

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Dave Altimari and Hartford Courant,

FINAL DECISION

Complainants,

Docket # FIC 2017-0623

against

Commissioner, State of Connecticut,
Department of Emergency Services
and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

September 26, 2018

The above-captioned matter was heard as a contested case on November 29, 2017, at which time the complainants and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On October 19, 2017, and October 20, 2017, Rupert Laird and Xavier Cruz, respectively, moved to intervene in this matter. Such motions were granted, without objection.

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 September 25, 2017, Dave Altimari, on behalf of the complainants, requested that the respondents provide him with an opportunity to inspect the completed internal affairs investigation file concerning State Troopers Xavier Cruz and Rupert Laird, related to their arrest by the Wethersfield Police Department on February 27, 2017 (September 25th request”).
3. It is found that Cruz and Laird were arrested on multiple felony charges for an incident that allegedly took place on February 18, 2017. It is found that the respondents subsequently conducted an internal affairs investigation (identified as IA 17-015), and Cruz and Laird were terminated on September 11, 2017, and September 12, 2017, respectively. It is found that the internal affairs file at issue incorporates, among other records, records compiled by the Wethersfield Police Department and the Mid-State Major Crime Squad, in connection with the criminal investigation of Cruz and Laird. It further found that, at the time of the September 25th request, there were pending criminal prosecutions against Cruz and Laird.

4. It is found that on September 26, 2017, the respondents' Legal Affairs Unit acknowledged the complainants' September 25th request, described in paragraph 2, above. It is found that on that same day, the Legal Affairs Department contacted the State's Attorney's Office about the September 25th request and the potential impact the disclosure of the requested records would have on the pending criminal prosecutions against Cruz and Lard.

5. It is found that on September 28, 2017, and September 29, 2017, attorneys for Laird and Cruz, respectively, filed motions for injunction and/or protective order in Superior Court (HHB-CR17-0286775-T and HHB-CR17-0286774-T), seeking to enjoin the State and/or its agents from disseminating the contents of the internal affairs investigation file. It is found that on October 2, 2017, the protective orders were adopted "by agreement of the parties," and signed by the court.

6. It is found that, by email dated October 2, 2017, a Senior Assistant State's Attorney provided the respondents with copies of the protective orders, described in paragraph 5, above, and advised that "any police reports (specifically CSP IA investigative reports) should not be disclosed. This does not preclude outside parties from filing appeals through FOIC or filing a motion with the court, but any disclosure requests directed to either WPD or CSP should be denied in accordance with this motion, unless otherwise directed via subsequent court or FOIC order." (Emphasis in original).

7. It is found that, by letter dated October 6, 2017, the respondents' Legal Affairs Unit provided the complainants with copies of the signed protective orders, described in paragraph 5, above. The respondents did not further elaborate.

8. It is found that, by email dated October 13, 2017, the complainants followed up with the respondents, seeking clarification as to whether the respondents' October 6, 2017 letter, described in paragraph 7, above, was a denial of their September 25th request.

9. It is found that, by email dated October 16, 2017, the respondents informed the complainants that "the Department is clearly bound by the order" and therefore "not at liberty to disclose the report to you at this time."

10. By email received on October 16, 2017, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with access to the records requested in their September 25th request, described in paragraph 2, above.

11. Section 1-200(5), G.S., defines "public records or files" as:

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.

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

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

14. It is found that the records requested by the complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

15. It is found that on October 19, 2017, the complainants filed with the court a Motion to Intervene and to Clarify or Reconsider the Protective Order, described in paragraphs 5 and 6, above.¹ It is found that the court heard such motion on October 20, 2017, and after reviewing the record and arguments of all counsel, dismissed the motion for injunction and denied the motion for protective order.

16. It is found that on or about October 20, 2017, the respondents provided, pursuant to Article 9 of NP-1, the State Police Bargaining Unit Contract between State of Connecticut and Connecticut State Police Union,² Laird and Cruz with written notification of the September 25th

¹ The Commission notes that, on October 18, 2017, the Commission filed its own Motion to Intervene to Request Clarification and/or Reconsideration of Injunction/Protective Order, described in paragraphs 5 and 6, above.

² Article 9 of the NP-1 contract, pertaining to personnel files, provides that “[t]he employee will be promptly notified of any request to see his/her OPF [*i.e.*, employee’s official personnel file].” In addition, the NP-1 contract provides that:

When an employee, after notification to him/her that a freedom of information request has been made concerning his/her file, objects to the release of that information on the basis of reasonable belief that the release would constitute an invasion of his/her privacy, the employee shall petition the Freedom of Information Commission for a stay on the release of said information, and the Department shall support the employee’s petition and not release the information until the FOIC has made a final determination on the issue of whether said release would constitute an invasion of privacy.

A copy of the NP-1 contract has been marked as Complainants’ Exhibit R (after-filed).

request. It is found that written objections to disclosure were signed on October 26, 2017, and November 22, 2017, respectively.

