

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

William Rousseau,

Complainant

against

Docket #FIC 2017-0281

Chief, Police Department,
Town of Windsor Locks;
Police Department, Town of
Windsor Locks; and Town of
Windsor Locks,

Respondents

March 14, 2018

The above-captioned matter was heard as a contested case on July 27, 2017, 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 email dated May 8, 2017, the complainant requested that the respondents provide him with copies of the following:
 - a. A copy of the letter that was submitted to Chief Suchocki regarding Dr. Kei's examination of me for fitness for duty to determine my fitness to continue my duties as a Windsor Locks police officer and any other records that pertain to my PHI¹ at that time;
 - b. How did you and Andrew Dziergowki come into possession of a 7 year old medical deposition of Dr. Kei that pertained to me and my PHI when I was a Windsor Locks police officer?;

¹ "PHI" stands for Protected Health Information, which phrase is defined by the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d, *et seq.*, and its corresponding regulations. *See* 45 C.F.R. §164.502(f) (wherein the Department of Health and Human Services defines PHI).

- c. Who provided this deposition that contains my protected PHI to Sgt. Dziergowski?;
- d. I have previously inquired of you that you provide me with name of the person that made the following comments that were in your letter requesting that I provide new medical information. The phrase that is in your letter [is] 'which impaired your judgment/mental capacity.' This is an inaccurate representation of my medical issues from 7 years ago!!!;
- e. The annual report and break down of incident responses for 2016 (total amount of incident responses by category);
- f. Total number of officers that are assigned to duties outside of Windsor Locks Police Department, [such as] Regional Task Forces, Regional Drug Task Forces, Computer Crimes Investigation, etc.;
- g. Total number of hours that these officers work each week or month by outside assignment area;
- h. The costs to the town for officers to work these details;
- i. Cost of special training to maintain certification in specialized areas by officer;
- j. What type of specific professional development and training justifies a \$19,500 expense?;
- k. What are the specific dues and fees required [by] a \$3,000 dollar expense?
- l. Are the 1969 rules and regulations [and] the General Order Manual applied and enforced under this administration?;
- m. The details of the retirement package that he offered to officers that recently retired; and
- n. As each of these officers retired as members in good standing, were they provided a retirement badge and a retired Windsor Locks P.D. photo ID as is normal and customary under the current practice established by you and authorized by the Windsor Locks Police Commission?

3. By email dated and filed May 23, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with a copy of the records referenced in paragraph 2, above.

4. 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.

5. 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.

6. 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.”

7. It is found that paragraphs 2.b, 2.c, 2.d, 2.j, 2.k, 2.l and 2.n, above, are questions and not requests for public records. Nothing in the FOI Act requires a public agency to answer questions, and, therefore, it is therefore concluded that the respondents did not violate the FOI Act by refusing to provide answers to the seven questions posed by the complainant. See, e.g. Sandra Staub, Esq., et al. v. Chief, Police Dep’t, City of Bridgeport, et al., Docket #FIC 2012-127 (Dec. 7, 2012).

8. It is found that the remaining 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 contended that the respondents were in possession of certain records that should have been destroyed pursuant to §1-216, G.S. The complainant further contended that the respondents failed to provide him with responsive records.

10. With regard to the complainant’s first contention, it is concluded that §1-216, G.S., is a statute that is read in conjunction with an exemption codified in §1-210(b)(3)(H), G.S., (uncorroborated criminal allegations). When read together, these statutes provide as follows:

Nothing in the FOI Act shall be construed to require the disclosure of:

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. See §1-210(b)(3)(H), G.S.

Except for records the retention of which is otherwise controlled by law or regulations, 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. See §1-216, G.S.

11. It is concluded that §1-210(b)(3)(H), G.S., provides law enforcement agencies a permissive exemption to the disclosure of public records when certain specific factors are established by way of evidence. It is concluded that these factors, (such as the fact the requested records are “records of a law enforcement agency,” “not otherwise available to the public,” and “were compiled in connection with detection or investigation of crime”), must be proven by the law enforcement agency in possession of the subject records and claiming the exemption to their disclosure. It is concluded that the complainant cannot claim that certain records, which he believes the police department maintains, are exempt from disclosure pursuant to §1-210(b)(3)(H), G.S, in order to contend that such records must be destroyed.

12. With regard to the complainant’s second contention—that the respondents failed to provide him with responsive records, Chief Eric Osanitsch appeared on behalf of the respondents and provided testimony.

13. It is found that the respondents gathered all of the records responsive to the complainant’s requests and provided them to their attorney. It is found that the responsive records were contained in an envelope. It is further found that the respondents’ attorney contacted the complainant to inform him that the records were available and could be picked up at counsel’s office. It is found that the complainant picked up the package of responsive records, but refused to open it. At the time of the contested case hearing, the complainant had yet to open the package. The complainant testified that he was refusing to open the package because it was provided to him by the respondents’ attorney rather than by Chief Osanitsch. The complainant reasoned that if he requests records from the Chief of Police he should receive records from the Chief of Police, not the chief’s attorney. This position is untenable. It makes no difference that a respondent’s attorney makes records available to a requester, rather than the respondent himself.

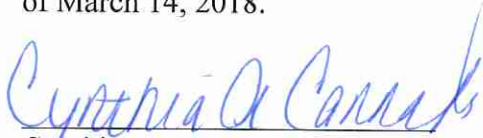
14. It is found that the respondents gathered all responsive records and provided such records to the complainant.

15. 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 March 14, 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:

WILLIAM ROUSSEAU, c/o Kathryn A. Mallach, 108 Oak Street, Hartford, CT 06106

CHIEF, POLICE DEPARTMENT, TOWN OF WINDSOR LOCKS; POLICE DEPARTMENT, TOWN OF WINDSOR LOCKS; AND TOWN OF WINDSOR LOCKS, c/o Attorney Carl T. Landolina, 487 Spring Street, Windsor Locks, CT 06096



Cynthia A. Cannata
Acting Clerk of the Commission