

TO: Freedom of Information Commission
FROM: Mary E. Schwind
RE: Minutes of the Commission's regular meeting of January 10, 2018
DATE: January 12, 2018

A regular meeting of the Freedom of Information Commission was held on January 10, 2018, in the Freedom of Information Hearing Room, 18-20 Trinity Street, Hartford, Connecticut. The meeting convened at 2:10 p.m. with the following Commissioners present:

Commissioner Owen P. Eagan, presiding
Commissioner Jonathan J. Einhorn
Commissioner Matthew Streeter
Commissioner Christopher P. Hankins
Commissioner Lenny T. Winkler

Also present were staff members, Colleen M. Murphy, Victor R. Perpetua, Tracie C. Brown, Kathleen K. Ross, Valicia D. Harmon, Cindy Cannata, and Mary E. Schwind.

The Commissioners voted 4-0 to approve the Commission's regular meeting minutes of December 13, 2017. Commissioner Winkler abstained.

Those in attendance were informed that the Commission does not ordinarily record the remarks made at its meetings, but will do so upon request.

[Docket #FIC 2017-0103](#)

Christopher Farrow v. Scott Semple, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2017-0157](#)

James Walker v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

James Walker participated via speakerphone. Attorney Nancy Canney appeared on behalf of the respondents. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2012-650](#)

Michael C. Harrington v. Thomas Kirk, President, Laurie Hunt, General Counsel, Connecticut Resources Recovery Authority; Connecticut Resources Recovery Authority

Michael Harrington appeared on his own behalf. Attorney Dan E. LaBelle appeared on behalf of the respondents. The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners then voted 4-1 to adopt the Hearing Officer's Report as amended (Commissioner Einhorn in opposition).* The proceedings were digitally recorded.

[Docket #FIC 2017-0039](#)

James Torlai v. Chief, Police Department, Town of Darien; and Police Department, Town of Darien

James Torlai appeared on his own behalf. Attorney Patricia M. Gaug appeared on behalf of the respondents. The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners then unanimously voted to adopt the Hearing Officer's Report as amended.* The proceedings were digitally recorded.

[Docket #FIC 2017-0065](#)

James Torlai v. Chief, Police Department, Town of Darien; and Police Department, Town of Darien

James Torlai appeared on his own behalf. Attorney Patricia M. Gaug appeared on behalf of the respondents. The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners then unanimously voted to adopt the Hearing Officer's Report as amended.* The proceedings were digitally recorded.

[Docket #FIC 2017-0090](#)

Robert Cushman v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2017-0151](#)

John Barney and Marek Kement v. Tax Assessor, Town of East Windsor

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2017-0155](#)

Kirk Carr v. Arthur Isaacson, Chairman, Clinton Housing, Inc.

Kirk Carr appeared on his own behalf. Attorney David Hoopes appeared on behalf of

the respondent. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2017-0167](#) Kirk Carr v. Jose Lopez, President, Liberty Place Affordable Housing Partnership; and Liberty Place Affordable Housing Partnership.

Kirk Carr appeared on his own behalf. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2017-0220](#) Henry Dacey v. Chairman, Board of Education, Easton Public Schools; and Board of Education, Easton Public Schools

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2017-0288](#) Alexander Wood and the Manchester Journal Inquirer v. Commissioner, State of Connecticut, Department of Economic and Community Development; and State of Connecticut, Department of Economic and Community Development

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2017-0360](#) Joan Coe v. David Ryan, President, Simsbury Performing Arts Center Board; and Simsbury Performing Arts Center Board

Joan Coe appeared on her own behalf. Attorney Charles Houlihan appeared on behalf of the respondents. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2017-0415](#) Leigh Tauss and the Record Journal v. Director of Human Resources, City of Meriden; and City of Meriden

Leigh Tauss appeared on behalf of the complainants. Attorney Deborah Moore appeared as the intervenor. The Commissioners voted, 4-0, to adopt the Hearing Officer's Report as previously amended during the Commission meeting of December 13, 2017. Commissioner Hankins recused himself from participating in the matter. The proceedings were digitally recorded.

Victor Perpetua reported on the New Britain Superior Court Memorandum of Decision in *Mark Sargent v. Freedom of Information Commission* (December 13, 2017).

Victor Perpetua reported on pending appeals.

Colleen Murphy reported that the staff is preparing for the upcoming legislative session.

Colleen Murphy acknowledged and introduced Krista Fasciano, an intern who has been working at the Commission.

The meeting was adjourned at 4:52 p.m.

Mary E. Schwind

* See Attached for amendments

MINREGmeeting 01102018/mes/01122018

AMENDMENTS

Docket #FIC 2012-650 Michael C. Harrington v. Thomas Kirk, President, Laurie Hunt, General Counsel, Connecticut Resources Recovery Authority; Connecticut Resources Recovery Authority

Paragraph 7 of the Hearing Officer's report is amended as follows:

7. Specifically, at issue in the present appeal are the exemptions claimed for certain records withheld in response to the November 21, 2011 request in Harrington I (see paragraph 2, above); specifically, for "all communications between Tom Ritter and the CRRA staff and Board" from January 1, 2007 to present; "all communications between Peter Boucher and the CRRA staff and Board" from January 1, 2009 to present; "all bills from and payments made to Brown Rudnick...for legal and municipal liaison services provided" from January 1, 2007 to present; and "all documents and communications between the CRRA staff and Board concerning the 2011 municipal liaison RFP...." It is found that, at the time these records were created, Boucher was an attorney with the law firm of Halloran & Sage, and acted as general counsel to CRRA. Several other attorneys at Halloran & Sage, **AND ATTORNEYS ASSOCIATED WITH OTHER LAW FIRMS**, also provided legal counsel to CRRA during this period, including Douglas Cohen, John Farley, William Champlin, Alan Curto, Miguel Escalera, Mark Baldwin, William Wilson, Christopher Novak, Thomas Blatchley and Scott McKessey.

The paragraph on page 16 of the Hearing Officer's Report described as Ritter 27 is amended as follows:

Ritter 27 – page 96, email from Nonnenmacher to Hunt and cc'd to Kirk and Ritter, dated November 29, 2010 at 2:54 pm (redaction).

The respondents claimed, during the hearing in this matter, that the last two paragraphs are a request for legal advice from Nonnenmacher, on behalf of CRRA, to Hunt, in her capacity as in-house counsel to CRRA. After careful in camera inspection of this email communication, it is found that it contains a request for legal advice from Nonnenmacher to Hunt. However, it is also found that the respondents offered no specific evidence from which it could be concluded that Ritter was included in this email communication by Nonnenmacher for the purpose of seeking legal advice from him, in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court. Nor is Ritter's role or the purpose clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication. To the contrary, the fact that Ritter was not a direct recipient of this communication, but merely was copied on it, suggests that **NONNENMACHER** [Kirk] was not seeking legal advice from Ritter, and that Ritter was not necessary to the legal consultation Nonnenmacher sought with Hunt. It is therefore found that the respondents failed to prove that this email communication was made in confidence.

Docket #FIC 2017-0039

James Torlai v. Chief, Police Department, Town of Darien; and Police Department, Town of Darien

New paragraphs 10 through 16 are added as follows:

10. WITH RESPECT TO THE RECORDS DESCRIBED IN PARAGRAPH 2.h AND 2.i, ABOVE, ON BRIEF, THE COMPLAINANT CONTENDS THAT §14-227i, G.S. REQUIRES THAT HE BE GIVEN SUCH RECORDS BY THE RESPONDENT.

11. SECTION 14-227i, G.S., PROVIDES:

(a) NOTWITHSTANDING ANY PROVISION OF THE GENERAL STATUTES, THE INVESTIGATING POLICE DEPARTMENT SHALL MAINTAIN ANY RECORD OF A DEFENDANT CONCERNING THE OPERATION OF A MOTOR VEHICLE BY SUCH DEFENDANT WHILE UNDER THE INFLUENCE OF, OR IMPAIRED BY THE CONSUMPTION OF, INTOXICATING LIQUOR OR DRUGS FOR A PERIOD OF NOT LESS THAN TWO YEARS FROM THE DATE SUCH DEFENDANT WAS CHARGED WITH A VIOLATION OF SECTION 14-277a.