17. At the hearing, the hearing officer ordered the respondents to submit copies of the records responsive to the September 25th request for an in camera inspection.³ On December 22, 2017, the respondents submitted unredacted, with limited exception⁴, copies of a 310-page Internal Affairs Investigation Report⁵ and seven CDs, which were being claimed to be exempt from disclosure. The respondents also submitted an in camera index.⁶ On May 23, 2018, pursuant to two orders of the hearing officer, the respondents submitted a revised in camera index, as well as an affidavit of Janet K. Ainsworth, dated May 23, 2018.⁷

18. On the in camera indices, the respondents claimed that the in camera records, or portions thereof, are exempt from disclosure, pursuant to one or more of the following exemptions: §§1-210(b)(2), 1-210(b)(3), 1-210(b)(3)(A), 1-210(b)(3)(C), 1-210(b)(3)(D), 1-210(b)(3)(E), 1-210(b)(3)(H), 1-210(b)(5), 1-210(b)(20), 1-217, 14-10(g), 51-5c, and 54-86e, G.S., and 28 U.S.C. §534 and 29 U.S.C. §164(f).

19. In their motions to intervene and at the hearing in this matter, the intervenors claimed that the records at issue were not subject to disclosure pursuant to §§1-210(b)(2), 1-210(b)(3)(C), 1-210(b)(3)(D) and 1-210(b)(4), G.S. They also claimed that the disclosure of the requested records would taint the jury pool in violation of their right to a fair trial under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article First, Section Eight of the Connecticut Constitution.

³ On November 27, 2017, the complainants served on the respondents a subpoena to appear and produce the requested records in camera at the November 29th hearing in this matter. At the hearing, counsel for the complainants indicated that the intervenors had filed motions to quash such subpoenas. Copies of the motions to quash were not provided to the Commission, nor did the intervenors present argument on such motions. The respondents did not object to the submission of the in camera records. Accordingly, the motions to quash will not be further addressed herein.

⁴ The Commission notes that IC-2017-0623-106 through IC-2017-0623-117, and IC-2017-0623-120 through IC-2017-0623-131, were provided to the Commission with redactions. The Commission infers that such redacted records are copies of the records that the respondents have in their custody as part of the internal affairs investigation file. In addition, the Commission finds that IC-2017-0623-120 through IC-2017-0623-131, with the redactions, were already publicly disclosed in Complainants' Exhibit L.

⁵ The respondents also submitted a CD containing a copy of the 310-page Internal Affairs Investigation Report with the information claimed to be exempt from disclosure highlighted.

⁶ The respondents did not number the lines on the in camera records; therefore, the hearing officer numbered such lines in pencil in order to identify which portion of a particular record is exempt from disclosure.

⁷ The affidavit of Ms. Ainsworth has been marked as Respondents' Exhibit 7 (after-filed), and not as Respondents' Exhibit 8 (after-filed), as noted on the hearing officer's orders.

20. The general rule under the FOI Act is disclosure: exceptions to this rule must be narrowly construed; and the burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. New Haven v. FOI Comm'n, 205 Conn. 767, 775 (1988); Ottochian v. FOI Comm'n, 221 Conn. 393, 398 (1992). By design, that burden is difficult to meet. "This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." Director, Retirement & Benefits Service v. FOI Commission, 256 Conn. 764, 773 (2001), citing New Haven, supra.

Section 1-210(b)(2), G.S.

21. With regard to the respondents' and intervenors' claims that the in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(2), G.S., that statute provides that disclosure is not required of "[p]ersonnel, medical and similar files the disclosure of which would constitute an invasion of personal privacy."

22. The Supreme Court set forth the test for the §1-210(b)(2), G.S., exemption in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993). Under the Perkins test, the claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, *and* second, that the disclosure of such information is highly offensive to a reasonable person.

23. It is found that the internal affairs investigation file consists of "personnel or medical files and similar files" within the meaning of §1-210(b)(2), G.S.

24. Based upon a careful review of the in camera records, it is found that IC-2017-0623-2 (lines 10 and 12), IC-2017-0623-13 (lines 4 and 9), IC-2017-0623-30 (lines 3, 21 and 27), IC-2017-0623-147 (line 5), IC-2017-0623-148 (line 5), IC-2017-0623-211 (line 4), IC-2017-0623-212 (line 4), IC-2017-0623-215 (line 14) and IC-2017-0623-216 (line 11), contain employee identification number information. In addition, it is found that IC-2017-0623-56 (line 15), IC-2017-0623-57 (line 31), IC-2017-0623-58 (line 8), IC-2017-0623-66 (lines 17 and 32), IC-2017-0623-69 (line 11), IC-2017-0623-132 (line 16)⁸, IC-2017-0623-135 (line 26) and IC-2017-0623-141 (line 25), contain driver's license number information, and IC-2017-0623-66 (line 18), IC-2017-0623-135 (line 8) and IC-2017-0623-141 (line 8), contain social security number information.

25. The Commission has consistently declined to order disclosure of social security numbers, employee identification numbers, and driver's license numbers contained in personnel,

⁸ On the revised index, the respondents indicate that IC-2017-0623-132 (line 15) includes "MV operator's license #" information. However, such information is found on IC-2017-0623-132 (line 16), and will be addressed accordingly.

medical or similar files pursuant to §1-210(b)(2), G.S., as such disclosure would constitute an invasion of personal privacy. See e.g., Docket #FIC 2014-032, Kevin J. Daly, Jr. and the City of Waterbury v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (November 19, 2014). Accordingly, the respondents did not violate the FOI Act when they withheld the information described in paragraph 24, above, from disclosure.⁹

26. With respect to the remaining in camera records which are claimed to be exempt from disclosure pursuant to §1-210(b)(2), G.S., including, but not limited to such information as a personal cell phone serial number¹⁰ and dates of birth¹¹, it is found that the respondents and intervenors failed to prove that such information does not pertain to legitimate matters of public concern, and that disclosure of such information is highly offensive to a reasonable person. Accordingly, it is found that the respondents and intervenors failed to prove that the disclosure of the requested information would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

Section 1-210(b)(3), G.S.

27. With regard to the respondents' and intervenors' claims that certain in camera records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(3), G.S., such statute permits the non-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

⁹ The respondents also claim that the employee identification number information contained in IC-2017-0623-2 (lines 10 and 12), IC-2017-06 23-13 (lines 4 and 9), IC-2017-0623-30 (lines 3, 21 and 27), IC-2017-0623-147 (line 5) and IC-2017-0623-148 (line 5), is exempt from disclosure pursuant to §1-210(b)(20), G.S. In light of the conclusion in paragraph 25, above, however, the Commission need not address the applicability of §1-210(b)(20), G.S., to such records.

¹⁰ The respondents claim that information consisting of a "personal cellphone serial #" in IC-2017-0623-22 (line 1) is exempt from disclosure pursuant to §1-210(b)(2), G.S.

¹¹ The respondents claim that "dates of birth" contained in the following records are exempt from disclosure pursuant to §1-210(b)(2), G.S.: IC-2017-0623-106, IC-2017-0623-109, IC-2017-0623-110, IC-2017-0623-116, IC-2017-0623-120, IC-2017-0623-123, IC-2017-0623-124, IC-2017-0623-130, IC-2017-0623-132, IC-2017-0623-134, IC-2017-0623-135, IC-2017-0623-137, IC-2017-0623-139, IC-2017-0623-141, IC-2017-0623-142, IC-2017-0623-143, IC-2017-0623-186, IC-2017-0623-191, and IC-2017-0623-193. The respondents also claim that IC-2017-0623-111 contains "date of birth" information. However, based upon a careful in camera review, the Commission notes that no such information is included in IC-2017-0623-111. In addition, the respondents claim that IC-2017-0623-25 (lines 33 and 37) and IC-2017-0623-26 (lines 4 and 8) contain "date of birth" information which is exempt from disclosure pursuant to §1-210(b)(2), G.S. However, in light of the conclusion in paragraph 60, below, the Commission need not address any further claims of exemption with respect to such records.

would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216....

Section 1-210(b)(3)(A), G.S.

28. On the revised index, the respondents claim that the following records contain "witness" information, within the meaning of §1-210(b)(3)(A), G.S.:

IC-2017-0623-17 (lines 8, 42, and 43-44)¹²,
 IC-2017-0623-18 (lines 14-16),
 IC-2017-0623-19 (line 29)¹³,
 IC-2017-0623-20 (line 3),
 IC-2017-0623-22 (lines 3, 8, 9, 14, 15, 16, 18, 19, 21, 22, 24, 26, 27, 28, 30, 36, 37, 40, 41, 42, 45 and 47)¹⁴,
 IC-2017-0623-23 (lines 1, 2, 3, 5, 6, 7, 9, 12, 13, 15, 16, 18, 21, 26, 27, 30, 33, 34, 36, 37, 40, 41, 42, 45, 46)¹⁵,

¹² On the revised index, the respondents indicate that IC-2017-0623-17 (lines 8 and 42-44) include "witness" information. However, such information is found on IC-2017-0623-17 (lines 8, 42, and 43-44), and will be addressed accordingly.

¹³ On the revised index, the respondents indicate that IC-2017-0623-19 (line 30) includes "witness" information. However, such information is found on IC-2017-0623-19 (line 29), and will be addressed accordingly.

