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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Estate of Joseph Mazzotta,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-033

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

October 25, 2012

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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, November 14, 2012**. 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 November 2, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE November 2, 2012**. 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 **fourteen (14) copies** be filed **ON OR BEFORE November 2, 2012**, 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

W. Paradis
Acting Clerk of the Commission

Notice to: A. Paul Spinella, Esq.
Timothy P. Lynch, Esq.

10/25/12/FIC# 2012-033/Trans/wrbp/MS/MES/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Estate of Joseph Mazzotta,

Complainant

against

Docket #FIC 2012-033

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

Respondents

October 24, 2012

The above-captioned matter was heard as a contested case on June 22, 2012, 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, by letter dated December 16, 2011, the complainant requested that the respondents provide it with copies of:
 - a. a search warrant and underlying affidavit for a search of the home of Joseph Mazzotta, 155 Highmeadow Lane, Middletown, conducted in April 2003;
 - b. an inventory of property seized at such search; and
 - c. any incident or investigatory report related to the matter.

The search referenced herein was prompted by the homicide of Joseph Mazzotta in Middletown in April 2003.

3. By letter dated January 17, 2012, and filed on January 20, 2012, the complainant appealed to this Commission, alleging that the respondents violated the

Freedom of Information (“FOI”) Act by failing to provide it with copies of the records described in paragraph 2, above.

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:

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 ... receive a copy of such records in accordance with the provisions of section 1-212.

6. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

8. At the hearing in this matter, the parties stipulated, and it is found, that the respondents do not maintain a warrant or inventory of property seized with respect to the property of Joseph Mazzotta at 155 Highmeadow Lane in Middletown.

9. It is found, however, that the respondents do maintain an April 2003 waiver of warrant and property receipt for another individual also located at 155 Highmeadow Lane in Middletown. The parties stipulated, and it is found, that the respondents provided copies of such records to the complainant.

10. It is concluded that the respondents did not violate the FOI Act with respect to the request described in paragraph 2.a and 2.b, above.

11. With respect to the request described in paragraph 2.c, above, it is found that the respondents maintain an investigatory report related to the homicide of Joseph Mazzotta. It is found that such report, which the respondents submitted to the Commission for in camera inspection, is responsive to the request described in paragraph

2.c, above. The in camera document is hereinafter referenced as IC-2012-033-001 through IC-2012-033-012.

12. The Commission notes that the in camera index submitted by the respondents indicates that IC-2012-033-11 and IC-2012-033-12 have already been released to the complainant. Additionally, the index to in camera records indicates that IC-2012-033-9 and IC-2012-033-10 can be released to the complainant.

12. With respect to the remainder of the requested records at issue, IC-2012-033-1 through IC-2012-033-8, the respondents contend that the investigation report is permissibly exempt from disclosure under §1-210(b)(3)(C), G.S.

14. Section 1-210(b)(3)(C), G.S., exempts from mandatory disclosure:

(3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of ... (C) information to be used in a prospective law enforcement action if prejudicial to such action....

15. At the hearing in this matter, the respondents contended that although the investigation into the nine-year old homicide is dormant, the case is considered a cold case which could, at some future date, lead to an arrest in the matter. However, §1-210(b)(3)(C), G.S., requires an evidentiary showing that the records at issue are to be used in a prospective law enforcement action, and that the disclosure of the records would be prejudicial to such action. Dept. of Public Safety v. Freedom of Information Commission, 51 Conn. App. 100, 104-105 (1998).

16. After careful review of the record in this matter, including the in camera records, it is concluded that the respondents failed to prove that the records requested in paragraph 2.c, above, are exempt from disclosure under §1-210(b)(3)(C), G.S.

17. It is concluded that the respondents violated the FOI Act by failing to provide the complainant with a copy of the in camera records in their entirety.

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

1. Forthwith, the respondents shall provide to the complainant a copy of in camera records IC-2012-033-1 through IC-2012-033-10.

A handwritten signature in black ink, appearing to read "Matthew Streeter", written over a horizontal line.

Commissioner Matthew Streeter
as Hearing Officer

FIC2012-033/hor/ms/mes/20121024