FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by Yvonne Perkins,

FINAL DECISION

Complainant

against

Docket #FIC 2018-0325

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

Respondents

May 22, 2019

The above-captioned matter was heard as a contested case on February 21, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. For the purposes of hearing, this case was consolidated with FIC 2018-0408, Yvonne Perkins v. Chief, Police Department, City of Danbury; Police Department, City of Danbury; and City of Danbury.

A Report of Hearing Officer was considered by the Commission at its meeting of April 24, 2019. At such time the Commission remanded the matter to the Hearing Officer to consider application of §19a-583, G.S., to the record at issue, which statute was raised by the respondents, for the first time, at such meeting.

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 letter dated May 17, 2018, the complainant made a written request to the respondents for copies of "booking tapes" for: Xavier Valerio on May 7, 2018; Warner Cuevas on April 2, 2018; Lenyn Feijoo on April 23, 2018, and Sindy Garcia on May 7, 2018.

3. By email dated June 18, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act, by failing to provide her with the requested copies.

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 found that, to the extent the respondents maintain the records described in paragraph 2, above, such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that, as of the May 17, 2018, request described in paragraph 2, above, neither the April 2, 2018 Cuevas booking tape nor the April 23, 2018 Feijoo booking tape existed. Testimony at the hearing revealed that booking recordings are routinely recorded over after "three weeks or so" if there is no reason for the department to retain them. It is concluded that the respondents did not violate the FOI Act, as alleged, with respect to such booking tapes.[1]

9. It is found that the respondents provided the complainant with a copy of the May 7, 2018 Valerio booking tape prior to the hearing in this matter. The complainant stated that such tape was no longer at issue in this matter.

10. With respect to the May 7, 2018 Garcia booking tape, the respondents contended that such booking tape is exempt from mandatory disclosure by virtue of §1-210(b)(2), G.S.

[1] Nonetheless, see order number 3, below.

11. Section 1-210(b)(2), G.S., permits the nondisclosure of "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

12. 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), which test has been the standard for disclosure of records pursuant to that exemption since 1993. The Commission takes administrative notice of the multitude of court rulings, Commission final decisions and instances of advice given by Commission staff members which have relied upon the Perkins test, since its release in 1993.

13. Specifically, 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 disclosure of such information is highly offensive to a reasonable person.

14. The respondents contended that during the arrest and booking process, the arrested party responded to routine medical questions. It is the respondents' position that the release of those medically related responses would violate the privacy of the arrested party. The respondents relied upon the Commission's Final Decision in FIC#2002-083, Joan Coe v. Chief, Police Department, Town of Simsbury (Oct. 9, 2002), in which the Commission found that a police incident report was exempt from disclosure under §1-210(b)(2), G.S., because it contained information about a subject's past medical condition and information pertaining to the subject's emotional and mental condition. The Commission found in that case that the incident report was based on a police response to a medical emergency call at a private facility. Further, the Commission found there that the contents of the report did not pertain to the conduct of public business and did not pertain to a legitimate matter of public concern. Finally, the Commission found there that the disclosure of the incident report would disclose intimate medical information about the subject and that disclosure of such information would be highly offensive to a reasonable person. The Commission's Final Decision in that matter was necessarily based on the particular facts of that case, as well as an in camera inspection of the records at issue.

15. Subsequent to the 2002 Final Decision in Coe, the Commission again addressed the issue of alleged medical information contained in police records.

16. For example, in 2003, the Commission concluded that a police report of an investigation of a suicide did not constitute a medical file, although it did detail medications of the deceased, because the document at issue was fundamentally a police investigative report. Docket # FIC 2002-164; Ralph Williams and Journal Inquirer v. Chief, Police Department, Town of Vernon (March 26, 2003). Such Final Decision was

necessarily based on the particular facts of that case, as well as an in camera inspection of the records at issue.