¹⁴ On the revised index, the respondents indicate that IC-2017-0623-22 (lines 3, 8, 9, 14, 16, 19, 22, 24, 26, 27, 28, 30, 36, 39-40, 41-43, 46 and 48) include "witness" information. However, such information is found on IC-2017-0623-22 (lines 3, 8, 9, 14, 15, 16, 18, 19, 21, 22, 24, 26, 27, 28, 30, 36, 37, 40, 41, 42, 45 and 47), and will be addressed accordingly.

¹⁵ On the revised index, the respondents indicate that IC-2017-0623-23 (lines 1, 2, 3, 5-8, 12, 13-16, 18, 19, 21, 26, 30, 33, 36, 37, 40, 41, 42, 45 and 46) include "witness" information. However, such information is found on IC-2017-0623-23 (lines 1, 2, 3, 5, 6, 7, 9, 12, 13, 15, 16, 18, 21, 26, 27, 30, 33, 34, 36, 37, 40, 41, 42, 45, and 46), and will be addressed accordingly.

IC-2017-0623-32 (lines 30-31)¹⁶,
IC-2017-0623-41 (line 22),
IC-2017-0623-49 (line 30),
IC-2017-0623-53 through 91 (all),
IC-2017-0623-231 through 241 (all), and
IC-2017-0623-244 through 310 (all).

29. At the hearing, Brian Preleski, the State's Attorney for the Judicial District of New Britain, testified that the requested records include the names, addresses and telephone numbers of lay witnesses who were interviewed and have not been publicly identified. Attorney Preleski testified that given the violent nature of the allegations in this case, the respondents are concerned that such witnesses may be subject to intimidation if their identities were disclosed. On cross-examination by the intervenors' attorneys, he also testified that, in his experience as a state's attorney, law enforcement officials could also be subject to intimidation and threats.

30. Upon careful review of the in camera records described in paragraph 28, above, it is found that such records, or portions thereof, were compiled in connection with the detection or investigation of crime. It is found, however, that the respondents failed to prove that the disclosure of such records, or portions thereof, would result in the disclosure of the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known.

31. It is therefore concluded that the in camera records described in paragraph 28, above, are not exempt from disclosure pursuant to §1-210(b)(3)(A), G.S.

Section 1-210(b)(3)(C), G.S.

32. On the revised index, the respondents claim that the following records contain signed statements of witnesses, within the meaning of §1-210(b)(3)(C), G.S.: IC-2017-0623-93 through 99 and IC-2017-0623-101 through 104.

33. Based upon a careful review of IC-2017-0623-93 through 99, and IC-2017-0623-101 through 104, it is found that such records consist of signed statements of witnesses, which were compiled in connection with the detection or investigation of a crime. Consequently, it is found that IC-2017-0623-93 through 99, and IC-2017-0623-101 through 104, are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

Section 1-210(b)(3)(D), G.S.

34. On the revised index, the respondents claim that the disclosure of the following records, in their entirety, would be prejudicial to a prospective law enforcement action, within the meaning of §1-210(b)(3)(D), G.S.:

¹⁶ On the revised index, the respondents indicate that IC-2017-0623-32 (lines 29-30) includes "witness" information. However, such information is found on IC-2017-0623-32 (lines 30-31), and will be addressed accordingly.

IC-2017-0623-53 through 91,
IC-2017-0623-150 through 157,
IC-2017-0623-159 through 162,
IC-2017-0623-164 through 167,
IC-2017-0623-231 through 241, and
IC-2017-0623-244 through 310.

35. At the hearing, Attorney Preleski testified that disclosure of the records compiled by the Wethersfield Police Department was “just not appropriate” because there is an “investigation still pending” and “an ongoing criminal prosecution.” On cross-examination by the intervenors’ attorneys, he also testified that the release of the requested records would prejudice the investigation because of the “potential for witnesses’ names and identities to be revealed,” “potential witness intimidation,” and that such records contain an uncorroborated allegation of criminal conduct and law enforcement techniques.

36. Based upon a careful review of the in camera records, it is found that the records described in paragraph 34, above, were compiled in connection with the detection or investigation of crime. It is found, however, that the respondents failed to demonstrate how disclosure of such records would be prejudicial to any prospective law enforcement action. It is found that the respondents failed to prove that IC-2017-0623-53 through 91, IC-2017-0623-150 through 157, IC-2017-0623-159 through 162, IC-2017-0623-164 through 167, IC-2017-0623-231 through 241, and IC-2017-0623-244 through 310, are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

37. The respondents also claim that certain photographs, and video and audio recordings, are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S. On the in camera index, they describe such photographs and recordings as “Witness interview by Wethersfield PD, crime scene photos/video and cell phone downloads (file not accessible). Prejudice to the prosecution.” Such records, except for the cellphone downloads¹⁷, have been marked as CD-1, CD-2, CD-3 and CD-4.

