

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Lisa Bovee,

Complainant

against

Docket #FIC 2016-0352

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

February 8, 2017

The above-captioned matter was heard as a contested case on August 5, 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 "Request for Copy of Report" form (the "request"), dated March 4, 2016, the complainant requested that the respondents provide her with a certified copy of a report prepared by State Trooper Loftis. It is found that the complainant provided the respondents with both a case number and an incident number, and explained that the relevant event occurred on November 14, 2015. It is further found that, upon submission of the request, the complainant gave the respondents \$17.00 (\$16.00 for a copy of the report itself and \$1.00 to have the report certified).
3. It is found that, by "Response to Request for Report" form (the "acknowledgement"), dated May 6, 2016, the respondents acknowledged the complainant's request, but denied the request on the ground that the requested report was exempt from disclosure pursuant to §1-210(b)(3)(H), G.S.

4. By letter dated May 7, 2016 and filed May 9, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide her with a copy of the report described in paragraph 2, above. In addition, by letter dated and filed May 13, 2016, the complainant renewed her appeal to the Commission, and provided supplemental information about the underlying request.

5. 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.

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 (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.

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 requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the contested case hearing, the complainant testified that, prior to November 4, 2015, she had successfully petitioned the court for a protective order and, on November 4, 2015, she contacted the respondent agency to report that a violation of the protective order had occurred. The complainant further testified that a state trooper was dispatched to her home and spoke to her about her allegations, but the alleged perpetrator had not been arrested. The complainant testified that, when she realized that the alleged perpetrator was not going to be arrested, she contacted the respondent agency again and requested that her case be reopened and reinvestigated. The complainant testified that the respondent agency did reinvestigate her complaint. It is found that initial investigation combined with the

reinvestigation resulted in the production of the written report that is at issue in the instant case. The complainant contends that she has a right to this report, without redactions, because she knows exactly what occurred on November 4th and because it is in the public's interest that the respondent agency's report be disclosed in its entirety.

10. At the conclusion of her testimony, the complainant moved to have the Commission conduct an in camera inspection of the responsive records. The hearing officer granted the complainant's motion and the records were ordered to be submitted to the Commission, without redaction, by September 6, 2016.

11. It is found that, under cover of letter dated June 21, 2016, the respondents disclosed the requested report to the complainant with redactions. The respondents contended that, while they could have withheld the entire report pursuant §1-210(b)(3)(H), G.S., exemption, they instead made minimal redactions to the report pursuant to the following provisions: (1) §1-210(b)(3)(H), G.S., (uncorroborated allegations); (2) 28 U.S.C. §534, (NCIC¹ records); (3) §14-10(g), G.S., (protected department of motor vehicle information); (4) §54-142a, G.S., (erased records); and (5) §54-142k(d), G.S., (permissible disclosure of non-conviction information).²

12. On August 31, 2016, the respondents lodged the in camera records with the Commission. The in camera records consist of forty-nine pages of records, and such records shall be identified as IC-2016-0352-01 through IC-2016-0352-49.

13. The respondents first contended that certain portions of the following records are exempt from disclosure pursuant to §1-210(b)(3)(H), G.S.: IC-2016-0352-1 through IC-2016-0352-9; IC-2016-0352-11³; IC-2016-0352-16; IC-2016-0352-18; and IC-2016-0352-32.

14. Section 1-210(b)(3)(H), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require the disclosure of:

¹ NCIC stands for the "National Crime Information Center," a computerized database of criminal history information, which is maintained by the Federal Bureau of Investigation.

² The respondents also contended that they redacted the day and month of complete birth dates and social security numbers from the requested report as an invasion of personal privacy, pursuant to §1-210(b)(2), G.S. The complainant indicated at the contested case hearing that she is not contesting these redactions. Accordingly, the Commission will not further address the respondents' claims of exemption pursuant to §1-210(b)(2), G.S.

³ The Commission notes that the index to the in camera records indicates that the respondents are claiming that "all" parts of IC-2016-0352-1 through IC-2016-0352-9 and IC-2016-0352-11 are being claimed exempt from disclosure pursuant to §1-210(b)(3)(H), G.S. However, a careful review of these in camera records reveals that the respondents' have actually highlighted in yellow, as instructed at the contested case hearing, those parts of the records that are being claimed exempt from disclosure. In contrast, in those instances where the respondents are actually claiming that an entire page is exempt from disclosure, they have drawn a diagonal line through such page to emphasize the claim. Accordingly, based on a review of the in camera records themselves, the Commission construes the exemption being claimed with regard to IC-2016-0352-1 through IC-2016-0352-9 and IC-2016-0352-11 as a partial exemption.