(b) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THE GENERAL STATUTES, BY MAKING A WRITTEN REQUEST TO THE INVESTIGATING POLICE DEPARTMENT, A PERSON INJURED IN AN ACCIDENT CAUSED BY THE ALLEGED VIOLATION OF SECTION 14-227a BY ANY SUCH DEFENDANT, ANY PARTY TO A CIVIL CLAIM OR PROCEEDING ARISING OUT OF SUCH ACCIDENT, OR THE LEGAL REPRESENTATIVE OF ANY SUCH PERSON OR PARTY MAY REVIEW AND OBTAIN REGULAR OR CERTIFIED COPIES OF ANY RECORD CONCERNING THE OPERATION OF A MOTOR VEHICLE BY SUCH DEFENDANT WHILE UNDER THE INFLUENCE OF, OR IMPAIRED BY THE CONSUMPTION OF, INTOXICATING LIQUOR OR DRUGS.

(2) THE INVESTIGATING POLICE DEPARTMENT SHALL FURNISH REGULAR OR CERTIFIED COPIES OF ANY SUCH RECORD TO ANY PERSON OR THE LEGAL REPRESENTATIVE OF SUCH PERSON, OR TO SUCH PARTY, NOT LATER THAN FIFTEEN DAYS FOLLOWING RECEIPT OF SUCH REQUEST. THE INVESTIGATING POLICE DEPARTMENT SHALL CHARGE A FEE FOR SUCH COPIES THAT SHALL NOT EXCEED THE COST TO SUCH POLICE DEPARTMENT FOR PROVIDING SUCH COPIES, BUT NOT MORE THAN FIFTY CENTS PER PAGE IN ACCORDANCE WITH SECTION 1-212.

12. FIRST, THE COMPLAINANT APPEARS TO BE ASKING THE COMMISSION TO ENFORCE RIGHTS HE BELIEVES HE HAS UNDER §14-227i(b)(2), G.S. THE COMMISSION HAS NO SUCH ENFORCEMENT POWER.

13. SECOND, THE COMMISSION CANNOT AGREE THAT §14-227i(b)(2), G.S., PROVIDES THE COMPLAINANT WITH A RIGHT OF ACCESS TO THE RECORDS DESCRIBED IN PARAGRAPHS 2.h AND 2.i, ABOVE. THAT STATUTE PROVIDES RIGHTS OF ACCESS TO THOSE INDIVIDUALS DESCRIBED IN §14-227i(b)(1), G.S.; SPECIFICALLY: PERSONS INJURED IN ACCIDENTS CAUSED BY DRIVERS UNDER THE INFLUENCE OF INTOXICATING LIQUORS OR DRUGS; PARTIES TO CIVIL CLAIMS OR PROCEEDINGS ARISING FROM SUCH ACCIDENTS; OR THE LEGAL REPRESENTATIVES OF SUCH INDIVIDUALS. THE LANGUAGE IN §14-227i(b)(2), G.S., CLEARLY AND SPECIFICALLY RELATES TO THE LANGUAGE IN §14-227i(b)(1), G.S.

14. ON BRIEF, THE COMPLAINANT RELIES ON THE LEGISLATIVE HISTORY OF §14-227i(b)(2), G.S. SUCH RELIANCE IS MISPLACED. UNDER THE PLAIN MEANING RULE, EXTRATEXTUAL EVIDENCE OF THE MEANING OF A STATUTE SHALL NOT BE CONSIDERED IF THE MEANING OF THE STATUTE CAN BE ASCERTAINED FROM ITS TEXT AND RELATIONSHIP TO OTHER STATUTES. §1-2z, G.S.

15. NEXT, THE COMPLAINANT CONTENDS THAT, SINCE THE RECORDS DESCRIBED IN PARAGRAPHS 2.h AND 2.i, ABOVE, ARE NEITHER SET FORTH IN §1-215, G.S., NOR SPECIFICALLY EXEMPTED THEREIN, IT FOLLOWS THAT SUCH STATUTE CANNOT OPERATE TO EXCUSE SUCH RECORDS FROM MANDATORY DISCLOSURE.