38. It is found that the records described in paragraph 37, above, were compiled in connection with the detection or investigation of crime. It is found, however, that the respondents failed to demonstrate how disclosure of such recordings would be prejudicial to any prospective law enforcement action. It is further found that the respondents failed to prove that CD-1, CD-2, CD-3 and CD-4, are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

¹⁷ The respondents did not submit copies of the cellphone files to the Commission for in camera review. In Attorney Ainsworth’s affidavit, dated May 23, 2018, she attests that “[t]he CD containing the cell phone files was not opened by the agency investigators because it does not maintain the necessary software. The agency did not acquire the software because investigators learned that there was no evidentiary value to the content of the cell phones.” Accordingly, such cellphone files will not be further addressed herein.

Section 1-210(b)(3)(E), G.S.

39. On the revised index, the respondents claim that the following records contain “investigative techniques” which are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.:

IC-2017-0623-18 (lines 29-42),
IC-2017-0623-20 (lines 42-47),
IC-2017-0623-21 (lines 1-27),
IC-2017-0623-25 (lines 1-30),
IC-2017-0623-27 (lines 24-40),
IC-2017-0623-33 (lines 13-43),
IC-2017-0623-53 through 91 (all),
IC-2017-0623-164 through 167 (all),
IC-2017-0623-231 through 241 (all), and
IC-2017-0623-244 through 310 (all).

40. At the hearing, Attorney Preleski testified that some of the requested records concern the processing of a crime scene and describe investigative techniques used by law enforcement officers to obtain forensic evidence. He testified that he does not believe that the general public is aware of such techniques, and that this is “an area that is constantly evolving.” In addition, Attorney Preleski testified that police officers receive specialized training in processing crime scenes, and that the investigative techniques at issue are not widely known by police officers who are not involved in processing crime scenes on a regular basis. Attorney Preleski also testified that he believes that if such techniques were disclosed, individuals could potentially use the information to effectively conceal or destroy evidence.

41. Based upon a careful review of the in camera records described in paragraph 39, above, it is found that such records were compiled in connection with the detection or investigation of crime. It is found, however, that the respondents failed to prove that the following records contain “investigatory techniques not otherwise known to the general public,” within the meaning of §1-210(b)(3)(E), G.S.:

IC-2017-0623-18 (lines 29-42),
IC-2017-0623-20 (lines 42-47),
IC-2017-0623-21 (lines 1 through 20 (up to “.”), lines 22 (after “.”) through 24 (up to “;”), and lines 26 (after “.”) through 27),
IC-2017-0623-25 (lines 1-12),
IC-2017-0623-27 (lines 24-40),
IC-2017-0623-33 (lines 13-33, line 34 (up to “.”), line 36 (after “.”) through 38, and lines 40 (after “.”) through 43),
IC-2017-0623-53 through 61,
IC-2017-0623-62 (lines 1-15, and lines 18-31),
IC-2017-0623-63 through 84,
IC-2017-0623-85 (lines 1-15, and lines 21-30),
IC-2017-0623-86 through 91,
IC-2017-0623-295 through 303, and

IC-2017-0623-304 through 310.

42. It is found that the in camera records described in paragraph 41, above, do not reveal any systematic procedures or methodologies used by a law enforcement agency in its observation, examination or inquiries into crime that are not known to the public. It is concluded therefore that such records are not exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

43. Based upon a careful review of the in camera records described in paragraph 39, above, it is found that disclosure of the following records would result in the disclosure of “investigative techniques not otherwise known to the general public,” within the meaning of §1-210(b)(3)(E), G.S.:

IC-2017-0623-21 (line 20 (after “.”) through 22 (up to “.”), and lines 24 (after “;”) through 26 (up to “.”),
IC-2017-0623-25 (lines 13-30),
IC-2017-0623-33 (lines 34 (after “.”) through 36 (up to “.”), lines 39 through 40 (up to “.”),
IC- 2017-0623-62 (lines 16-17),
IC-2017-0623-85 (lines 16-20),
IC-2017-0623-164 through 167,
IC-2017-0623-231 through 241, and
IC-2017-0623-244 through 294.

It is concluded therefore that such records are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

Section 1-210(b)(3)(H), G.S.

44. On the revised in camera index, the respondents claim that the following records contain “uncorroborated allegations,” within the meaning of §1-210(b)(3)(H), G.S.:

IC-2017-0623-22 (lines 16-19, and lines 31-38),
IC-2017-0623-23 (lines 16, 20, 25 and 27),
IC-2017-0623-53 through 91 (all),
IC-2017-0623-164 through 167 (all), and
IC-2017-0623-244 through 310 (all).

45. At the hearing, Attorney Preleski testified that the requested records contain uncorroborated allegations of criminal conduct concerning a third party who was not arrested.

46. Based upon a careful review of the records described in paragraph 44, above, it is found that the respondents failed to prove that such records consist of “uncorroborated allegations subject to destruction pursuant to section 1-216¹⁸,” and, therefore, are not exempt from disclosure pursuant to §1-210(b)(3)(H), G.S.