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 . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216[.]

15. 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.

16. It is found, and a staff attorney from the respondent agency's Legal Affairs Unit (the "staff attorney"), credibly testified, that the portions of the records redacted pursuant to §1-210(b)(3)(H), G.S., contain information concerning the complainant's claim that her protective order had been violated. It is found that the complainant's allegations were investigated by the respondent agency, and then later reinvestigated by the respondent agency. It is found that the respondents were not able to corroborate the complainant's allegations, and it was ultimately determined that no arrest should be made. At the hearing, the staff attorney testified that, while it was initially determined that the respondents could claim the entire report was exempt as uncorroborated allegations, she decided to take a narrower approach and to disclose the requested report with the name and the identifying information of the alleged perpetrator redacted pursuant to §1-210(b)(3)(H), G.S.

17. Based on a careful in camera inspection, it is found that those portions of IC-2016-0352-1 through IC-2016-0352-9; IC-2016-0352-11; IC-2016-0352-16; and IC-2016-0352-18, which portions are highlighted in yellow, as well as lines 45 through 54 of IC-2016-0352-32, 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.

18. Accordingly, it is concluded that the respondents did not violate the FOI Act by withholding the indicated portions of IC-2016-0352-1 through IC-2016-0352-9; IC-2016-0352-11; IC-2016-0352-16; and IC-2016-0352-18, or lines 45 through 54 of IC-2016-0352-32 from the complainant.

19. The respondents next claim^{ED} that a portion of IC-2016-0352-15 (specifically, the “FBI identification number”) as well as the entirety of IC-2016-0352-19; IC-2016-0352-21; and IC-2016-0352-22 are exempt from disclosure pursuant to 28 U.S.C. §534.

20. 28 U.S.C. §534 is a federal statute that deals with the exchange of federal records, including records contained in national crime information databases, between federal and state authorities. The Connecticut Legislature has recognized the agreement (or compact) between the federal government and the state government concerning the exchange of criminal information in §29-164f, G.S.

21. Section 29-164f, G.S., provides, in relevant part, as follows:

The National Crime Prevention and Privacy Compact is hereby entered into and enacted into law with any and all of the states and the federal government legally joining therein. . . .

22. In Commissioner of Public Safety v. FOIC, et al., 144 Conn. App. 821, 827 (2013), the Appellate Court clarified that “the compact provides that the NCIC database is to be used for limited purposes authorized by law, such as background checks, and that NCIC records may only be used for official purposes.” The Court concluded that §29-164f, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S. Id. at 831.

23. Based upon a careful review of the in camera records, it is found that the indicated portion of IC-2016-0352-15 contains NCIC information and the entirety of IC-2016-0352-19; IC-2016-0352-21; and IC-2016-0352-22 are NCIC records, within the meaning of §29-164f, G.S.

24. Accordingly, it is concluded that the indicated portion of IC-2016-0352-15 and the entirety of IC-2016-0352-19; IC-2016-0352-21; and IC-2016-0352-22 are exempt from disclosure pursuant to §29-164f, G.S., and it is further concluded that the respondents did not violate FOI Act by withholding such records or the portion of one record from the complainant.

25. The respondents next contend that IC-2016-0352-20⁴ is exempt from disclosure pursuant to §14-10, G.S., as information contained in a Connecticut Department of Motor Vehicles record which may not be disclosed.

26. Section 14-10(c)(2), G.S., provides, in relevant part, as follows:

[b]efore disclosing personal information pertaining to an applicant or registrant from such motor vehicle records or allowing the inspection of any such record containing

⁴ The Commission notes that, while the respondents contend that the entirety of IC-2016-0352-20 is exempt from disclosure, there are only seven lines of information on this record.

such personal information in the course of any transaction conducted at [the] . . . main office, the commissioner shall ascertain whether such disclosure is authorized under subsection (f) of this section, and require the person or entity making the request to (A) complete an application that shall be on a form prescribed by the commissioner, and (B) provide personal identification satisfactory to the commissioner.

