

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Cordaryl Silva,

Complainant,

against

Docket # FIC 2018-0084

Kevin Hale, Chief, Police Department, City of Ansonia; Police Department, City of Ansonia; City of Ansonia; City of Ansonia; Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,

Respondents

December 19, 2018

The above-captioned matter was heard as a contested case on April 30, August 27, and October 23, 2018, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Pursuant to §1-210(d), G.S., the following parties were named as additional respondents: Commissioner, State of Connecticut, Department of Emergency Services and Public Protection (“DESPP”); and State of Connecticut, DESPP.

The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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)(A), G.S.
2. It is found that on January 31, 2018, the complainant requested the following records from the respondent Chief:
 - a. All audio records of the complainant’s work as a confidential informant
 - b. All reports of the complainant’s work as a confidential informant
 - c. All reports concerning the complainant’s arrest on March 9, 2012

- d. All paperwork that the complainant completed to register as a confidential informant, and
- e. All phone call recordings of May 15, 2012.

3. By letter filed February 20, 2018, the complainant appealed to this Commission, alleging that the Ansonia respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the requested records.

4. Section 1-200(5), G.S., defines “public records” as follows:

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.

5. Section 1-210(a), G.S., provides, in relevant part:

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

5. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

6. It is concluded 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.

7. With respect to the complainant’s request for all reports concerning his arrest, described in paragraph 2.c, above, the Ansonia respondents conceded at the hearings in this matter that they had not yet provided such records to the complainant, but agreed to do so forthwith.

8. With respect to the request for all phone call recordings of May 15, 2012, as described in paragraph 2.e, above, it is found that in August 2018, the Ansonia respondents provided such records in audio form to the complainant’s correctional institution. It is found that the Ansonia respondents failed to provide such records in a prompt manner.

9. It is concluded that the Ansonia respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the records described in paragraphs 2.c and 2.e in a prompt manner.

10. With respect to the remainder of the complainant's request, it is found, based on the complainant's Exhibit C, that a police detective testified in open court during the complainant's criminal trial that the complainant "wore a wire" for the respondents as they "used Cordaryl to purchase drugs from [the target]. It is found that the detective stated in his public testimony that "Cordaryl had ... come to us an informant..."

11. It is also found that the complainant's status as a confidential informant is no longer a secret, and the complainant readily confirmed at the hearing in this matter that he acted as such at one time.

12. The Ansonia respondents claim that the records requested by the complainant concerning his registration and work as a confidential informant are exempt pursuant to §1-210(b)(3)(E) and (19), G.S.

13. Section 1-210(b), G.S., provides that disclosure is not required of:

- (3) 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 ... (E) investigatory techniques not otherwise known to the general public[.]
- (19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person ... Such reasonable grounds shall be determined (A) ... (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency;

14. Section 1-210(d), G.S., provides in relevant part:

Whenever a public agency ... receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person.

15. It is found that on May 11, 2018, the Ansonia respondents notified the Commissioner of Emergency Services and Public Protection (“DESPP”) of the complainant’s request for records concerning his status as a confidential informant.

16. It is found that on August 14, 2018, DESPP sent a letter to the Ansonia respondents, in which the Commissioner directed them not to disclose the records described in paragraph 2.a, b., and d, above.

17. On September 10, 2018, the respondents submitted for in camera inspection the records that DESPP directed the respondents not to disclose. Such records shall herein be referenced as IC-2017-0755-1 through IC-2017-0755-5.

18. With respect to whether the Commissioner of DESPP has reasonable grounds to believe that disclosure of IC-2017-0755-1 through IC-2017-0755-5 may result in a safety risk, the Connecticut Supreme Court has held that §1-210(b)(19), G.S., requires deference to DESPP’s assessment “unless the party seeking disclosure establishes that the determination was frivolous, patently unfounded or in bad faith.” People for the Ethical Treatment of Animals, Inc. v. FOI Commission, 321 Conn. 805, 819 (2016).

19. It is found that, despite the public knowledge of the complainant’s status as a confidential informant, DESPP and the respondent Chief of Police articulated reasons for not disclosing the requested records. In particular, the Commissioner of DESPP believes that disclosure would jeopardize the safety of people other than the complainant who are named or described in the records and that disclosure would divulge details of the process and procedures used in drug enforcement work.

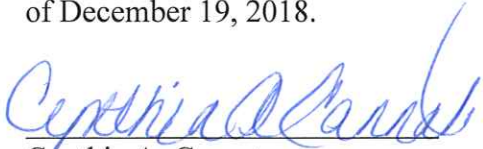
20. Upon careful inspection of the in camera records, and in light of the threshold for the establishing the existence of “reasonable grounds” and the burden placed on the complainant to show that such grounds are frivolous, patently unfounded or in bad faith, it is found that the Commissioner of DESPP has reasonable grounds to believe that disclosure of IC-2017-0755-1 through IC-2017-0755-5 may result in a safety risk, within the meaning of §1-210(b)(19), G.S.

21. It is concluded, therefore, that the respondents did not violate the FOI Act by refusing to disclose the records described in paragraph 2.a, b., and d., above.

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

1. Forthwith, the Town of Ansonia respondents shall provide copies of the records described in paragraph 2.c of the findings of fact, above, if they have not already done so.
2. Henceforth, the Town of Ansonia respondents shall strictly comply with the promptness requirements of §§1-210(a) and 1-212(a), G.S.
3. The complaint against the DESPP respondents is dismissed.

Approved by Order of the Freedom of Information Commission at its special meeting of December 19, 2018.



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:

CORDARYL SILVA, #332230, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

KEVIN HALE, CHIEF, POLICE DEPARTMENT, CITY OF ANSONIA; POLICE DEPARTMENT, CITY OF ANSONIA; CITY OF ANSONIA, c/o Attorney John P. Marini, Cohen & Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604; **COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION**, c/o Assistant Attorney General Terrence M. O'Neill, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission