

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ronald Mercado,

Complainant

against

Docket #FIC 2016-0139

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

Respondents

February 8, 2017

The above-captioned matter was heard as a contested case on July 6, 2016, 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 November 6, 2015, the complainant made a request to the respondents for a certain internal affairs investigation report involving a hate crime; and any emails regarding that investigation from internal affairs officers, the chief of the police department or his office, and the city attorney's office.
3. It is found that, by letter dated January 11, 2016, the respondents acknowledged the complainant's request and informed him that they were in the process of complying with his request and that he would be provided any responsive records subject to state and federal exceptions or exemptions.
4. It is found that, by letter dated February 2, 2016, the respondents informed the complainant that the requested records were "similar to" a personnel file under §1-210(b)(2), G.S., and that because the subjects of the records had submitted written objections to the records being disclosed, the respondents could not disclose them unless ordered to do so by the FOI Commission.

5. By email dated February 18, 2016 and filed on February 19, 2017, the complainant appealed to this Commission alleging that the respondents had violated the Freedom of Information (“FOI”) act by denying his request for records.

6. 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.

7. 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.

8. 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.”

9. It is concluded that the respondents maintain the requested records and that such records are public records within the meaning of §1-200(5), 1-210(a), and 1-212(a), G.S.

10. At the hearing on this matter, the respondents abandoned the original claim of exemption. At the hearing, new counsel for the respondents contended that, based on her review of the requested records, the threshold test for an invasion of privacy under §1-210(b)(2), G.S., could not be met since the records pertain to a matter of legitimate public concern. The respondents claimed instead that the records were exempt from disclosure pursuant to §1-210(b)(4), G.S.

11. At the hearing on this matter, the respondents’ counsel argued that because the records, and the information contained therein, are being used as evidence in legal actions, the records pertain to strategy and negotiations with respect to pending claims and pending litigation and are exempt from disclosure pursuant to §1-210(b)(4), G.S.

12. Section 1-210(b)(4), G.S., provides in relevant part that “nothing in the Freedom of Information Act shall be construed to require disclosure of:

. . . Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled. . . .”

13. The Supreme Court, in construing the exemption found in §1-210(b)(4), G.S., stated that “[s]trategy is defined as the art of *devising or employing plans or stratagems* Negotiation is defined as the action or process of negotiating, and negotiate is variously defined as: to communicate or confer with another so as to arrive at the settlement of some matter; to meet with another so as to arrive through discussion at some kind of agreement or compromise about something; to arrange for or bring about through conference and discussion; work out or arrive at or settle upon by meetings or agreements or compromises; and to influence successfully in a desired way by discussions and agreements or compromises.” (Citation omitted; emphasis in original; internal quotations marks omitted.) Stamford v. Freedom of Information Commission, 241 Conn. 310, 318, 696 A.2d 321 (1997).

14. It is found that the respondents are parties to two different actions filed against them – one by a Lonnie Blackwell and the other by a Clive Higgins.

15. It is found that the respondents intend to use certain information contained in the internal affairs report in their defense against the actions filed against them.

16. It is also found, however, that the respondents failed to prove that the information contained in the requested records reflect the devising of plans or stratagems for their defense against the claims filed by Lonnie Blackwell and Clive Higgins.

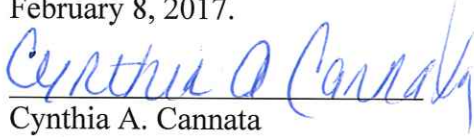
17. It is found that the respondents failed to prove that the requested records pertain to “strategy and negotiation” within the meaning of §1-210(b)(4), G.S.

18. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with a copy of the records described in paragraph 2, above.

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

1. The respondents shall forthwith provide the complainant with a copy of the records described in paragraph 2 of the findings, above, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 8, 2017.



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:

Ronald Mercado
26 Francis Street
Trumbull, CT 06611

Chief, Police Department, City of Bridgeport; Police Department,
City of Bridgeport; and City of Bridgeport
c/o Tyisha S. Toms, Esq.
Office of the City Attorney
999 Broad Street
Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission