FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by — FINAL DECISION

Miguel Pittman,

Complainant

against — Docket #FIC 2018-0079

Racheal Cain, Assistant Chief,
Police Department, City of
New Haven; Manmeet Colon,
Lieutenant, Police Department,
City of New Haven; Police
Department, City of New Haven;
and City of New Haven,

Respondents — January 9, 2019

The above-captioned matter was heard as a contested case on April 23, 2018, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After the hearing, the respondents requested that the matter be reopened, which request was granted by the hearing officer, without objection from the complainant. A second hearing was held on June 19, 2018, at which time the complainant and the respondents appeared and presented additional 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, in 2013, 2015 and 2017, the complainant unsuccessfully applied to the respondent police department to be a New Haven police officer.

3. It is found that, by letters dated February 14, 2018, and February 15, 2018, the complainant requested from the respondents copies of his complete application file.

4. It is found that on February 16, 2018, the respondents denied the complainant's records request described in paragraph 3, above. The respondents informed the complainant that they had already provided him with copies of records relating to his 2013 and 2015 applications

in response to previous records requests; and they were withholding copies of records relating to his 2017 application until his candidacy process was completed and the file "closed."

5. By email sent February 16, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his records request, described in paragraph 3, above. The complainant also requested the imposition of civil penalties.

6. 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.

7. 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 (1) inspect such records promptly during regular office or business hours or . . . (3) receive a copy of such records in accordance with section 1-212.

8. 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."

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

10. It is found that on February 19, 2018, the complainant inspected his application files as they existed on such date.

11. It is found that by email sent on April 9, 2018, the respondents informed the complainant that copies of 105 pages of documents constituting his application files from the 2013 and 2015 recruitment cycles were available for pick up. They also informed the complainant that they were withholding 48 pages of documents on the following bases: 35 pages were exempt from disclosure pursuant to §1-210(b)(6), G.S.; 13 pages were copies of a warrant application for an arrest that had been erased under operation of Connecticut law; one page was

from the COLLECT system; and one page was from the Criminal Justice Information System. In addition, the respondents informed the complainant that a copy of his application file for the 2017 recruitment cycle was not releasable at that time as he was still under active consideration as a candidate and, as a result, the file was incomplete.

12. It is found that on April 9, 2018, the complainant once again inspected his application files as they existed on such date. It is also found that the respondents offered to provide the complainant with copies of some responsive records at such time, but the complainant refused because the file was incomplete (i.e., did not include the records from the 2017 recruitment cycle).

13. It is found that by email sent on April 10, 2018, the respondents informed the complainant that, with respect to his application file for the 2017 recruitment cycle, such records were exempt from disclosure pursuant to §1-210(b)(1), G.S. They informed the complainant that such records "are part of a working file on your current candidacy for a position. Until you are hired or removed as a candidate, that file remains incomplete and essentially a draft. For the purposes of your ability to address any concerns that may be raised by such records with the Board of Police Commissioners you are entitled to review them in person, which I understand that you have already done."

14. It is found that by email sent on April 17, 2018, after having completed the process of evaluating the complainant's candidacy in the 2017 recruitment cycle, the respondents informed the complainant that they were prepared to release a copy of his 2017 application file, with redactions.

15. It is found that as of the June 19, 2018 reopened hearing in this matter, the respondents had provided the complainant an opportunity to inspect (and take notes on) all records responsive to his records request, including those records which they claimed were exempt from disclosure. It is also found that the respondents provided the complainant with copies of the requested records, except for those records which the respondents claimed were exempt from disclosure.

16. At the June 19th reopened hearing, the complainant testified that the records remaining at issue are the following: polygraph examinations, psychological evaluations, OP Center (local law enforcement database) records and COLLECT (Connecticut Online Law Enforcement Communications Teleprocessing system) records.

17. After the hearings in this matter, the respondents submitted unredacted copies of 15 pages of records for in camera review, which records have been marked as IC-2018-0079-1 through IC-2018-0079-15. The respondents claim that such records are exempt from disclosure pursuant to §§1-210(b)(3)(E), 1-210(b)(6) and 54-142r, G.S., respectively.[1]

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[1] The Commission notes that the in camera records (and in camera Index) were submitted on June 19, 2018, and then again on August 23, 2018, pursuant to an order of the hearing officer. The in camera records were marked in accordance with the reference numbers provided on the in camera Index submitted on June 19, 2018. The Commission also notes that a page is missing from the August 23rd in camera submission, as noted on the corresponding in camera Index.

18. With respect to IC-2018-0079-1 through 6, IC-2018-0079-7 through 9, and IC-2018-0079-10 through 11, the respondents publicly identify such records as a pre-employment psychological evaluation, and polygraph examinations, respectively. The respondents claim that such records are exempt from disclosure pursuant to §1-210(b)(6),G.S., which statute provides that disclosure is not required of "[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations…."

19. At the April 23, 2018 hearing, the respondents testified that an individual applying to be a certified City of New Haven police officer must submit an application, and undergo a written and oral assessment. An eligible candidate will also undergo a background check, including psychological evaluation and polygraph examinations. The respondents testified that such psychological evaluation and polygraph examinations are "part of the testing process" used to determine the suitability, truthfulness and integrity of candidates for police officer, and that the disclosure of such records would allow candidates to modify their answers to get a more favorable outcome.

20. The respondents also rely on the Commission's decision in Docket #FIC 2017-0244; David Eldridge v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, et. al. (April 11, 2018), in which the Commission found that portions of two polygraph examinations to which an individual submitted during his employment application to the Milford and Shelton Police Departments, respectively, recited the applicant's answers to questions put to him, and that his answers revealed the questions he was asked. The Commission concluded therefore that such portions were permissibly exempt from disclosure pursuant to §1-210(b)(6), G.S. See also Docket #FIC 1995-295; Michael J. Proto v. Town of Hamden, et. al. (June 26, 1996) (Commission found that the evaluative records that the complainant sought, which contained opinions and conclusions about his fitness to be a police officer as determined by a psychologist and polygraph examiner, were not used to administer an employment examination within the meaning of §1-210(b)(6), G.S. The Commission therefore concluded that the respondents failed to prove that the subject records were exempt from disclosure under §1-210(b)(6), G.S.); and Docket #FIC 1998-053; Anastasia DeLuca v. Director of Human Resources, Office of Legal Affairs, Human Resources Division, City of Stamford, et. al. (July 8, 1998) (Commission found that the psychological evaluation of an applicant for police officer, which contained a discussion and analysis of the applicant's responses to certain questions asked during the psychological examination, did not constitute data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S., and therefore was not exempt from disclosure pursuant to §1-210(b)(6), G.S. The Commission did however conclude that to the extent that the psychological evaluation at issue disclosed examination questions, those questions were permissively exempt from disclosure as "test questions" within the meaning of §1-210(b)(6), G.S.). Compare Docket #FIC 2009-502; Joao Godoy v. Mark Rinaldo, Chief, Police Department, Town of Avon, et. al. (June 9, 2010) (based upon an in camera examination, the Commission found that although records consisting of responses, in narrative form, to the requested polygraph examinations of applicants for the position of police officer, were created as part of a town's police officer selection process, the records were not used to administer an employment examination, within the meaning of §1-210(b)(6), G.S. The Commission's decision

in Godoy did not analyze whether portions of such records would constitute and/or reveal "test questions," within the meaning of §1-210(b)(6), G.S.).

21. Based upon the facts and circumstances of this case, and upon a careful examination of IC-2018-0079-1 through 6, IC-2018-0079-7 through 9, and IC-2018-0079-10 through 11, it is found that the disclosure of the following records would reveal test questions used to administer an examination for employment, within the meaning of §1-210(b)(6), G.S.: IC-2018-0079-1 (lines 23-36); IC-2018-0079-2 through 5 (lines 1-21); IC-2018-0079-7 (lines 12-39); IC-2018-0079-8 through 9 (lines 1-34); IC-2018-0079-10 (lines 19-30); and IC-2018-0079-11 (lines 1-3).[2] It is therefore concluded that such in camera records are permissibly exempt from disclosure pursuant to §1-210(b)(6), G.S.

22. It is further found, however, that the disclosure of the following records would not reveal test questions, within the meaning of §1-210(b)(6), G.S.: IC-2018-0079-1 (lines 1-22); IC-2018-0079-5 (lines 22-44) through 6; IC-2018-0079-7 (lines 1-11, lines 40-43); IC-2018-0079- 9 (lines 35-40); IC-2018-0079-10 (lines 1-18, lines 31-33); and IC-2018-0079-11 (lines 4-8). It is therefore concluded that such in camera records are not exempt from disclosure pursuant to §1-210(b)(6), G.S.

23. With respect to IC-2018-0079-12 through 13, and IC-2018-0079-14 through 15, the respondents claim that such records are exempt from disclosure pursuant to §§1-210(b)(3)(E) and/or 54-142r, G.S., respectively.

24. Section 54-142g(a), G.S., provides in relevant part:

> "Criminal history record information" means court records and information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments, informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases....

25. Section 54-142g(b), G.S., provides:

> "Criminal justice agency" means any court with criminal jurisdiction, the Department of Motor Vehicles or any other governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice, including, but not limited to, organized municipal police departments, the Division of State Police, the Department of Correction, the Court

[2] 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.

> Support Services Division, the Office of Policy and Management, the state's attorneys, assistant state's attorneys and deputy assistant state's attorneys, the Board of Pardons and Paroles, the Chief Medical Examiner and the Office of the Victim Advocate. "Criminal justice agency" includes any component of a public, noncriminal justice agency if such component is created by statute and is authorized by law and, in fact, engages in activities constituting the administration of criminal justice as its principal function.

