

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Torlai,

Complainant

against

Docket #FIC 2017-0766

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

Respondents

September 26, 2018

The above-captioned matter was heard as a contested case on September 4, 2018, at which time the complainant and the respondents appeared 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, on or about March 16, 2017, after an investigation, the respondent police department arrested Davon Polite, a Bridgeport police officer, and charged him with second degree assault and second degree breach of peace. It is found that the arrest of Mr. Polite was by warrant.
3. It is found that, by letters dated June 1, June 15, and December 15, 2017, the complainant requested from the respondents certain information related to the arrest of Mr. Polite, specifically: the full name, address, and race of the person arrested; the date, time and place of the arrest, and a list of all the charges. In addition, the complainant requested a copy of the official arrest report, any arrest or search warrant, applications for any arrest or search warrant, and any affidavit in support of such warrant(s).
4. By letter dated December 23, 2017, and filed December 27, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the requested records.
5. Section 1-200(5), G.S., provides:

“[p]ublic 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.

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

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

7. 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.”

8. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, although the respondents acknowledged the complainant’s June 1st request on June 5, 2017, they failed to provide any of the requested records (even after the complainant made two subsequent written requests for such records, including the December 15, 2017 request at issue herein), until January 15, 2018, when the respondents provided to the complainant a one page “incident report,” concerning the arrest of Mr. Polite. It is found that the incident report contains the so-called “blotter information,” i.e., the name, address, and race of the person arrested, date, time and place of arrest, as well a list of the charges, requested by the complainant. It is found that the respondents redacted Mr. Polite’s home address from such incident report.

10. The complainant contended, at the hearing in this matter, that the one page incident report, described in paragraph 9, above, was not the record he requested, and that the respondents violated the FOI Act by failing to provide him with a copy of the report of the investigation that led to Mr. Polite’s arrest (“report”), and the arrest warrant application/affidavit. The complainant further contended that the respondents improperly redacted the home address of Mr. Polite from the incident report.

11. Section 1-215, G.S., provides, in relevant part:

(a) For the purposes of this section, "record of the arrest" means (1) the name, race and address of the person arrested, the date, time and place of the arrest and the

offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identify of witnesses, (2) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (3) any information that a judicial authority has ordered to be sealed from public inspection or disclosure....

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending, shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

12. Section 1-217, G.S., provides that a public agency may not disclose the residential address of certain designated categories of individuals, including sworn members of a municipal police department (1) from such public agency's personnel, medical or similar files; or (2) from certain other records provided that the individual whose residential address is included in such records has requested that his or her residential address be kept confidential.

13. With regard to the allegation that the respondents violated the FOI Act's disclosure requirements by failing to provide to him a copy of the report of the investigation, it is found that, at the time of the request, the criminal prosecution of Mr. Polite was pending. As this Commission has acknowledged, §1-215, G.S., exclusively governs law enforcement agencies'

disclosure obligations under the FOI Act during the pendency of criminal prosecutions. See e.g., David DesRoches and WNPR v. Chief, Police Department, Town of Greenwich, et al., Docket #FIC 2017-0070 (September 27, 2017).

14. It is found that, pursuant to §1-215, G.S., when an arrest has been made pursuant to a warrant, and while the criminal prosecution is pending, a law enforcement agency is required to disclose the “record of the arrest,” consisting of the so-called “blotter information,” and the arrest warrant application and any affidavit in support of such application. In addition, the law enforcement agency also must disclose any record that documents or depicts the arrest or custody of a person.

15. Accordingly, because the report of the investigation is not part of “the record of the arrest,” or a record that documents or depicts the arrest or custody of a person, it is concluded that the respondents were not required to disclose the report of the investigation to the complainant at the time he requested it, and are not required to disclose it during the pendency of the criminal prosecution.

16. On the other hand, because the arrest warrant affidavit/application is part of the “record of the arrest,” as defined in §1-215, G.S., the respondents were required to disclose such record at the time the complainant requested it.

17. Counsel for the respondents represented that the respondents did not provide a copy of the arrest warrant application/affidavit to the complainant because the respondents do not maintain such record. According to counsel, the arrest warrant application/affidavit was sent to the state’s attorney’s office, and the respondents did not maintain a copy of such record. Counsel further represented that she informed the complainant that he could obtain a copy of the arrest warrant/affidavit from the court clerk’s office.

18. Because the respondents did not bring a witness to testify under oath that a thorough search for an electronic or paper copy of the search warrant application/affidavit was conducted, and that no such copy was located, it is found that the respondents failed to prove that they do not maintain an electronic or paper copy of such record.

19. Thus, it is found that the respondents violated §§1-210(a), 1-212(a) and 1-215(b), G.S., by failing to provide a copy of the arrest warrant application/warrant, described in paragraph 3, above, to the complainant.

20. With regard to the allegation that the respondents improperly redacted Mr. Polite’s home address from the incident report, it is found that the respondents believed such redaction was required by §1-217, G.S. However, because the incident report is not a “personnel, medical or similar file” of the respondent police department, but rather, is a police record related to the arrest of Mr. Polite, and because the respondents offered no evidence that Mr. Polite requested that his residential address be kept confidential, it is found that §1-217, G.S., is inapplicable.

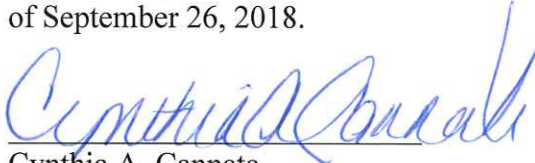
21. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a), 1-212(a), and 1-215, G.S., by redacting the home address of Mr. Polite from the incident report.

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

1. Forthwith, the respondents shall provide to the complainant a copy of the arrest warrant application/affidavit, described in paragraph 3, above, free of charge, and further shall disclose the home address of Mr. Polite.

2. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-212(a), and 1-215(b), 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:

JAMES TORLAI, 127 Barton Street, Torrington, CT 06790

CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Tamara J. Titre, City of Bridgeport, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission