

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Jeremy Shafer and the American Civil
Liberties Union,

Complainants

against

Docket #FIC 2016-0050

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

Respondents

November 16, 2016

The above-captioned matter was heard as a contested case on April 21, and July 11, 2016, at which times the complainants and the respondents appeared, stipulated to certain facts 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 by letter dated December 17, 2016, the complainants made a request to the respondents for the following:
 - a. all records reflecting the Bridgeport Police Department's assessment, purchase, borrowing, or use of IMSI-catching, cell-site simulating, cell phone direction-finding, or cell phone eavesdropping devices such as Stingray, Gossamer, Triggerfish, Kingfish, Amberjack, Harpoon, or Hailstorm. Your response should include—but not be limited to—all records showing the occasions on which each device was purchased, borrowed, or used; the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of such devices;

b. all records reflecting the Bridgeport Police Department's assessment, purchase, borrowing, or use of mobile device forensics devices or software, such as are marketed by Cellebrite, Paraben, Katana Forensics, NowSecure, AccessData and others. Your response should include-but not be limited to - all records showing the occasions on which each device or piece of software was purchased, borrowed, or used, as well as the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of such devices or software;

c. all records reflecting the Bridgeport Police Department's assessment, purchase, borrowing, or use of any unmanned aerial vehicles, also known as drones. Your response should include-but not be limited to-all records showing the occasions on which a drone was purchased, borrowed, or used, as well as the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of the drone; and

d. all records showing applications made to, or amounts received from, any funding source or grant program for funds to be used for the purchase or use of:

- (1.) IMSI-catching, cell-site simulating, cell phone direction-finding, or cell phone eavesdropping devices such as Stingray, Gossamer, Triggerfish, Kingfish, Amberjack, Harpoon, or Hailstorm;
- (2.) mobile device forensics devices or software, such as are marketed by Cellebrite, Paraben, Katana Forensics, NowSecure, AccessData and others; and
- (3.) drones.

3. It is found by letter dated December 22, 2015, that the respondents acknowledged the complainants' request but did not provide any responsive records.

4. By letter dated January 15, 2016 and filed on January 19, 2016, the complainants appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with their December 17, 2016 records request.

5. 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.

6. 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.

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

9. At the hearing in this matter, the respondents refused to confirm or deny that they maintain records that are responsive to the complainants' request. The respondents claimed that to do so would disclose an investigatory technique and would encourage criminal behavior. Nevertheless, the respondents submitted responsive records to the Commission for in camera inspection.

10. Such records shall be identified as IC-2016-0050-1 through IC-2016-0050-3, totaling 91 pages.

11. The respondents claimed the records are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., which provides that disclosure is not required 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 would not be in the public interest because it would result in the disclosure of ... (E) investigatory techniques not otherwise known to the general public[.]”

12. It is found that the respondents testified only in general terms that disclosure would interfere with law enforcement and would allow criminals to adjust their behavior accordingly.

13. It is found, based on the complainants' exhibits, and upon careful review of IC-2015-581-1 through IC-2015-581-3, that disclosure of the records identified as IC-2015-581-1 through IC-2015-581-3 would not result in the disclosure of investigatory techniques not otherwise known to the general public. In particular, complainants' Exhibit E, which was entered into evidence during the hearing in this matter, is a news story published by a local TV station about law enforcement's widespread use of a software program to discover the contents of cell phones.

14. It is concluded, therefore, that §1-210(b)(3)(E), G.S., does not exempt IC-2015-581-1 through IC-2015-581-3 from disclosure.

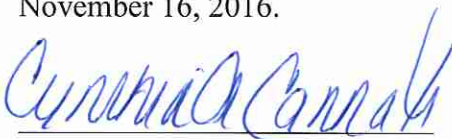
15. It is concluded that the respondents violated the FOI Act as alleged.

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 promptly provide to the complainants, free of charge, an unredacted copy of all records responsive to their request. In addition, the respondents shall conduct a diligent search for any policies, rules, guidance, or procedures governing the use of any of the devices identified by the complainants, and promptly provide a copy of any such records to the complainants, free of charge. If the respondents do not maintain any such records, they shall inform the complainants of that fact in written correspondence.

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 November 16, 2016.



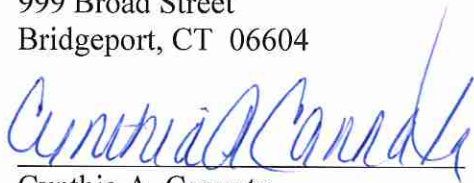
Cynthia A. Cannata
Acting Clerk of the Commission

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:

Jeremy Shafer and the American Civil
Liberties Union
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Cynthia A. Cannata
Acting Clerk of the Commission