16. THE COMMISSION NOTES THAT THE ISSUE OF WHETHER §1-215, G.S., MERELY SETS FORTH THE MINIMUM INFORMATION THAT MUST BE DISCLOSED AT THE TIME OF ARREST HAS BEEN DECIDED TO THE CONTRARY BY THE SUPREME COURT IN COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY V. FOIC, 312 CONN. 513 (2014). THE COURT CONCLUDED THAT, DURING A PENDING CRIMINAL PROSECUTION, A LAW ENFORCEMENT AGENCY'S DISCLOSURE OBLIGATIONS UNDER THE FOI ACT WITH RESPECT TO RECORDS RELATED TO THE ARREST ARE EXCLUSIVELY GOVERNED BY §1-215, G.S. ACCORDINGLY, IT IS CONCLUDED THAT RECORDS NOT SET FORTH IN §1-215, G.S., WHICH MIGHT ALSO RELATE TO AN ARREST, SUCH AS THE RECORDS DESCRIBED IN PARAGRAPHS 2.h AND 2.i, ABOVE, ARE NOT REQUIRED TO BE MADE AVAILABLE TO THE PUBLIC DURING THE LIMITED TIME OF A PENDING PROSECUTION.

Paragraphs 10 through 12 are renumbered as paragraphs 17-19.

Paragraph 13 is amended as follows:

20. [13.] The complainant contended at the hearing **AND ON BRIEF** that, since the \$1.50 fee was under \$10, as set forth in §1-212(c), G.S., the respondents were required to mail him the arrest report, and bill him for the record. The Commission cannot agree. A public agency need not provide requested copies if payment is not made at point of receipt. Thus, if the

complainant had arrived at the respondents' offices, and demanded a copy of the three page report, the respondents would have every right to demand payment **AT THE TIME** [before providing the] records **WERE PROVIDED**. It is only because the transaction here was conducted through the mail that this issue has arisen. It should also be noted that nowhere in the FOI Act is it required that public agencies provide requested copies by mail, although that is normally done as a courtesy. Under the facts and circumstances of this case, it is concluded that the respondents did not violate the FOI Act by informing the complainant that they would send him the requested arrest report upon payment of the statutory fee of \$1.50.

Paragraphs 14 through 15 are renumbered as paragraphs 21 through 22.

Paragraph 16 is amended as follows:

23. [16.] It is found that the respondents arrived at the fee of \$15.00 by using a portion of the hourly rate of the employee who was charged with searching for, retrieving, and copying the requested **RECORDINGS** [*audios*] onto a DVD. **IT IS FOUND THAT THE RESPONDENTS FAILED TO PROVE THAT SUCH TASKS CONSTITUTED FORMATTING AND PROGRAMMING FUNCTIONS WITHIN THE MEANING OF §1-212(b)(1), G.S., OR THAT SUCH TASKS DID NOT CONSTITUTE SEARCH AND RETRIEVAL WITHIN THE MEANING OF SUCH PROVISION.** [It is concluded that such a fee is not allowable under §1-212(b)(1), G.S.] Accordingly, it is concluded that the respondents violated the FOI Act by conditioning provision of the records requested in paragraph 2.j, above, upon payment of the \$15.00 fee.

Paragraph 17 is renumbered as paragraph 24.

Paragraph 18 is amended as follows:

25. [18.] On December 10, 2017, the complainant filed a "Motion to Append the Record and Add One Exhibit." The complainant seeks to add as an exhibit a printout from the Judicial website, indicating that the file in the arrest at issue has been statutorily sealed. Receiving no objection, such request is granted and such one page printout has been marked as complainant's Exhibit J. **ON JANUARY 3, 2018, THE RESPONDENTS ALSO MOVED TO SUPPLEMENT THE RECORD BY ADDING AS AN EXHIBIT A COPY OF A JANUARY 2, 2018 EMAIL FROM THE ASSISTANT STATE'S ATTORNEY TO THE REDPONDENTS INDICATING THAT THE FILE IN THE ARREST AT ISSUE HAS BEEN SEALED AND INCLUDING A REFERENCE TO §54-56g, G.S. SUCH REQUEST IS GRANTED AND SUCH ONE PAGE COPY HAS BEEN MARKED AS RESPONDENTS' EXHIBIT 1.**

A new paragraph 26 is added as follows:

26. It is found that the file related to the arrest at issue has been sealed by the court **PURSUANT TO §54-56g, G.S.**

Paragraph 19 is renumbered as paragraph 27.