...

27. "Personal information," as that term is used in §14-10(c), G.S., is defined as ". . . information that identifies an individual and includes an individual's photograph or computerized image, Social Security number, operator's license number, name, address other than the zip code, telephone number, electronic mail address, or medical or disability information, but does not include information on motor vehicle accidents or violations, or information relative to the status of an operator's license, registration or insurance coverage." See §14-10(a)(3), G.S.

28. "Motor vehicle record," as such term is used in §14-10(c), G.S., is defined as "any record that pertains to an operator's license, instruction permit, identity card, registration, certificate of title or any other document issued by the Department of Motor Vehicles." See §14-10(a)(2), G.S.

29. Subsection 14-10(f), G.S., provides, in relevant, part:

The commissioner [of motor vehicles] may disclose personal information from a motor vehicle record to . . . (2) Any individual, organization or entity that signs and files with the commissioner, under penalty of false statement as provided in section 53a-157b, a statement on a form approved by the commissioner, together with such supporting documentation or information as the commissioner may require, that such information will be used for any of the following purposes: (A) In connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories. . . .

30. Section 14-10(g), G.S., provides that:

[a]ny person receiving personal information or highly restricted personal information from a motor vehicle record pursuant to subsection (f) of this section shall be entitled to use such information for any of the purposes set forth in said subsection for which such information may be disclosed by the commissioner. No such

person may resell or redisclose the information for any purpose that is not set forth in subsection (f) of this section, or reasonably related to any such purpose.

31. Based upon a careful review of IC-2016-0352-20, it is found that this record contains information that pertains to an operator's license, instruction permit, identity card, registration, or certificate of title, within the meaning of §14-10(c), G.S., and therefore the in camera record is a "motor vehicle record."

32. Accordingly, it is concluded that IC-2016-0352-20 is exempt from disclosure pursuant to §14-10, G.S., and that the respondents did not violate the FOI Act by withholding this record from the complainant.

33. Finally, the respondents contended that IC-2016-0352-23 through IC-2016-0352-31 in their entirety as well as lines 1 through 44 of IC-2016-0352-32, are exempt pursuant to §54-142a, G.S.

34. Section 54-142a, G.S., entitled "Erasure of Criminal Records," provides, in relevant part, as follows:

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. . .

....

(e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records

of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

35. Section 54-142c, G.S., further provides, in relevant part, as follows:

(a) The clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter.

36. For purposes of §54-142c, G.S., a “criminal justice agency” is defined as including “any . . . government agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice.”

37. It is found that the respondent agency is a criminal justice agency, within the meaning of §54-142c, G.S.

38. It is found that a review of the in camera records easily establishes that IC-2016-0352-23 through IC-2016-0352-31, in their entirety, as well as lines 1 through 44 of IC-2016-0352-32, contain information that has been erased, within the meaning of §54-142c, G.S.⁵

39. Accordingly, it is concluded that IC-2016-0352-23 through IC-2016-0352-31 in their entirety as well as lines 1 through 44 of IC-2016-0352-32 are exempt from disclosure pursuant to §54-142c, G.S., and that the respondents did not violate the FOI Act by withholding such records or the portion of one record from the complainant.

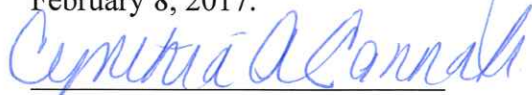
⁵ The respondents also contended that these same records and the portion of one record were exempt from disclosure pursuant to §54-142k(d), G.S., (permissible disclosure of non-conviction information). However, because the Commission sustains the respondents’ claim of exemption pursuant to §54-142a, G.S., in its entirety, it need not address the respondents’ supplemental contention pursuant to §54-142k(d), G.S.

40. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is dismissed.

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



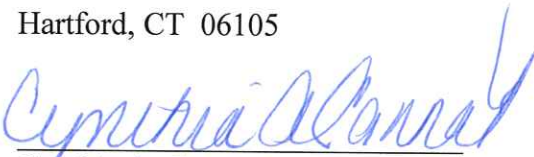
Cynthia A. Cannata
Cynthia A. Cannata
Acting Clerk of the Commission

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:

Lisa Bovee
242 Puddin Lane
Mansfield Center, CT 06250

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
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Cynthia A. Cannata
Acting Clerk of the Commission