

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Collins and The Day,

Complainants

against

Docket #FIC 2018-0509

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

Respondents

March 13, 2019

The above-captioned matter was heard as a contested case on October 31, 2018, at which time the complainants 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 November 19, 2015, the complainants requested that the respondents provide them with copies of the police report and search warrant relating to the investigation of Ginseng Spa and Massage parlor (CFS# 15-00401080) (“November 19<sup>th</sup> request”).
3. It is found that by email dated November 20, 2015, the respondents’ Legal Affairs Unit acknowledged the complainants’ November 19<sup>th</sup> request.
4. It is found that by letter dated December 30, 2015, the respondents informed the complainants that the requested records were not subject to disclosure pursuant to §1-215, G.S., as the criminal prosecution was still pending, and informed the complainants that they may be able to obtain the requested information from the State’s Attorney’s office handling the prosecution.
5. It is found that by letter dated May 4, 2016, the respondents informed the complainants that the prosecution was complete and case report CFS# 15-00401080 could be released. The respondents also informed the complainants that upon receipt of a check in the

amount of \$16.00, the Legal Affairs Unit would request the report from the respondents' Reports and Records Unit.

6. It is found that on June 27, 2016, the respondents received the requisite payment from the complainants, and thereafter forwarded the November 19<sup>th</sup> request to the Reports and Records Unit for processing.

7. It is found that on June 6, 2018, approximately two and one half years after the complainants' November 19<sup>th</sup> request, the Reports and Records Unit provided the Legal Affairs Unit with a copy of the responsive record for their review.

8. It is found that on August 17, 2018, the respondents provided the complainants with a copy of the requested case report, with redactions. Among other exemptions, the respondents claimed that the disclosure of certain information could jeopardize the safety and security of persons, and therefore was exempt from disclosure pursuant to §1-210(b)(19), G.S. Subsequently, the respondents notified the Department of Administrative Services ("DAS") of the November 19<sup>th</sup> request about withholding the names and badge numbers of police personnel working in an undercover capacity on the investigation. It is found that the DAS Commissioner, in agreement with the respondents, determined that there were reasonable grounds to believe that disclosure of the identity of undercover police officers may result in a safety risk to such officers and the general public.

9. By letter received and filed on September 13, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by improperly redacting information and failing to promptly respond to their November 19<sup>th</sup> request.

10. 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.

11. 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.

12. 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.”

13. It is found that the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

14. At the hearing in this matter, the complainants alleged that the respondents violated the FOI Act by failing to provide responsive records in a prompt manner, and improperly withholding certain information (i.e., the identities of police personnel).

15. With respect to the issue of promptness, the Commission has held that the meaning of the word “promptly” is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word “promptly,” as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore a primary duty of all public agencies, and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

16. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

17. The respondents contended that there was a substantial backlog in processing records requests due to the volume of requests and reports processed by and staffing shortages within the respondents’ Legal Affairs Unit and Reports and Records Unit, respectively.

18. It is found that the *approximately two and one half year* wait before providing records in response to a simple request pursuant to the FOI Act is unacceptable. See also Docket #FIC 2016-0775; Stephen Williams v. Dora Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of

Connecticut, Department of Emergency Services and Public Protection (March 22, 2017) in which this Commission found that the respondents' Reports and Records Unit estimated compliance with the complainant's request of one and one half to two years (due to an overwhelming work load and a reduction in staffing) was unacceptable and concluded that the respondents had violated §§1-210(a) and 1-212(a), G.S., of the FOI Act for failing to provide the requested records in a prompt manner; Docket #FIC2017-402; Lauren Sievert, Mike Savino and Record Journal v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (May 14, 2018) in which the Commission found that the approximately two year wait for compliance with a straightforward, well-defined request that applied to a specific incident (due to the Reports and Records Unit being severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts) was unacceptable; Docket #FIC 2017-0342; Robert Cushman v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (May 14, 2018) and Docket #FIC 2017-0596; Robert Cushman v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (May 14, 2018) in which the Commission found again that the approximately two year wait for compliance with a straightforward, well-defined request that also applied to a specific incident (due to the Reports and Records Unit being severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts) was, in both cases, unacceptable; and Docket #FIC 2017-0643; Mark Dumas and Connecticut State Police Union v. Dora Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (August 8, 2018), *currently pending in Superior Court* (HHB-CV-18-6047741-S), in which the Commission found that the respondents' failure to comply promptly with records requests as required under the FOI Act appears to be a systemic issue. The Commission found that the respondents once again failed to promptly comply with records requests in a prompt manner, that such failure was without reasonable grounds, and imposed a civil penalty against the respondent Commissioner.

19. It is found that the respondents failed to provide records to the complainants in a prompt manner.

20. With respect to the redactions of the identities of police personnel, the respondents contended that such information is exempt from disclosure pursuant to §1-210(b)(19), G.S.

21. Section 1-210(b)(19), G.S., provides that disclosure is not required of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility.... Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency....

22. Section 1-210(d), G.S., provides:

Whenever a public agency...receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services...of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person....

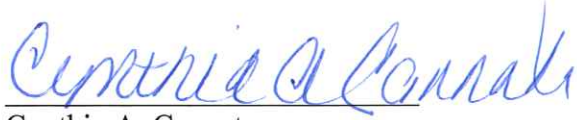
23. At the hearing, the respondents contended that the disclosure of the identities of undercover law enforcement officers would pose a risk of harm to such undercover officers (e.g., may allow past arrestees, including, but not limited to members of organized crime, to discover an undercover detective's identity, home address and family ties); would compromise the integrity and effectiveness of undercover operations; and may present a risk to the general public (e.g., if a now-known undercover police officer is observed contacting an informant or witness, that informant or witness may then be intimidated or even harmed, and the criminal subjects of the undercover investigation would not be apprehended). It is found that the respondents had reasonable grounds to believe that disclosure of the identities of the undercover officers may result in a safety risk. It is further found that such information is exempt from disclosure pursuant to §1-210(b)(19), G.S. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such information.

24. The respondents also contended that the disclosure of the identities of police personnel who were involved in the investigation, but were not undercover, would pose a safety risk. It is found that the Commissioner of DAS did not opine that the disclosure of such police personnel may result in a safety risk. It is therefore found that the respondents failed to prove that the disclosure of the identities of such police personnel may result in a safety risk. It is found that the identities of such police personnel are not exempt from disclosure pursuant to §1-210(b)(19), G.S. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such information.

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 complainants with the information described in paragraph 24 of the findings, above.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 13, 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:

**DAVID COLLINS AND THE DAY**, 47 Eugene O'Neill Drive, P.O. Box 1231, New London, CT 06320-1231

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION**, c/o Assistant Attorney General Steven M. Barry, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata  
Acting Clerk of the Commission