

2012 ANNUAL CONFERENCE

# FOI 101: Crash Course in the FOI Act

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Contested Cases and Skits

**Tracie C. Brown**

FREEDOM OF INFORMATION COMMISSION

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Robert H. Boone and Journal Inquirer,

Complainants

against

Docket #FIC 2000-137

Metropolitan District Commission,

Respondent

July 12, 2000

The above-captioned matter was heard as a contested case on May 17, 2000, at which time the complainant and the respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Local 1026, Council 4, AFSCME requested, and was granted, intervenor status in the above-captioned matter.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. By letter dated February 25, 2000 to the respondent, the complainants, through their staff writer, Julie Sprengelmeyer, made a request for access to records identifying the individual employees by name and the discipline each received for their alleged negligent involvement in the fire which destroyed the respondent's composting facility in December of 1999.
3. By letter dated February 29, 2000, to Ms. Sprengelmeyer, the respondent, citing §1-214, G.S., informed the complainants that because the request was for information and records contained in the employees' personnel and/or similar files, notice had been provided to the six employees involved, and to their collective bargaining representatives, of the request and that until the time period for a response had expired, a decision regarding disclosure would not be made.
4. It is found that the respondent received timely written objections to disclosure of the requested records from five of the six employees and one from the collective bargaining unit.

5. By letter dated March 13, 2000 to Ms. Sprengelmeyer, the respondent informed the complainants that it received written objections to the disclosure of the requested records and that pursuant to §1-214, G.S., the request was denied.

6. By letter dated March 15, 2000, and filed on March 16, 2000, the complainants appealed to this Commission alleging that the respondent violated the Freedom of Information (“FOI) Act by failing to comply with their request. The complainants requested the imposition of a civil penalty.

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 receive a copy of such records in accordance with the provisions of section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.”

8. It is found that the requested records, to the extent such records exist, are public records within the meaning of §1-210(a), G.S.

9. At the hearing on this matter, the respondent argued that §1-214, G.S. is a notice statute, which requires the respondent to provide an employee with notice of, and an opportunity to object to, the complainants’ request if it determines that the records requested would impact the personal privacy of the employees.

10. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall require the disclosure of “personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy . . . .”

11. Section 1-214(b), G.S., provides in relevant part that:

“Whenever a public agency receives a request to inspect or copy records contained in any of its employees’ personnel or medical files and similar files and the agency **reasonably believes that the disclosure of such records would legally constitute an invasion of privacy**, the agency shall immediately notify in writing (1) each employee concerned . . . and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it

does not reasonably believe that such disclosure would **legally constitute an invasion of personal privacy.**”

12. In Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993), the Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S. 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 such information is highly offensive to a reasonable person.

13. It is found that the respondent did not determine whether disclosure would legally constitute an invasion of personal privacy by determining, first, that the information sought does not pertain to a legitimate matter of public concern and, secondly, that the information is highly offensive to a reasonable person. The respondent only determined that the requested records would impact the personal privacy of the employees.

14. It is found that the respondent failed to make the appropriate legal determination, which is a prerequisite to providing notice to the employees under §1-214(b), G.S.

15. At the hearing on this matter, the intervenor argued that because three of the employees were then involved in a grievance proceeding regarding the disciplinary actions taken against them for their alleged involvement in the fire, the records should not be disclosed.

16. It is found that the intervenor has not claimed an applicable exemption to disclosure under the FOI Act.

17. Moreover, it is found that the requested records pertain to a matter concerning the conduct of the public’s business.

18. It is further found that the records pertain to a legitimate matter of public concern in that they disclose the identities of public employees held responsible by the respondent for the fire in question and the disciplinary action taken as a result the actions as public employees.

19. It is also found that there is no evidence in the record to support a finding that disclosure of the requested records would be highly offensive to a reasonable person within the meaning of Perkins, supra.

20. It is therefore concluded that the disclosure of the requested records would not be an invasion of personal privacy within the meaning of §§1-210(b)(2) and 1-214(b), G.S.

21. It is further concluded that the respondent violated the disclosure provisions of §1-210(a), G.S., and its duties under §1-214(b), G.S.