Paragraph 20 is amended as follows:

28. [20.] [First, there has been speculation, but no evidence, that the file which has been statutorily sealed in the case at issue herein was indeed sealed pursuant to §54-56g, G.S. Second, the] THE decision in Docket #FIC 2005-242 was reached well before the amendments to the FOI Act which added the current provisions of §1-215, G.S., WHICH, AS DESCRIBED IN PARAGRAPH 16, ABOVE, EXCLUSIVELY GOVERN THE DISCLOSURE OF RECORDS RELATED TO ARRESTS DURING THE PENDANCY OF A PROSEOTION, AS IS AT ISSUE IN THIS MATTER.

Paragraph 21 is amended as follows:

29. [21.] Under §1-215, G.S., the sealing of the file by the court affects the disclosure of the record of arrest only; that is, the arrest report described in paragraph 2.g, above. As concluded in paragraph 20 [13], above, the respondents did not violate the FOI Act with respect to the record described in paragraph 2.g, above. [Should the complainant still wish to obtain such record, he may make a new request, and the respondents would necessarily have to comply under the law as particularly set forth in §1-215(a), G.S.]

New paragraphs 30-36 are added as follows:

30. ON BRIEF, THE RESPONDENTS CONTENTED THAT §54-56g, G.S., PRECLUDES THE DISCLOSURE OF THE REQUESTED RECORDS. SINCE THE COMMISSION HAS NOT ORDERED THE DISCLOSURE OF THE RECORDS DESCRIBED IN PARAGRAPHS 2.g, 2.h, OR 2.i, THE ONLY REMAINING RECORD AT ISSUE IS THE DVD, DESCRIBED IN PARAGRAH 2.j, ABOVE.

31. SECTION 54-56g, G.S., ESTABLISHES THE PRETRIAL ALCOHOL EDUCATION PROGRAM, AND STATES IN RELEVANT PART;

(a)(1) THERE SHALL BE A PRETRIAL ALCOHOL EDUCATION PROGRAM FOR PERSONS CHARGED WITH A VIOLATION OF SECTION 14-227a, 14-227g, 15-132a, 15-133, 15-140/ OR 15-140N. UPON APPLICATION BY ANY SUCH PERSON FOR PARTICIPATION IN SUCH PROGRAM AND PAYMENT TO THE COURT OF AN APPLICATION FEE OF ONE HUNDRED DOLLARS AND A NONREFUNDABLE EVALUATION FEE OF ONE HUNDRED DOLLARS, THE COURT SHALL, BUT ONLY AS TO THE PUBLIC, ORDER THE COURT FILE SEALED

32. ON BRIEF, THE RESPONDENTS CONTENTED THAT SINCE §1-215(b)(3), G.S., COVERS “ANY INFORMATION THAT A JUDICIAL AUTHORITY HAS ORDERED TO BE SEALED FROM PUBLIC INSPECTION OR DISCLOSURE COVERED BY THE COURT ORDER”, THEN ALL RECORDS RELATED TO THE CASE MUST BE EXMEPT. HOWEVER, §1-215(b)(3), G.S. , APPLIES ONLY TO THE “RECORD OF THE ARREST” AS DEFINED IN PARAGRAPH §1-215(a), G.S. IT IS FOUND THAT THE REMAINING RECORD, DESCRIBED IN PARAGRAPH 2.j,

ABOVE, IS NOT A RECORD OF ARREST, BUT RATHER IS A RECORD WITHIN THE MEANING OF §1-215(c), G.S.

33. THE COMMISSION NOTES THAT THE LEGISLATURE SPECIFICALLY SEPARATED THE RECORDS CONTEMPLATED IN §1-215(c), G.S., FROM THE RECORDS OF ARREST CONTEMPLATED IN §§1-215(a) AND (b), G.S., AND, ADDITIONALLY, SET FORTH A SEPARATE STANDARD FOR DISCLOSURE FOR SUCH RECORDS.