26. Section 54-142q(a), G.S., provides in relevant part:

> As used in this section, … "offender-based tracking system" means an information system that enables … criminal justice agencies… to share criminal history record information, as defined in subsection (a) of section 54-142g, and to access electronically maintained offender and case data involving felonies, misdemeanors, violations, motor vehicle violations, motor vehicle offenses for which a sentence to a term of imprisonment may be imposed, and infractions, and (3) "criminal justice information systems" means the offender-based tracking system and information systems among criminal justice agencies.

27. Section 54-142r, G.S., provides:

> (a) Any data in the offender-based tracking system, as defined in section 54-142q, shall be available to the Commissioner of Administrative Services and the executive director of a division of or unit within the Judicial Department that oversees information technology, or to such persons' designees, for the purpose of maintaining and administering said system.
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> (b) Any data in said system from an information system of a criminal justice agency, as defined in subsection (b) of section 54-142g, that is available to the public under the provisions of the Freedom of Information Act, as defined in section 1-200, shall be obtained from the agency from which such data originated. The Secretary of the Office of Policy and Management shall provide to any person who submits a request for such data to the Criminal Justice Information System Governing Board, pursuant to said act, the name and address of the agency from which such data originated.

28. Section 54-142s, G.S., provides in relevant part:

> (a) The Criminal Justice Information System Governing Board shall design and implement a comprehensive, state-wide information technology system to facilitate the immediate, seamless and comprehensive sharing of information between all state agencies, departments, boards and commissions having any cognizance over matters relating to law enforcement and criminal justice, and organized local police departments and law enforcement officials…
>
> (f) Such information technology system shall be developed with state-of-the-art relational database technology and other appropriate software applications and hardware, and shall be:
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> (1) Completely accessible by any authorized criminal justice official through the Internet;
>
> (2) Completely integrated with the state police, organized local police departments, law enforcement agencies and such other agencies and organizations as the governing board deems necessary and appropriate, and their information systems and database applications…
>
> (5) Secure and protected by high-level security and controls;
>
> (6) Accessible to the public subject to appropriate privacy protections and controls; and
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> (7) Monitored and administered by the Criminal Justice Information Systems Governing Board, with the assistance of the Department of Administrative Services, provided major software and hardware needs may be provided and serviced by private, third-party vendors.

29. With respect to IC-2018-0079-12 through 13, the respondents publicly identify such records as "COLLECT report."

30. The Commission takes administrative notice of its previous decisions in which it held that records accessed by way of the COLLECT system, a statewide criminal database system used by law enforcement and criminal justice agencies, are exempt from mandatory disclosure. See e.g., Docket #FIC 2015-518; Lazzari v. Chief, Police Department, Town of Newington, et. al. (February 10, 2016); Docket #FIC 2013-562; Anania v. University of Connecticut, et. al. (May 28, 2014).

31. Based upon a careful in camera review of IC-2018-0079-12 through 13, it is found that such records consist of a COLLECT printout. It is further found that the information

contained within IC-2018-0079-12 through 13 must be obtained from the agency from which such data originated, within the meaning of §54-142r, G.S.

32. With respect to IC-2018-0079-14 through 15, the respondents publicly identify such records as "Op Center report." At the April 23, 2018 hearing, the respondents testified that such report was generated as a result of an inquiry through the local law enforcement database, similar to the COLLECT system. The respondents further testified that such local law enforcement database can only be accessed by sworn law enforcement personnel and authorized records personnel.

33. Based upon a careful review of IC-2018-0079-14 through 15, it is found that such records consist of an Op Center printout. However, it is also found that the respondents failed to prove the applicability of §54-142r, G.S., to such records.

34. The respondents also claim that IC-2018-0079-14 through 15 are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., which statute provides that disclosure is not required of "[r]ecords 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... investigatory techniques not otherwise known to the general public...."

35. Based upon a careful review of IC-2018-0079-14 through 15, it is found that the respondents failed to prove that such records were compiled in connection with the detection or investigation of crime, and contain investigatory techniques not otherwise known to the general public, within the meaning of §1-210(b)(3)(E), G.S.

36. It is concluded that, except for the records described in paragraphs 21 and 31, above, the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the requested records from the complainant.

37. The Commission in its discretion declines to consider the imposition of a civil penalty against the respondents.

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 the complainant with unredacted copies of the records described in paragraphs 22, 33 and 35, of the findings, above, free of charge.

2. 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 January 9, 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:

MIGUEL PITTMAN, 82 Orchard Street, New Haven, CT 06519

RACHEAL CAIN, ASSISTANT CHIEF, POLICE DEPARTMENT, CITY OF NEW HAVEN; MANMEET COLON, LIEUTENANT, POLICE DEPARTMENT, CITY OF NEW HAVEN; POLICE DEPARTMENT, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Kathleen Foster, City of New Haven, 165 Church Street, New Haven, CT 06510

Cynthia A. Cannata
Acting Clerk of the Commission

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