22. The complainant's request for the imposition of a civil penalty is denied.

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

1. The respondent shall forthwith provide the complainants with any and all documents responsive to the request as described in paragraph 2 of the findings, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 12, 2000.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Dan Levine,

Complainant

against

Docket #FIC 2004-092

Public Information Officer,  
Police Department, City of Hartford,

Respondent

February 9, 2005

The above-captioned matter was heard as a contested case on October 6, 2004, at which time the complainant and the respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. At the hearing in this matter, Officer Richard Rodriguez, the subject of the requested records in this case, requested and was granted party status, pursuant to §1-206(b)(1), G.S.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondent is a public agency within the meaning of §1-200(1), G.S.
2. By e-mail dated January 6, 2004 to the respondent, the complainant requested access to inspect “any documents relating to any internal affairs investigation that involved [Officer] Richard Rodriguez, who is head of the Explorers program.”
3. It is found that there are two records responsive to the complainant’s request, one of which the complainant was given access to inspect.
4. It is found however that by letter dated February 7, 2004, Officer Rodriguez objected to the disclosure of the other record, which is an internal affairs investigation report, described as relating to off-duty personal conduct and identified as I-File 02-16 (hereinafter “the I-File”).

5. By letter dated and filed on February 20, 2004, the complainant appealed to this Commission alleging that the respondent violated the Freedom of Information (“FOI”) Act by denying him access to inspect the I-File.

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 . . . Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

7. It is found that the I-File is a public record within the meaning of §1-210(a), G.S.

8. At the hearing in this matter the respondent contended that the I-File is exempt from disclosure pursuant to §§1-210(b)(2) and 1-210(b)(3)(G), G.S.

9. At the hearing on this matter, Officer Rodriguez argued, through counsel, that the I-File is a personnel record subject to destruction pursuant to §1-210(b)(G)(3), G.S., and that the respondent should not have acknowledged that the I-File existed.

10. At the hearing on this matter the respondent argued that the records were exempt from disclosure pursuant to §1-210(b)(2), G.S. Officer Rodriguez joined the respondent in that argument.

11. With respect to the argument that the I-File is exempt from disclosure pursuant to §1-210(b)(2), G.S., that section provides that nothing in the FOI Act shall be construed to require disclosure of “. . . [p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy . . . .”

12. Section 1-214(b), G.S., provides in relevant part that:

Whenever a public agency receives a request to inspect or copy records contained in any of its employees’ personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned . . . and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it



does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

13. 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,<sup>1</sup> and instances of advice given by Commission staff members,<sup>2</sup> which have relied upon the Perkins test, since its release in 1993.

14. 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.

15. At the hearing on this matter, the respondent was ordered to provide the I-File to the Commission for in-camera review by October 15, 2004. The respondent failed to provide the Commission with the in-camera record at that time. However, at the Commission meeting of February 9, 2005, the respondent provided the subject records which have been identified as 2004-092-1 through 2004-092-30.

16. After a review of the in-camera records, it is found that the requested records are "personnel" files or "similar" files within the meaning of §1-210(b)(2), G.S.

17. At the hearing on this matter, the respondent and Officer Rodriguez argued, through counsel, that because the I-File is an investigation report of an incident that occurred while Officer Rodriguez was off-duty, it does not pertain to a legitimate matter of public concern and that he would be offended if the report was disclosed.

18. It is found that Officer Rodriguez, in his capacity as a Hartford police officer, is a public employee and is sworn to protect and serve the public.

19. It is found that the alleged off-duty incident was sufficiently related to Officer Rodriguez's employment as a Hartford Police Officer that the respondent found it appropriate to conduct an internal investigation of the incident.

20. It is found, therefore, that the I-File pertains to legitimate matters of public concern because the information contained in the I-File concerns and implicates the conduct of a police officer, and also discloses the process by which the respondent department conducted the internal investigation.

21. It is also found that Officer Rodriguez and the respondent failed to prove that disclosure of the I-File would be "highly offensive" to a reasonable person.

22. It is therefore concluded that disclosure of the I-File would not constitute an invasion of privacy, and therefore such record is not exempt from disclosure pursuant to §1-210(b)(2), G.S.