34. IT IS CONCLUDED THAT THE LANGUAGE IN §54-56g, G.S., BY ITS OWN TERMS SEALS THE COURT FILE. SINCE THE RESPONDENTS' RECORD IS A RECORD OF THE DARIEN POLICE DEPARTMENT, IT IS CONCLUDED THAT §54-56g, G.S., DOES NOT PROVIDE A BASIS TO WITHHOLD THE RECORD DESCRIBED IN PARAGRAPH 2.j, ABOVE, FROM THE COMPLAINANT.

35. ON BRIEF, THE RESPONDENTS ALSO CONTENDED THAT BY THE APPLICATION OF §54-56G, G.S., THE PRETRAIL ALCOHOL EDUCATION PROGRAM MAY WELL LEAD TO AN EVENTUAL DISMISSAL OR ERASURE IN THE UNDERLYING ARREST, AND THAT IF SUCH EVENT OCCURS, THE ERASURE STATUTE, §54-142A, G.S., WILL CONTROL AND PROHIBIT THE DISCLOSURE OF THE RECORD DESCRIBED IN PARAGRAPH 2.j, ABOVE. THE RESPONDENTS FURTHER CONTENDED THAT TO ORDER RELEASE OF RECORDS WHICH MIGHT EVENTUALLY BE ERASED WILL INHIBIT THE PRETRIAL EDUCATION PROGRAM.

36. IT IS FOUND THAT THE RECORD DESCRIBED IN PARAGRAPH 2.j, ABOVE, HAS NOT BEEN ERASED. IT IS CONCLUDED THAT THE ERASURE STATUTE DOES NOT PROVIDE A BASIS TO WITHHOLD SUCH RECORD AT THIS TIME.

Paragraph 22 is deleted as follows:

[22. It is concluded that the sealing of the court file in this matter does not affect disclosure of the DVD containing the records described in paragraph 2.j, above, as such record is not a record of arrest, as set forth in §1-215(a), G.S. Rather, such record should be disclosed in accordance with §1-215(c), G.S. The respondents have not claimed an exemption to disclosure for such record, within the meaning of §1-215(c), G.S. Therefore, it is concluded that the complainant is entitled to receive a copy of the DVD.]

Paragraph 1 of the order is amended as follows:

1. Forthwith, the respondents shall provide the complainant with a copy of the DVD described in paragraph 2.j [22] of the findings, above, free of charge.

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James Torlai v. Chief, Police Department, Town of Darien; and Police Department, Town of Darien

New paragraphs 10 and 11 are added as follows:

10. THE COMPLAINANT CONTENDED THAT, SINCE THE RECORDS DESCRIBED IN PARAGRAPHS 2.h AND 2.i, ABOVE, ARE NEITHER SET FORTH IN §1-215, G.S., NOR SPECIFICALLY EXEMPTED THEREIN, IT FOLLOWS THAT SUCH STATUTE CANNOT OPERATE TO EXCUSE SUCH RECORDS FROM MANDATORY DISCLOSURE.

11. THE COMMISSION NOTES THAT THE ISSUE OF WHETHER §1-215, G.S., MERELY SETS FORTH THE MINIMUM INFORMATION THAT MUST BE DISCLOSED AT THE TIME OF ARREST HAS BEEN DECIDED TO THE CONTRARY BY THE SUPREME COURT IN COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY V. FOIC, 312 CONN. 513 (2014). THE COURT CONCLUDED THAT, DURING A PENDING CRIMINAL PROSECUTION, A LAW ENFORCEMENT AGENCY'S DISCLOSURE OBLIGATIONS UNDER THE FOI ACT WITH RESPECT TO RECORDS RELATED TO THE ARREST ARE EXCLUSIVELY GOVERNED BY §1-215, G.S. ACCORDINGLY, IT IS CONCLUDED THAT RECORDS NOT SET FORTH IN §1-215, G.S., WHICH MIGHT ALSO RELATE TO AN ARREST, SUCH AS THE RECORDS DESCRIBED IN PARAGRAPHS 2.h AND 2.i, ABOVE, ARE NOT REQUIRED TO BE MADE AVAILABLE TO THE PUBLIC DURING THE LIMITED TIME OF A PENDING PROSECUTION.

Paragraphs 10 through 14 are renumbered as paragraphs 12 through 16.

