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The Police Have The Right To Remain Silent Too: The Supreme Court Rules On The Disclosure Of Police Reports Under The FOIA

Working Together

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The Connecticut Supreme Court has resolved an intense debate about what law enforcement agencies are required to release with regard to arrest records and associated reports. This decision could affect the ability of school boards, municipalities and other public bodies to investigate employee and student misconduct.

The Court's decision in *Commissioner of Public Safety v. FOIC, 312 Conn. 513 (July 15, 2014)* involved a matter in which a newspaper requested a copy of records concerning the arrest of an individual for allegedly assaulting an elderly person. In response, the Department of Public Safety ["DPS"] sent the newspaper a copy of the official DPS press release pertaining to the incident. The newspaper filed a complaint with Connecticut's Freedom of Information Commission ["FOIC"], and the FOIC ordered DPS to disclose most of the actual police report.

The dichotomy between DPS' position and the FOIC's order arose from their differing interpretations of the Freedom of Information Act ["FOIA"], specifically Section 1-215 of the Connecticut General Statutes, which provides in part that "records of the arrest" of any person (other than those of a juvenile or where the record is "erased") are public records that are subject to disclosure. Conn. Gen. Stat. §1-215(a). The FOIA goes on to provide, however, that a law enforcement agency could comply with this mandate merely by providing: (1) the name 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) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, *news release* ***or*** other similar report of the arrest of a person. Conn. Gen. Stat. §1-215(b)(emphasis added). On its face, then, law enforcement could choose to comply with the FOIA by simply issuing a press release that provides minimal "police blotter" style information as opposed to the actual arrest or incident report, at least during the pendency of a criminal prosecution. *Gifford v. FOIC, 227 Conn. 641 (1993).*

Despite this statutory language, the FOIC asserted that in addition to the disclosures required under Conn. Gen. Stat. §1-215, any other law enforcement records (for example, the actual reports, mug shots, documentary evidence) compiled in connection with the investigation of a crime must also be disclosed unless the law enforcement agency proves that disclosure would not be in the public interest because it would reveal (1) the identity of informants or witnesses whose safety would be endangered or who would be

subject to threat or intimidation if their identity was made known, (2) the identity of minor witnesses, (3) signed statements of witnesses, (4) information to be used in a prospective law enforcement action (if prejudicial to such action), (5) investigatory techniques not otherwise known to the general public, (6) arrest records of juveniles, (7) the name and address of the victim of a sexual assault, or injury or risk of injury, or impairing of morals of a child, or of an attempt thereof, or (8) uncorroborated criminal allegations subject to destruction. See Conn. Gen. Stat. §1-210(b)(3).

The DPS appealed, and the Superior Court reversed the FOIC, concluding that DPS had satisfied the FOIA with its disclosure of the press release. The Court found that DPS complied with the FOIA, as the press release included the above basic information required by law, and also included a two-paragraph narrative setting forth additional information about the arrest, which constituted a sufficient "news release" for FOIA purposes. The Appellate Court agreed with the trial court, and in its July 15, 2014 decision, the Connecticut Supreme Court affirmed. Looking to the legislative history to resolve any ambiguity, the Court agreed that Section 1-215(b) contains the exclusive disclosure obligation of law enforcement agencies with respect to documents relating to a pending criminal prosecution. Additionally, following the conclusion of a criminal prosecution, law enforcement officials can still withhold disclosure of any such records, provided they satisfy the exemptions contained in Section 1-210(b)(3).

Why does this case matter (even if you are not with a police department)?

Generally, the courts and the laws provide for balance between public access to records and not jeopardizing criminal investigations. However, the public status of arrest records is of interest not only to law enforcement officials trying to protect information in order to further the investigation and prosecution of crimes, but also to 1) employers wishing to investigate employee wrongdoing, and 2) school districts who may be in need of information related to student discipline issues. As a person involved in investigating -- and assisting the response to -- employee and student misconduct, I can attest to the value of the actual arrest and incident reports. Sometimes, the parallel investigations of student or employee misconduct can be hindered by a law enforcement agency's refusal to release them. Fortunately, in the context of another statute governing police testimony at expulsion hearings, a school district may still be able to obtain the actual reports for production at the student disciplinary hearing. See Connecticut General Statutes §10-233h.

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