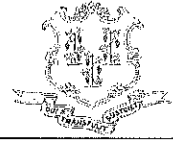


Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Loretta Davis and Keyonna Davis,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-540

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

Respondent(s)

May 23, 2014

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, June 11, 2014**. 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 May 30, 2014**. 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE May 30, 2014**. **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 May 30, 2014**, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: Loretta Davis and Keyonna Davis
Steven M. Barry, AAG

2014-05-23/FIC# 2013-540/Trans/wrbp/MS/GFD/PSP

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Loretta Davis and Keyonna Davis,

Complainants

against

Docket #FIC 2013-540

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

Respondents

May 23, 2014

The above-captioned matter was heard as a contested case on March 20, 2014, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter dated September 5, 2013 and filed with the Commission on September 9, 2013, the complainants alleged that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the complainants with a copy of a report related to the case described in paragraph 3, below.
3. It is found that, by letter dated June 18, 2013, with attached check for the required \$16.00 search/copy fee, the complainants requested a copy of "State Case No. 11-004-528-69" from the respondents' Reports and Records Unit.
4. It is found that the respondents' Reports and Records Unit, which is the custodian of all of the respondents' investigative reports, releases over fifty thousand investigative reports each year. It is also found that the respondents' Reports and Records Unit was experiencing a five-month backlog when the complainants made their June 18, 2013 request.
5. It is found that, by "Response To Request for Report" form, DPS-741-C, dated August 14, 2013, the respondents' Reports and Records Unit acknowledged receipt of the complainants' request described in paragraph 3, above, and indicated that the report

pertaining to case number 1100452869 was not disclosable pursuant to §1-210(b)(3)(G), G.S., as containing uncorroborated allegations.¹

6. It is found that sometime in early November 2013 and after the complainants filed their September 5, 2013 complaint with the Commission, the respondents' Legal Affairs Unit received a copy of the complainants' June 18, 2013 request described in paragraph 3, above. It is also found that, by letter dated February 21, 2014, the respondents' Legal Affairs Unit acknowledged receipt of the complainants' request and enclosed a copy of a redacted report (Complainants' Exhibit A) pertaining to case number 1100452869 Unit (hereinafter the "requested report"), describing the redactions made as follows:

- a. "Pursuant to Connecticut General Statutes Section 1-210(b)(3)(H), uncorroborated allegations that an individual has engaged in criminal activity;"
- b. "Pursuant to Connecticut General Statutes Section 1-210(b)(11), name and address of students in public school or college;" and
- c. "Seven (7) pages were withheld pursuant to Connecticut General Statutes Section 1-210(b)(3)(E), investigatory techniques not otherwise known to the general public; report of the National Center for Missing and Exploited Children CyberTipline Report."

7. 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.

8. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

¹ The Commission notes that the exemption for uncorroborated allegations is now set forth in §1-210(b)(3)(H), G.S., pursuant to Public Act 13-311. Accordingly, the Commission will address the exemption as currently codified.

9. Section 1-212(a)(1), G.S., provides in relevant part that:

Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record.

10. It is found that the respondents maintain an investigation report related to the request described in paragraph 3, above, and it is concluded, therefore, that such report is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S., and that copies of such record must be provided in accordance with §§1-210(a), and 1-212(a), G.S., unless the record, or portions thereof, are exempt from disclosure.

11. At the hearing on this matter, the complainants contended that they were challenging the respondents' redactions to the requested report and the respondents' claims that such information is exempt from disclosure as consisting of uncorroborated allegations of criminal activity; name and address of students in public school or college; and records that if disclosed would reveal investigatory techniques not otherwise known to the general public.

12. Section 1-210(b)(3), G.S., provides, in relevant part, that nothing in the FOI Act shall require disclosure of the following:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of a crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of . . . (E) investigatory techniques not otherwise known to the general public . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216.