¹⁸ Section 1-216, G.S., provides that: “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

Section 1-210(b)(5), G.S.

47. On the revised index, the respondents claim that IC-2017-0623-145 (line 1) is exempt from disclosure pursuant to §1-210(b)(5), G.S., which statute provides that disclosure is not required of:

(A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and

(B) Commercial or financial information given in confidence, not required by statute...

48. At the hearing, the respondents did not offer any evidence as to the applicability of §§1-210(b)(5)(A) or 1-210(b)(5)(B), G.S., to IC-2017-0623-145 (line 1). In addition, based upon a careful review of such in camera record, it is found that IC-2017-0623-145 (line 1) does not consist of trade secrets, within the meaning of §1-210(b)(5)(A), G.S., nor does it contain commercial or financial information given in confidence, not required by statute, within the meaning of §1-210(b)(5)(B), G.S. It is therefore concluded that IC-2017-0623-145 (line 1) is not exempt from disclosure pursuant to §§1-210(b)(5)(A) or 1-210(b)(5)(B), G.S.

Section 1-217, G.S.

49. With regard to the respondents' claim that certain information is exempt from disclosure pursuant to §1-217, G.S., such section entitled, "Nondisclosure of residential addresses of certain individuals," provides, in relevant part, as follows:

(a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency:...(2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Environmental Protection....

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."

50. Based upon a careful review of the in camera records, it is found that the following information consists of the residential addresses of sworn members of the Division of State Police within the Department of Emergency Services and Public Protection (“DESPP”):

IC-2017-0623-5 (line 9),
IC-2017-0623-6 (line 9),
IC-2017-0623-8 (lines 6 and 13),
IC-2017-0623-14 (line 25),
IC-2017-0623-15 (lines 13, 18 and 32-33)¹⁹,
IC-2017-0623-16 (line 27),
IC-2017-0623-17 (lines 5 and 21-22),
IC-2017-0623-19 (line 41),
IC-2017-0623-20 (lines 19 and 20),
IC-2017-0623-21 (line 43),
IC-2017-0623-23 (line 14),
IC-2017-0623-24 (line 43),
IC-2017-0623-25 (line 4)²⁰,
IC-2017-0623-27 (line 17),
IC-2017-0623-28 (lines 5-6, 12-13, 34 and 40-41)²¹,
IC-2017-0623-29 (lines 17 and 24),
IC-2017-0623-38 (lines 7-8, 18 and 32)²²,
IC-2017-0623-44 (lines 33-34),
IC-2017-0623-45 (lines 5 and 14),
IC-2017-0623-51 (lines 20-21),
IC-2017-0623-132 (line 11),
IC-2017-0623-134 (lines 7, 13 and 15),
IC-2017-0623-135 (line 6),
IC-2017-0623-139 (lines 15-17),
IC-2017-0623-141 (line 19),

¹⁹ On the revised index, the respondents indicate that IC-2017-0623-15 (lines 9, 13 and 26) include “residential address” information. However, such information is found on IC-2017-0623-15 (lines 13, 18 and 32 through 33), and will be addressed accordingly.

²⁰ On the revised index, the respondents indicate that IC-2017-0623-25 (line 5) includes “residential address” information. However, such information is found on IC-2017-0623-25 (line 4), and will be addressed accordingly.

²¹ On the revised index, the respondents indicate that IC-2017-0623-28 (lines 5, 12, 34 and 40) include “residential address” information. However, such information is found on IC-2017-0623-28 (lines 5-6, 12-13, 34 and 40-41), and will be addressed accordingly.

²² On the revised index, the respondents indicate that IC-2017-0623-38 (lines 7, 18 and 32) include “residential address” information. However, such information is found on IC-2017-0623-38 (lines 7-8, 18 and 32), and will be addressed accordingly.

IC-2017-0623-183 (lines 20-21)²³,
IC-2017-0623-186 (line 7),
IC-2017-0623-188 (line 6),
IC-2017-0623-223 (line 5)²⁴, and
IC-2017-0623-224 (line 5)²⁵.

51. In addition, although the respondents did not claim §1-217, G.S., as an exemption for the information below in this paragraph, based upon a careful review of the in camera records, it is found that such information consists of the residential addresses of sworn members of the Division of State Police within DESPP:

IC-2017-0623-53 (lines 12 and 19),
IC-2017-0623-54 (line 30),
IC-2017-0623-56 (line 19),
IC-2017-0623-57 (lines 11, 12 and 28),
IC-2017-0623-58 (lines 7, 11, 26 and 30),
IC-2017-0623-60 (line 14),
IC-2017-0623-61 (line 10),
IC-2017-0623-62 (lines 3 and 5),
IC-2017-0623-66 (line 29),
IC-2017-0623-67 (lines 14, 18 and 28),
IC-2017-0623-69 (line 13),
IC-2017-0623-70 (line 10),
IC-2017-0623-72 (lines 4, 10 and 13),
IC-2017-0623-75 (line 11),
IC-2017-0623-77 (line 9),
IC-2017-0623-78 (line 16),
IC-2017-0623-79 (lines 9 and 27),
IC-2017-0623-80 (line 17),
IC-2017-0623-81 (lines 9 and 27),
IC-2017-0623-83 (line 9),
IC-2017-0623-89,
IC-2017-0623-90,
IC-2017-0623-91,

²³ On the revised index, the respondents indicate that IC-2017-0623-183 (line 21) include “res. address” information. However, such information is found on IC-2017-0623-183 (lines 20-21), and will be addressed accordingly.