17. In 2008, the Commission concluded that the State Department of Public Safety failed to prove that its report regarding another death constituted a medical file within the meaning of §1-210(b)(2), G.S. Docket # FIC 2007-580; Town of Putnam and Putnam Board of Education v. Commissioner, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety (May 28, 2008). Docket # FIC 2007-580 was appealed to the Superior Court, which upheld the Commission's decision, ruling that medical information contained in a police report investigating a death did not convert the police report into a "medical file" within the meaning of §1-210(b)(2), G.S. State of Connecticut, Department of Public Safety v. Freedom of Information Commission et al., Superior Court, Judicial District of New Britain, Docket No. HHB-CV-08-4018164-S (March 3, 2009, Schuman, J.). Specifically, the court ruled:

> While these pages do contain some medical and prescription information about a third party, the obvious function of that information is not to contribute to making a medical decision regarding the third party, but rather to explain the decedent's source of a means to commit suicide. Stated differently, it is apparent from reading the entire six pages that the third party, rather than providing information to a health care professional to assist in medical treatment, rendered the medical information to the police in order to assist in their investigation. The department can establish only that the file contains medical 'information' but not that the file is a 'medical file' under the prevailing definition. Accordingly, the commission reasonably concluded that the six pages do not constitute a medical file and therefore are not exempt from disclosure under the act.

18. The respondents herein duly complied with the Commission's order to submit a copy of the booking tape at issue for in camera inspection. Such copy shall be identified as IC 2018-0325-001. Whether IC 2018-00325-001 constitutes a medical file depends on the purpose of the record. As Connecticut courts have aptly stated, "a medical file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual..." Connecticut Alcohol & Drug Abuse Commission v. Freedom of Information Commission, 233 Conn. 28, 41 (1995).

19. Based upon careful inspection of IC 2018-0325-001, it is found that such record documents the booking process for S. Garcia, and it is also found that some of the questions asked of S. Garcia were medical in nature.

20. It is found that, while several medical questions are asked and answered as a routine part of the process, those inquiries were not made by a health care professional to assist in medical treatment.

21. Based upon careful in camera inspection, and upon the facts and circumstances of this particular case, which are distinguishable from Coe, it is found that IC 2018-0325-001 does not constitute a personnel, medical or similar file, within the meaning of §1-210(b)(2), G.S. Therefore, it is concluded that the remaining record at issue, the Garcia booking tape of May 7, 2018, is not exempt from mandatory disclosure by virtue of §1-210(b)(2), G.S.

22. Section 19a-583, G.S., provides in relevant part:

> (a) No person who obtains confidential HIV-related information may disclose or be compelled to disclose such information, except to the following:

The statute then enumerates thirteen categories of individuals or organizations that are authorized by law to receive such confidential HIV-related information.

23. An analysis of the statute reveals that §19a-581, G.S., the relevant terms as used within the statute are defined as follows:

> "Protected individual" means a person who has been counseled regarding HIV infection, is the subject of an HIV-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness;
>
> "Confidential HIV-related information" means any information pertaining to the protected individual or obtained pursuant to a release of confidential HIV-related information, concerning whether a person has been counseled regarding HIV infection, has been the subject of an HIV-related test, or has HIV infection, HIV-related illness or AIDS, or information which identifies or reasonably could identify a person as having one or more of such conditions, including information pertaining to such individual's partners;

24. Based on the in camera review of the record in this case, it is found that the booking recording in question does not contain any information as defined or contemplated by §19a-581, et seq, G.S. Accordingly, it is found that §19a-583, G.S., does not provide a basis to withhold the record at issue.

25. It is concluded that the respondents violated the disclosure provisions of §§1-210 and 1-212 G.S., by failing to provide the complainant with a copy of the Garcia booking tape of May 7, 2018.

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

1. Forthwith, the respondents are hereby ordered to provide the complainant with a copy of the May 7, 2018 booking tape for S. Garcia, as requested, without cost.

2. Henceforth, the respondents will strictly comply with the disclosure requirements in §§1-210(a) and 1-212(a), G.S.

3. The Commission strongly suggests that the respondents consult with the State Office of the Public Records Administrator regarding approved retention periods for the types of booking tapes at issue in this matter, and notes, in general, that premature disposal of records can result in denial of access to public records under certain circumstances.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 22, 2019.

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:

**YVONNE PERKINS**, 4 Moss Avenue, Danbury, CT 06810

**CHIEF, POLICE DEPARTMENT, CITY OF DANBURY**; **POLICE DEPARTMENT, CITY OF DANBURY; AND CITY OF DANBURY**, c/o Attorney D. Randall DiBella, Cramer & Anderson, 51 Main Street, New Milford, CT 06776

Cynthia A. Cannata
Acting Clerk of the Commission

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