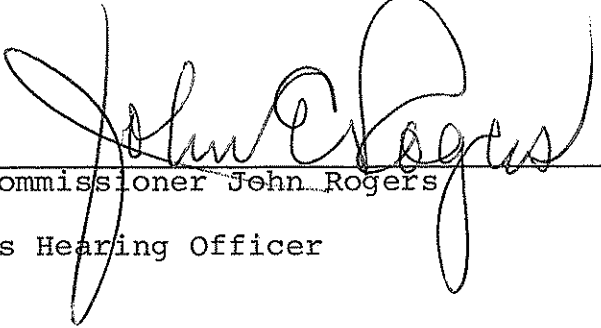
19. To find otherwise with reference to paragraphs 17 and 18, above, would be to ignore the obvious legislative intent in enacting the Freedom of Information Act. If the respondent board's position was sustained, that aspect of the public's business concerning their public servants' activities could be hidden under the broad cloak of "personnel files." Then form would prevail over substance and even Watergate-type misconduct by public officers would be kept from public scrutiny.

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

1. The respondent board shall forthwith provide the complainant with access to the exhibits and the transcript sought in his October 7, 1977 letter.

2. Paragraph 1 of this order is subject to the respondent board's right to delete or conceal from the complainant's view only that part of any of the recorded data or information therein which, in its good faith opinion, would result in the disclosure of the identity of informants not otherwise known.

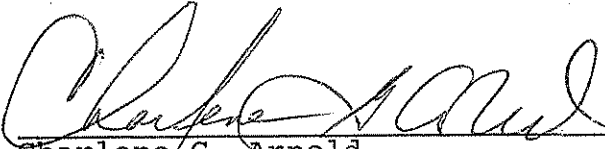
3. Nothing herein shall be construed as limiting the complainant's rights in seeking further relief before this Commission in the case where specific information is deleted or concealed from such records and the complainant believes that such deletion or concealment is not in conformity with his rights under the Freedom of Information Act.



Commissioner John Rogers

as Hearing Officer

Approved by order of the Freedom of Information Commission on
January 25, 1978.



Charlene G. Arnold
Clerk of the Commission