²⁴ On the revised index, the respondents indicate that IC-2017-0623-223 (line 6) includes “res. address” information. However, such information is found on IC-2017-0623-223 (line 5), and will be addressed accordingly.

²⁵ On the revised index, the respondents indicate that IC-2017-0623-224 (line 6) includes “res. address” information. However, such information is found on IC-2017-0623-224 (line 5), and will be addressed accordingly.

IC-2017-0623-150 (line 19),
 IC-2017-0623-151 (lines 22 and 37),
 IC-2017-0623-153 (lines 2 and 31),
 IC-2017-0623-156 (lines 17, 18 and 23),
 IC-2017-0623-157 (lines 8 and 9),
 IC-2017-0623-296 (line 19),
 IC-2017-0623-297 (lines 22 and 37),
 IC-2017-0623-299 (lines 2 and 31),
 IC-2017-0623-302 (lines 17-18 and 23),
 IC-2017-0623-303 (lines 8-9), and
 IC-2017-0623-304 through 310 (bottom of page).

52. Accordingly, it is concluded that the residential address information, described in paragraphs 50 and 51, above, is exempt from disclosure pursuant to §1-217, G.S.

Section 54-86e, G.S.

53. On the in camera indices, the respondents claim that IC-2017-0623-137 (lines 14-15) and IC-2017-0623-143 (lines 6 and 7), contain “family violence” information, which is exempt from disclosure pursuant to §54-86e, G.S.

54. Section 54-86e, G.S., provides that:

The name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or family violence, as defined in section 46b-38a²⁶ and such other

²⁶ Section 46-38a, G.S., provides:

For the purposes of sections 46b-38a to 46b-38f, inclusive:

(1) “Family violence” means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members. Verbal abuse or argument shall not constitute family violence unless there is present danger and the likelihood that physical violence will occur.

(2) “Family or household member” means any of the following persons, regardless of the age of such person: (A) Spouses or former spouses; (B) parents or their children; (C) persons related by blood or marriage; (D) persons other than those persons described in subparagraph (C) of this subdivision presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship.

(3) “Family violence crime” means a crime as defined in section 53a-24, other than a delinquent act as defined in section 46b-120, which, in addition to its other elements, contains as an element

identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

55. At the hearing, the respondents did not offer any evidence as to the applicability of §54-86e, G.S., to IC-2017-0623-137 (lines 14-15) and IC-2017-0623-143 (lines 6 and 7). In addition, based upon a careful review of such records, it is found that the respondents have failed to prove that the disclosure of IC-2017-0623-137 (lines 14-15) and IC-2017-0623-143 (lines 6 and 7), would disclose identifying information pertaining to a victim of family violence, within the meaning of §54-86e, G.S. It is therefore concluded that no names or addresses within IC-2017-0623-137 (lines 14-15) and IC-2017-0623-143 (lines 6 and 7), are exempt from disclosure pursuant to §54-86e, G.S.

Section 51-5c, G.S.

56. On the in camera indices, the respondents claim that the following records contain “protective order” information, which is exempt from disclosure pursuant to §51-5c, G.S.:

IC-2017-0623-25 (lines 31-43),
 IC-2017-0623-26 (lines 1-15),
 IC-2017-0623-35 (lines 21-24),
 IC-2017-0623-37 (lines 20-26),
 IC-2017-0623-42 (lines 7-12),
 IC-2017-0623-44 (lines 6-12), and
 IC-2017-0623-170 through 177²⁷.

thereof an act of family violence to a family or household member. “Family violence crime” does not include acts by parents or guardians disciplining minor children unless such acts constitute abuse.

(4) “Institutions and services” means peace officers, service providers, mandated reporters of abuse, agencies and departments that provide services to victims and families and services designed to assist victims and families.

²⁷ On the indices, the respondents also claim that in camera records IC-2017-0623-170 through 177 are exempt from disclosure pursuant to §§14-10(g) and 29-164(f), G.S., and 28 U.S.C. §534. However, in light of the conclusion in paragraph 58, below, there is no need to address any further claims of exemption with respect to such records.