Paragraph 15 is amended as follows:

17 [15.] It is found that the respondents arrived at the fee of \$15.00 by using a portion of the hourly rate of the employee who was charged with searching for, retrieving, and copying the requested videos onto a DVD. IT IS FOUND THAT THE RESPONDENTS FAILED TO PROVE THAT SUCH TASKS CONSTITUTED FORMATTING AND PROGRAMMING FUNCTIONS WITHIN THE MEANING OF §1-212(b)(1), G.S., OR THAT SUCH TASKS DID NOT CONSTITUTE SEARCH AND RETRIEVAL WITHIN THE MEANING OF SUCH PROVISION. [It is concluded that such a fee is not allowable under §1-212(b)(1), G.S.] Accordingly, it is concluded that the respondents violated the FOI Act by conditioning provision of the records requested in paragraph 2.j, above, upon payment of the \$15.00 fee.

Paragraph 16 is renumbered as paragraph 18.

Paragraph 17 is amended as follows:

19. [17.] On December 10, 2017, the complainant filed a "Motion to Append the Record and Add One Exhibit." The complainant seeks to add as an exhibit a printout from the Judicial website, indicating that the file in the arrest at issue has been statutorily sealed. Receiving no

objection, such request is granted and such one page printout has been marked as complainant's Exhibit G. **ON JANUARY 3, 2018, THE RESPONDENTS ALSO MOVED TO SUPPLEMENT THE RECORD BY ADDING AS AN EXHIBIT A COPY OF A JANUARY 2, 2018 EMAIL FROM THE ASSISTANT STATE'S ATTORNEY TO THE REDPONDENTS INDICATING THAT THE FILE IN THE ARREST AT ISSUE HAS BEEN SEALED AND INCLUDING A REFERENCE TO §54-56g, G.S. SUCH REQUEST IS GRANTED AND SUCH ONE PAGE COPY HAS BEEN MARKED AS RESPONDENTS' EXHIBIT 1.**

A new paragraph 20 is added as follows:

20. It is found that the file related to the arrest at issue has been sealed by the court **PURSUANT TO §54-56g, G.S.**

Paragraph 18 is renumbered as paragraph 21.

Paragraph 19 is amended as follows:

22. [19.] [First, there has been speculation, but no evidence, that the file which has been statutorily sealed in the case at issue herein was indeed sealed pursuant to §54-56g, G.S. Second, the] **THE** decision in Docket #FIC 2005-242 was reached well before the amendments to the FOI Act which added the current provisions of §1-215, G.S., **WHICH, AS DESCRIBED IN PARAGRAPH 11, ABOVE, EXCLUSIVELY GOVERN THE DISCLOSURE OF RECORDS RELATED TO ARRESTS DURING THE PENDANCY OF A PROSECTION, AS IS AT ISSUE IN THIS MATTER.**

Paragraph 20 is deleted as follows:

[20. Under §1-215, G.S., the sealing of the file by the court affects the disclosure of the record of arrest only.]

Paragraph 21 is renumbered as paragraph 23.

Paragraph 22 is amended as follows:

24. [22.] However, since the file has now been sealed by a court, the particular provisions of §1-215(b), G.S., would apply to the disclosure of the record described in paragraph 2.g, above, **SINCE IT IS A RECORD OF ARREST, WITHIN THE MEANING OF §1-215(a), G.S.**

New paragraphs 25 through 32 are added as follows:

25. **ON BRIEF, THE RESPONDENTS CONTENDED THAT §54-56g, G.S., PRECLUDES THE DISCLOSURE OF THE REMAINING REQUESTED RECORDS.**

26. SECTION 54-56g, G.S., ESTABLISHES THE PRETRIAL ALCOHOL EDUCATION PROGRAM, AND STATES IN RELEVANT PART:

(a)(1) THERE SHALL BE A PRETRIAL ALCOHOL EDUCATION PROGRAM FOR PERSONS CHARGED WITH A VIOLATION OF SECTION 14-227a, 14-227g, 15-132a, 15-133, 15-140/ OR 15-140N. UPON APPLICATION BY ANY SUCH PERSON FOR PARTICIPATION IN SUCH PROGRAM AND PAYMENT TO THE COURT OF AN APPLICATION FEE OF ONE HUNDRED DOLLARS AND A NONREFUNDABLE EVALUATION FEE OF ONE HUNDRED DOLLARS, THE COURT SHALL, BUT ONLY AS TO THE PUBLIC, ORDER THE COURT FILE SEALED

