

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ilis Cortes,

Complainant

against

Docket #FIC 2016-0824

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

Respondents

June 14, 2017

The above-captioned matter was heard as a contested case on March 28, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2016-0604, Eric Cotton and the Meriden Record Journal v. Chief, Police Department, City of Meriden; Police Department, City of Meriden; and City of Meriden.

The original complainant, attorney Marisa Bellair, moved without opposition to substitute her client, Ilis Cortes, as complainant. The hearing officer granted such motion and the caption has been adjusted accordingly.

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, on April 25, 2016; July 15, 2016; and September 6, 2016, the complainant requested “a complete copy of all police reports regarding Erica Moreno.”
3. It is found that on October 27, 2016, the respondents provided 537 pages of responsive records, of which 16 pages contained redactions.
4. By letter filed November 22, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide copies of the records she requested in a prompt manner and by improperly redacting the records.
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, ...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:

[e]xcept 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, ... 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: “[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 records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. The respondents claimed that the redactions are exempt pursuant to §1-210(b)(4), G.S., which provides that disclosure is not required 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.”

10. It is found that Erica Moreno died by hanging herself while in the custody of the respondents on January 19, 2016. It is found that, on January 28, 2016, the attorney for Ms. Moreno’s estate filed a Notice of Claim against the City of Meriden, the Meriden Police Department, and/or one or more of its officers.

11. It is found that on the date of the request there existed a pending claim against the respondents, and it is found that such claim had not been finally adjudicated or otherwise settled as of the date of the hearing in this matter.

12. The respondents submitted the records they claimed were exempt from disclosure for in camera inspection.

13. It is found that the redactions are two investigative reports. It is found that one report is of an Internal Affairs Bureau investigation into “Possible Policy Violations,” by Sgt. McKay, who was assigned to the respondents’ Internal Affairs Bureau. It is found that the other report is a “Case Supplemental Report,” by Detective S. Burstein.

14. It is found that both McKay and Burstein were assigned to their respective investigations as part of their normal job duties on January 19, 2016, when they reported for work at their scheduled hours a few hours after Ms. Moreno was found unresponsive in her cell.

15. It is found that McKay's assignment was to investigate whether there was any wrongdoing by police personnel. As indicated in the records that the respondents disclosed, it is found that his report contains his observations about the surveillance video, the actions of police personnel, relevant interviews, and analysis of possible violations of General Order 72.5, "Custody Searches at time of Booking."

16. It is found that Burstein's assignment was to investigate "an attempted suicide." It is found that Burstein's report contains his review of the facts of the incident, such as the basis for Ms. Moreno's arrest, her transport to the police station, processing, and conduct while in the cell, as well as interviews with an arrestee who was in the cell block at the time. The report also details Burstein's attempt to review Ms. Moreno's medical records.

17. It is found, from the Index to Records Submitted for In Camera Inspection that accompanied the Burstein report, that the respondents described the information believed to be exempt as: "Burstein recites what he saw on video" and "Burstein's interpretation of what he saw on video."

18. It is found, from the Index to Records Submitted for In Camera Inspection that accompanied the McKay report, that the respondents described the information believed to be exempt in a similar manner as the information redacted from the Burstein report; that is, the redactions are both of what the investigator observed and also an interpretation or opinion about those observations.

19. In support of their position, the respondents cite Stamford v. FOI Commission, 241 Conn. 310 (1997), in which the Supreme Court concluded that an investigative report prepared for the city of Stamford was exempt from disclosure under §1-210(b)(4), G.S., where the report evaluated the merits of a pending law suit brought by the city to recover excess sums paid under a contract, assess the city's prospects for recovery, and evaluate settlement opportunities.

20. The Supreme Court in Stamford v. FOIC, above, at 318, cited with approval the definitions in Webster's Third New International Dictionary of the words "strategy" and "negotiations" within the meaning of §1-210(b)(3), G.S:

Strategy is defined as 'the art of devising or *employing plans or stratagems.*' [Emphasis in original.] 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: 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 meeting or agreements or compromises;' and 'to influence

successfully in a desired way by discussions and agreements or compromises.’

21. After review in camera of the unredacted Burstein and McKay reports, it is found that, unlike the report in Stamford, the redacted information does not reveal a plan or strategem to be employed in the pending claim.

22. Moreover, it is found the investigations were authorized and begun before the respondents received notice of the intent to sue. It is found that the reports serve a different purpose than a record that contains strategy or negotiation with respect to a pending claim or pending litigation.

23. It is found that the redacted information does not pertain to strategy or negotiations with respect to a pending claim within the meaning of §1-210(b)(4), G.S.

24. It is concluded, therefore, that §1-210(b)(4), G.S., does not exempt the redacted records from disclosure.

25. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to prove that their six month delay in producing any records in response to the complainant’s request was prompt, and by withholding the redacted records from the McKay and Burstein reports.

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 disclose to the complainant, free of charge, unredacted copies of the Burstein and McKay reports.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 14, 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:

Illis Cortes
c/o Marisa Bellair, Esq.
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Chief, Police Department, City of Meriden; Police Department,
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Cynthia A. Cannata
Acting Clerk of the Commission