23. With respect to the argument that the I-File is exempt from disclosure pursuant to §1-210(b)(3)(G), G.S., that section provides for the non-disclosure of:

records of law enforcement agencies . . . 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 . . . uncorroborated allegations subject to destruction pursuant to section 1-216. [Emphasis added].

24. It is found that the I-File concerns a non-criminal police internal affairs investigation and the administrative disposition of such investigation.

25. It is therefore found that the I-File was not compiled in connection with the detection or investigation of crime within the meaning of §1-210(b)(3), G.S.

26. Accordingly, it is concluded that the exemption at §1-210(b)(3), G.S., is inapplicable to the I-File.

27. Based on the forgoing, it is concluded that the respondent violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with a copy of the I-File described in paragraph 4, above.

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

1. Forthwith, the respondent shall provide the complainant with a copy of the record described in paragraph 4, above, in its entirety and free of charge.

2. In complying with paragraph 1 of the order above, the respondent may redact the names of the minors who participated in the Explorer program and the names of their parents.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 9, 2005.

## 1. ENDNOTES

### A. Court cases

Payne v. City of Danbury, 267 Conn. 669 (2004); Director, Retirement & Benefits Services Div. v. FOIC, 256 Conn. 764 (2001); Rocque v. FOIC, 255 Conn. 651 (2001); Dept. of Public Safety v FOIC, 242 Conn. 79 (1997) Conn. Alcohol & Drug Abuse Commission v. FOIC, 233 Conn.28 (1995) Kurecza v. FOIC, 228 Conn. 271 (1994); First Selectman v. FOIC, 60 Conn. App. 64 (2000); Dept. of Children & Families v. FOIC, 48 Conn. App. 467 (1998); Almeida v. FOIC, 39 Conn. App. 154 (1995); Dept. of Transportation v. FOIC, Super Ct JD NB CV 01-0508810 (Schuman, J. 2001); City Treasurer, City of Hartford v. FOIC, Super Ct JD NB CV 99 0496222 (Cohn, J. 2000); Rocque, Commissioner of Environmental Protection v. FOIC, Super Ct JD NB CV 98 0492734 (Hartmere, J. 1999); Director, Retirement & Benefits Services Div. v. FOIC, Super Ct JD NB CV 98 0492692 (Hartmere, J. 1999); First Selectman, Town of Ridgefield v. FOIC, Super Ct JD NB CV 99-0493041 (McWeeny, J. 1999); Chairman, Bd. of Education Town of Darien v. FOIC, Super Ct JD Htfd NB CV 97 0575674 (McWeeny, J. 1998); Waters, Commissioner of State of Conn. Dept. of Administrative Services v. FOIC, Super Ct JD Htfd/NB CV 96 0565853 (McWeeny, J. 1997); Armstrong, Commissioner of State of Conn. Dept. Of Correction v. FOIC, Super Ct JD Htfd/NB CV 96 0563608 (McWeeny, J. 1997); Dept. of Children & Families v. FOIC, Super Ct JD Htfd NB CV 96 0562546 (McWeeny, J. 1997); State of Conn. Office of Protection and Advocacy for Persons with Disabilities v. FOIC, Super Ct JD Htfd/NB CV 95 0554467 (McWeeny, J. 1997); Youngquist v. FOIC, Super Ct JD Htfd/NB, CV 95 0554601 (McWeeny, J. 1996 and 1997); Cracco v. FOIC, Super Ct JD Htfd/NB, CV 94 0705371 (Dunnell, J. 1995); Cracco v. FOIC, Super Ct JD Htfd NB, CV 93 0705370, (Dunnell, J. 1995); Cracco v. FOIC, Super Ct JD Htfd NB, CV 94 0705369, (Dunnell, J. 1995); Simonds v. FOIC, Super Ct JD Htfd/NB, CV 93 070 41 39 (Maloney, J. 1994); Gallagher v. FOIC, Super Ct JD Htfd/NB, CV 93 0531514 (Maloney, J. 1994).