27. ON BRIEF, THE RESPONDENTS CONTENDED THAT SINCE §1-215(b)(3), G.S., COVERS “ANY INFORMATION THAT A JUDICIAL AUTHORITY HAS ORDERED TO BE SEALED FROM PUBLIC INSPECTION OR DISCLOSURE COVERED BY THE COURT ORDER”, THEN ALL RECORDS RELATED TO THE CASE MUST BE EXEMPT. HOWEVER, IT IS CONCLUDED THAT §1-215(b)(3), G.S. , APPLIES ONLY TO THE “RECORD OF THE ARREST” AS DEFINED IN PARAGRAPH §1-215(a), G.S. IT IS FOUND THAT THE RECORD DESCRIBED IN PARAGRAPH 2.g, ABOVE, IS SUCH A RECORD AT THIS TIME. IT IS CONCLUDED THAT THE PROVISIONS OF §1-215(b)(3), G.S., APPLY TO SUCH RECORD AT THIS TIME.

28. HOWEVER, IT IS FURTHER FOUND THAT THE RECORD DESCRIBED IN PARAGRAPH 2.j, ABOVE, IS NOT A RECORD OF ARREST, BUT RATHER IS A RECORD WITHIN THE MEANING OF §1-215(c), G.S.

29. THE COMMISSION NOTES THAT THE LEGISLATURE SPECIFICALLY SEPARATED THE RECORDS CONTEMPLATED IN §1-215(c), G.S., FROM THE RECORDS OF ARREST CONTEMPLATED IN §§1-215(a) AND (b), G.S., AND, ADDITIONALLY, SET FORTH A SEPARATE STANDARD FOR DISCLOSURE FOR SUCH RECORDS.

30. IT IS CONCLUDED THAT THE LANGUAGE IN §54-56g, G.S., BY ITS OWN TERMS SEALS THE COURT FILE. SINCE THE RECORD DESCRIBED IN PARAGRAPH 2.j, ABOVE, IS A RECORD OF THE DARIEN POLICE DEPARTMENT, IT IS CONCLUDED THAT §54-56g, G.S., DOES NOT PROVIDE A BASIS TO WITHHOLD IT FROM THE COMPLAINANT.

31. ON BRIEF, THE RESPONDENTS ALSO CONTENDED THAT BY THE APPLICATION OF §54-56G, G.S., THE PRETRIAL ALCOHOL EDUCATION PROGRAM MAY WELL LEAD TO AN EVENTUAL DISMISSAL OR ERASURE IN THE UNDERLYING ARREST, AND THAT IF SUCH EVENT OCCURS, THE ERASURE STATUTE, §54-142A, G.S., WILL CONTROL AND PROHIBIT THE DISCLOSURE OF THE RECORD DESCRIBED IN PARAGRAPHS 2.g and 2.j, ABOVE. THE RESPONDENTS FURTHER CONTENDED THAT TO ORDER RELEASE OF

RECORDS WHICH MIGHT EVENTUALLY BE ERASED WILL INHIBIT THE PRETRIAL EDUCATION PROGRAM.

32. IT IS FOUND THAT THE RECORDS DESCRIBED IN PARAGRAPHS 2.g AND 2.j, ABOVE, HAVE NOT BEEN ERASED. IT IS CONCLUDED THAT THE ERASURE STATUTE DOES NOT PROVIDE A BASIS TO WITHHOLD SUCH RECORDS AT THIS TIME.

Paragraph 23 is deleted as follows:

[23. It is concluded that the sealing of the court file in this matter does not affect disclosure of the DVD containing the records described in paragraph 2.j, above, as such record is not a record of arrest, as set forth in §1-215(a), G.S. Rather, such record should be disclosed in accordance with §1-215(c), G.S. The respondents have not claimed an exemption to disclosure for such record, within the meaning of §1-215(c), G.S. Therefore, it is concluded that the complainant is entitled to receive a copy of the DVD.]

Paragraph 2 of the order is amended as follows:

2. Forthwith, the respondents shall provide the complainant with a copy of the DVD described in paragraph 2.j [23] of the findings, above, free of charge.