57. Section 51-5c, G.S., prohibits public access to protective orders maintained in an automated registry of protective orders. Specifically, section 51-5c, G.S., provides, in relevant part:

(b) (1) The following information contained in the registry of protective orders shall not be subject to disclosure and may be accessed only in accordance with this section, unless otherwise ordered by the court: (A) Any information that would identify a person protected by an order contained in the registry; (B) any information that is confidential pursuant to state or federal law, including, but not limited to, any information that is confidential pursuant to a court order; and (C) any information entered in the registry pursuant to an ex parte order prior to a hearing by a court having jurisdiction over the parties and the subject matter.

58. Based upon a careful review of the records described in paragraph 56, above, it is found that such records contain information in the registry of protective orders that is not subject to disclosure pursuant to §51-5c, G.S.

59. In addition, although the respondents did not claim §51-5c, G.S., as an exemption, for IC-2017-0623-35 (lines 25-27) and IC-2017-0623-42 (line 13), it is found, based upon a careful in camera review, that such records contain information in the registry of protective orders that is not subject to disclosure pursuant to §51-5c, G.S.

60. It is concluded that the respondents are prohibited from disclosing the information described in paragraphs 56 and 59, above.

Section 1-210(b)(4), G.S.

61. With regard to the intervenors' claim that the in camera records, in their entirety, are exempt from disclosure pursuant to §1-210(b)(4), G.S., that statute provides that disclosure is not required of "[r]ecords 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...."

62. It is found that subsequent to Cruz and Laird's termination from their employment, the CT State Police Union filed, on behalf of Cruz and Laird, respectively, labor grievances with the Office of Labor Relations against the respondents. It is found that the labor proceedings were still pending at the time of the November 29th hearing in this matter.

63. Based upon a careful review of the in camera records, it is found that the intervenors failed to prove that the requested records are records pertaining to "strategy and negotiations with respect to pending claims or pending litigation," within the meaning of §1-210(b)(4), G.S. Accordingly, it is concluded that the requested records are not exempt from disclosure pursuant to §1-210(b)(4), G.S.

Constitutional Argument

64. With regard to the intervenors' claim that the disclosure of the requested records, in their entirety, would taint the jury pool, the Commission finds such contention unpersuasive. The intervenors did not offer any evidence to support such claim. In addition, Attorney Preleski testified, that from the State's perspective, any potential taint of the jury pool can be addressed by individual voir dire²⁸, which is unlimited in Connecticut.

In Camera Recordings CD-5, CD-6 and CD-7

65. On the in camera index, the respondents state that "[a]ll interviews conducted by DESPP Professional Standards Unit to be redacted for all applicable exemptions. See document index for specifics."

66. It is found that in camera CD-5, CD-6 and CD-7 consist of recordings of interviews conducted by the respondents' Professional Standards Unit in relation to the internal affairs investigation of Cruz and Laird. It is found that the respondents did not cite specific exemptions from disclosure for such records. It is further found that the respondents failed to prove the applicability of any exemption to CD-5, CD-6 and CD-7, and therefore the respondents failed to prove that such records are exempt from disclosure.

67. It is concluded that, except for the records described in paragraphs 24, 33, 43, 50, 51, 56 and 59, above, the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the requested records from disclosure.

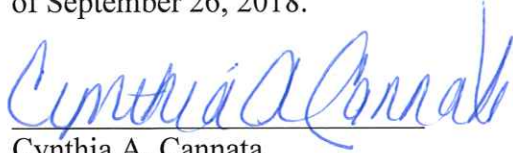
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall forthwith provide copies of the in camera records to the complainants, free of charge.
2. In complying with paragraph 1 of this order, the respondents may withhold the in camera records, or portions thereof, identified as exempt from disclosure in paragraphs 24, 33, 43, 50, 51, 56 and 59 of the findings, above.

²⁸ The Commission notes that Conn. Practice Book §42-12 concerning voir dire examinations in criminal matters, provides: "Each party shall have the right to examine, personally or by counsel, each juror outside the presence of other prospective jurors as to qualifications to sit as a juror in the action, or as to interest, if any, in the subject matter of the action, or as to relations with the parties thereto. If the judicial authority before whom such examination is held is of the opinion from such examination that any juror would be unable to render a fair and impartial verdict, such juror shall be excused by the judicial authority from any further service upon the panel, or in such action, as the judicial authority determines. The judicial authority shall not abridge the right as such examination by requiring counsel or the defendant to put questions to any juror in writing and to submit them in advance of the commencement of the trial."

3. Henceforth, the respondents shall strictly comply with the disclosure provisions in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 26, 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.

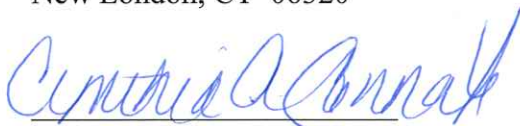
THE PARTIES TO THIS CONTESTED CASE ARE:

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COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o
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