### B. FOIC Decisions

Docket #FIC 2003-285; Frank C. Violissi, Jr. v. First Selectman, Town of Chester (May 26, 2004); Docket #FIC 2003-074; Heather M. Henderson v. State of Connecticut, Department of Public Safety, Legal Affairs Department (Dec. 10, 2003); Docket #FIC 2003-020; Hugh Curran v. Mayor, City of Waterbury (Sept. 10, 2003); Docket #FIC 2002-580; Ken Byron and The Hartford Courant v. First Selectman, Town of Westbrook (Sept. 10, 2003); Docket #FIC 2003-038 Chris Dehnel and The Journal Inquirer v. First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2002-531 Chris Dehnel and Journal Inquirer First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2003-055; Robert Mack v. Director, State of Connecticut, Department of Correction, Labor Relations (July 23, 2003); Docket #FIC 2002-345; Josh Kovner, Chris Keating, and The Hartford Courant v. Chief, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-338; Amy L. Zitka and The Middletown Press v. Chief, Police

Department, City of Middletown; and Professional Standards Unit Supervisor, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-465; Fred Radford v. Chairman, Police Commission, Town of Trumbull; and Chief, Police Department, Town of Trumbull (July 9, 2003); Docket #FIC 2002-118; Kimberly W. Moy and the Hartford Courant v. Superintendent of Schools, Southington Public Schools (Feb. 26, 2003); Docket #FIC 2002-020; Maurice Timothy Reidy and The Hartford Courant v. Chief, Police Department, Town of Newington and Brendan Fitzgerald (Oct. 23, 2002); Docket #FIC 2001-489 Jonathan Kellogg, Trip Jennings and Waterbury Republican-American Chief, Police Department, Borough of Naugatuck and Rick Smolicz (Sept. 25, 2002); Docket #FIC 2002-173; Carrie J. Champion v. Director, Department of Human Resources, Town of Fairfield (Aug. 28, 2002); Docket #FIC 2001-425 Joseph Mincewicz, Commissioner, State of Connecticut, Department of Public Safety, Division of State Police; and State of Connecticut, Department of Public Safety, Division of State Police (Aug. 28, 2002); Docket #FIC 2001-421 Jean M. Morningstar and University Health Professionals Local 3837, AFT-CFEPE, AFL-CIO v. Executive Vice President for Health Affairs, State of Connecticut, University of Connecticut Health Center; and State of Connecticut, University of Connecticut Health Center; and Justin Radolf, M.D., Director, Center for Microbial Pathogenesis, School of Medicine, University of Connecticut Health Center (Aug. 28, 2002); Docket #FIC 2002-093 Sean P. Turpin v. Director, Department of Human Resources, Town of Greenwich and Steve Demetri (July 24, 2002); Docket #FIC 2002-034; MariAn Gail Brown, Michael P. Mayko and Connecticut Post Michael Lupkas, Comptroller, City of Bridgeport; Christopher Duby, Chief of Staff, City of Bridgeport; Mark Anastasi, City Attorney, City of Bridgeport; and Gregory Conte, Deputy Chief of Staff, City of Bridgeport (June 26, 2002); Docket #FIC 2001-364; Karen Guzman and The Hartford Courant v. City of New Britain Docket (June 26, 2002); Docket #FIC 2001-180 James H. Smith and The Record Journal Publishing Company v. Commissioner, State of Connecticut, Department of Public Safety, Division of State Police; and State of Connecticut, Department of Public Safety, Division of State Police (Feb. 13, 2002); Docket #FIC 2001-129; Kimberly W. Moy and The Hartford Courant v. Police Commission, Town of Southington (Feb. 13, 2002); Docket #FIC 2001-251 Fred Radford v. Chief, Police Department, Town of Trumbull (Jan. 23, 2002); Docket #FIC 2000-624; Eric Gustavson v. Board of Education, Brookfield Public Schools (June 13, 2001); Docket #FIC 2000-557; Wendy John v. Richard Blumenthal, Attorney General, State of Connecticut, Office of the Attorney General; Wil Gundling, William McCullough, Phillip Schulz, Margaret Chapple, Assistant Attorneys General, State of Connecticut, Office of the Attorney General; and State of Connecticut, Office of the Attorney General (June 13, 2001); Docket #FIC 2000-268; Michael Costanza and The Day v. Director of Utilities, Utilities Department, City of Groton; and Mayor, City of Groton (April 25, 2001); Docket #FIC 2000-198; William J. Stone v. Personnel Administrator, State of Connecticut, Department of Transportation, Bureau of Finance and Administration; and State of Connecticut, Department of Transportation (April 20, 2001); Docket #FIC 2000-537; James Leonard, Jr. v. Chief, Police Department, City of New Britain (March 28, 2001); Docket #FIC 2000-348; Bradshaw Smith v. Office of the Vice Chancellor for Information Services, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut (February 28, 2001); Docket #FIC 2000-474; Robert H. Boone and Journal Inquirer v. Chief, Police