13. Section 1-216, G.S., provides as follows:

Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

14. It is found, and a staff attorney of the respondents' Legal Affairs Unit (hereinafter the "staff attorney"), who provided the complainants with a redacted copy of the requested report as described in paragraph 6, above, credibly testified, that the

requested report contains information related to case number 1100452869, specifically the investigation into allegations that Loretta Davis' daughter was referenced on pornographic websites. It is also found, and the staff attorney credibly testified, that the requested report included information from computer searches of friends and neighbors who were investigated as a result of the underlying allegations, and a copy of a National Center for Missing and Exploited Children (hereinafter "NCMEC") CyberTipline Report.

15. It is found that portions of the requested report described in paragraphs 3 and 6, above, are records of a law enforcement agency, not otherwise available to the public, which were compiled in connection with the detection or investigation of crime, and which contain uncorroborated allegations subject to destruction pursuant to §1-216, G.S. It is further found that disclosure of such records would not be in the public interest.

16. The Commission has consistently concluded that the entirety of the record of an investigation of uncorroborated allegations of criminal activity is exempt from disclosure, pursuant to §1-210(b)(3)(H), G.S. See, e.g., Docket #FIC 2006-049, Otto v. Chief, Police Department, Town of Greenwich (all 48 pages of police report exempt from disclosure under §1-210(b)(3)(G), G.S.); Docket #FIC 2005-031, Bosco v. Chief, Police Department, Town of Wethersfield (all 22 pages of investigation report comprised of incident report; supplemental reports; statements of the complainant, the suspect and another individual; case closure report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 2003-462, Kosinski v. Department of Public Safety (all 25 pages of investigation report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 2003-218, Chalecki v. Department of Public Safety (entirety of investigation report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 2000-291, Damato v. Records Supervisor, Police Department, Town of Glastonbury (all four pages of investigation report exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 1999-493, Peruta v. Chief, Police Department, Town of Wethersfield et al. (all three pages of investigation exempt under §1-210(b)(3)(G), G.S.); Docket #FIC 1999-296, Hartford Courant et al. v. Chief, Police Department, City of Torrington et al. (all 317 pages of investigation report exempt under §1-210(b)(3)(B) and (G), G.S.).

17. It is found, and the staff attorney credibly testified that, although the entirety of the requested report at issue herein could have been withheld as records of uncorroborated allegations of criminal activity pursuant to §1-210(b)(3)(H), G.S., the respondents provided the complainants with a copy of the requested report, redacting information consisting of uncorroborated allegations that an individual has engaged in criminal activity, and redacting information from computer searches of friends and neighbors who were investigated as a result of the underlying allegations. It is also found, and the staff attorney credibly testified, that she declined to provide the complainants with a seven page copy of the NCMEC CyberTipline Report pursuant to §1-210(b)(3)(E), G.S., because she believed such report contained investigatory techniques not otherwise known to the general public.

18. While the complainants also alleged during the hearing on this matter that they question the accuracy of the determinations made by the investigating officer in the

requested report, it is concluded that the respondents did not violate the FOI Act since the respondents provided the complainants with redacted copies of the requested report they could have permissibly withheld in its entirety pursuant to §1-210(b)(3)(H), G.S. It is also found that the accuracy of the determinations made by the investigating officer in the requested report is not within the Commission's purview. See FIC #2000-261, Dante DeLoreto v. Chief of Police, Police Department, Town of Wethersfield.


19. Because the respondents could permissibly have withheld the entire report under §1-210(b)(3)(H), G.S., it is unnecessary for the Commission to determine whether portions of the report were exempt under §1-210(b)(3)(E), G.S.

20. Accordingly, it is concluded that the respondents did not violate the FOI Act by providing the complainants with a redacted copy of the requested report.

21. Based upon the foregoing conclusion, the Commission need not consider the remaining claims of exemptions raised by the respondents.

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.


Commissioner Matthew Streeter
as Hearing Officer