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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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Michael Doody,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-815

Chief, Police Department, Town of North Branford;  
Police Department, Town of North Branford; and  
Town of North Branford,  
Respondent(s)

May 13, 2016

### 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 8, 2016**. 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 27, 2016**. 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 27, 2016**. **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 **fifteen (15) copies** be filed **ON OR BEFORE May 27, 2016**, 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: Michael Doody  
Attorney Pasquale Young

2015-05-13/FIC# 2015-815/Trans/wrbp/VB//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Doody,

Complainant

against

Docket #FIC 2015-815

Chief, Police Department, Town  
of North Branford; and Police  
Department, Town of Branford; and  
Town of Branford,

Respondents

April 18, 2016

The above-captioned matter was heard as a contested case on February 11, 2016, at which time the complainant and the respondents appeared and presented 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 written request dated November 3, 2015, the complainant requested that the respondents provide him with a copy of a report related to an incident at 10 Briarwood Drive that occurred the previous week.<sup>1</sup>
3. It is found that, on November 13, 2015, the respondents acknowledged the request described in paragraph 2, above, and informed the complainant that they had identified responsive records but that those records were exempt from mandatory disclosure by virtue of §1-210(b)(3)(H), G.S.
4. By letter of complaint, dated November 24, 2015 and filed November 30, 2015, the complainant appealed to this Commission, alleging that the respondents failed to provide the responsive records referenced in paragraph 3, above, in violation of the Freedom of Information Act.
5. Section 1-200(5), G.S., defines “public records or files” as:

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<sup>1</sup>At the request of the hearing officer, the respondents submitted a copy of the complainant’s November 3, 2015 records request, which has been marked by the hearing officer as respondents’ Exhibit No. 2 (after-filed).

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 . . . (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 responsive records described in paragraph 3, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the hearing in this matter, the complainant challenged the respondents' reliance on the exemption contained in §1-210(b)(3)(H), G.S., that was claimed by the respondents for the responsive records described in paragraph 3, above.

10. The respondents contended that the responsive records are exempt from mandatory disclosure by virtue of §1-210(b)(3)(H), G.S., because such records contain uncorroborated allegations of criminal activity.

11. Section 1-210(b)(3)(H), G.S., provides, in relevant part, that nothing in the Freedom of Information Act shall require the disclosure of:

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 . . . uncorroborated allegations subject to destruction pursuant to section 1-216 . . . .

12. In turn, §1-216, G.S., provides:

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.

13. Upon order of the hearing officer, the respondents submitted copies of the records described in paragraph 3, above, for in camera inspection. Such copies are hereinafter described as IC-2015-815-1 through IC-2015-815-25. Such records consist of case incident reports, application for arrest warrant, witness statements and various related police forms.<sup>2</sup>

14. Based upon careful review of the in camera records, it is found that such records are records of a law enforcement agency, not otherwise available to the public, which were compiled in connection with the detection or investigation of a crime, and which contain uncorroborated allegations subject to destruction pursuant to §1-216, G.S.<sup>3</sup>

15. In Bona v. FOIC, 44 Conn. App. 622, 627-28 (1996), the Appellate Court concluded that three separate documents—an incident report summary sheet, an incident report narrative, and an analysis for submission to the state police—together constituted one record for the purposes of §§1-210(b)(3)(G) and 1-216, G.S., and that the entire record was exempt from disclosure.

16. Consistent with Bona, the Commission has repeatedly 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., Loretta Davis and Keyonna Davis v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, et al., Docket #FIC 2013-540 (June 11, 2014) (“respondents could permissibly have withheld the entire report under §1-210(b)(3)(H), G.S.”); Gerald Pinto v. Chief, Police Department, Town of Stratford; and Police Department, Town of Stratford, Docket #FIC 2013-071 (September 25, 2013) (all 21 pages of investigation were exempt from disclosure under 1-210(b)(3), G.S.); Douglas O’Meara v. Legal Affairs Unit, State of Connecticut, Department of Public Safety, Docket #FIC 2009-782 (October 27, 2010) (all records, including reports, signed witness statements, and other related documents compiled during various stages of the criminal investigation exempt under §1-210(b)(3)(G), G.S.); Karen Otto v. Chief, Police Department, Town of Greenwich, Docket #FIC 2006-049 (January 10, 2007) (all 48 pages of police report exempt from disclosure under §1-210(b)(3)(G), G.S.); Peter Bosco v. Chief, Police Department, Town of Wethersfield, Docket #FIC 2005-031 (November 9, 2005) (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.).<sup>4</sup>

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<sup>2</sup>The Commission notes that the respondents incorrectly included in their in camera submission respondents’ Exhibit No. 2 (after-filed) and respondents’ Exhibit No. 3. Those records are listed on the in camera inspection Index as Record Reference No. 1 (complainant’s records request) and No. 2 (respondents’ response to records request). The Index has been re-numbered to exclude those two (2) records.

<sup>3</sup>Despite the existence of an arrest warrant *application*, the Commission notes that there was no arrest made in connection with the alleged criminal activity due to the Office of the State’s Attorney decision to deny the arrest warrant application.

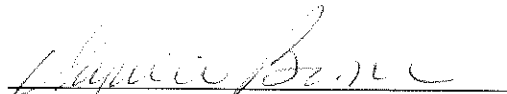
<sup>4</sup>The Commission notes that prior to 2013, the exemption for uncorroborated allegations was contained in §1-210(b)(3)(G), G.S.

17. Despite the complainant's assertion that the respondents' investigation itself was not conducted properly, such an issue is beyond the jurisdiction of this Commission. As aptly stated by the Bona Court, the purpose of the Freedom of Information Act is "to ensure openness in government and access by the public, not to establish the actions law enforcement agencies must take when acting upon a complaint or otherwise to impose standards for police investigations." Id., 634.

18. It is concluded that IC-2015-815-1 through IC-2015-815-25 are exempt from mandatory disclosure by virtue of §1-210(b)(3)(H), G.S. Accordingly, it is also concluded that the respondents did not violate the Freedom of Information Act by withholding such records 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.

  
Virginia Brown  
as Hearing Officer