Department, Town of Windsor Locks (Jan. 24, 2001); Docket #FIC 2000-265; Lisa Goldberg and The Hartford Courant v. Superintendent of Schools, Vernon Public Schools (Jan. 24, 2001); Docket #FIC 2000-569; Mary Hyde v. Chief, Police Department, Town of Seymour (Dec. 13, 2000); Docket #FIC 2000-049; Nicholas B. Wynnich v. Board of Directors, Ansonia Public Library, Town of Ansonia (Dec. 13, 2000); Docket #FIC 2000-136; Thomas E. Lee v. Board of Education, Trumbull Public Schools; and Superintendent of Schools, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC 2000-135; Thomas E. Lee v. Board of Education, Trumbull Public Schools; and Superintendent of Schools, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC2000-086; Mitchell D. Poudrier v. Superintendent of Schools, Killingly Public Schools (Sept. 13, 2000); Docket #FIC 2000-173; Robert H. Boone and the Journal Inquirer v. Anthony Milano, District Manager, Metropolitan District Commission; and Metropolitan District Commission (Aug. 23, 2000); Docket #FIC 2000-094; James D. Goodwin v. Communications Specialist, State of Connecticut, Department of Social Services, Public and Government Relations Unit (Aug. 9, 2000); Docket #FIC 2000-022; Thedress Campbell v. City Treasurer, City of Hartford (Aug. 9, 2000); Docket #FIC 2000-137; Robert H. Boone and Journal Inquirer v. Metropolitan District Commission (July 12, 2000); Docket #FIC 1999-560; Leo F. Smith v. Robert H. Skinner, First Selectman, Town of Suffield; and Selectmen's Office, Town of Suffield (July 12, 2000); Docket #FIC 1999-556; Delores Annicelli v. Director, New Haven Housing Authority, City of New Haven; and New Haven Housing Authority, City of New Haven (July 12, 2000); Docket #FIC 1999-548; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 1999-547; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 1999-525; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 2000-118; Elizabeth Ganga and Connecticut Post v. Police Department, Town of Stratford (June 28, 2000); Docket #FIC 2000-095; Ron Robillard and the Chronicle v. Chairman, Board of Education, Eastford Public Schools; and Board of Education, Eastford Public Schools (June 28, 2000); Docket #FIC 2000-093; Megan J. Bard and The Norwich Bulletin v. Chairman, Board of Education, Eastford Public Schools; and Board of Education, Eastford Public Schools (June 28, 2000); Docket #FIC 1999-575; Bruce Kaz v. Robert Skinner, First Selectman, Town of Suffield; and Ted Flanders, Building Inspector, Town of Suffield (June 28, 2000); Docket #FIC 1999-519; Robert J. Fortier v. Personnel Director, Town of East Hartford; and Mayor, Town of East Hartford (June 14, 2000); Docket #FIC1999-550; James and Susanne Milewski v. Deputy Chief, Police Department, Town of Clinton; and Police Department, Town of Clinton (May 24, 2000); Docket #FIC 2000-005; Fred B. Feins v. President and Chief Executive Officer, Granby Ambulance Association, Inc., Town of Granby (May 10, 2000); Docket #FIC1999-606; Robert L. Corrado and IBEW Local 90 v. Town Attorney, Town of Hamden; and Electrical Contractors, Inc. (May 10, 2000); Docket #FIC 1999-533; Donald J. Lanouette, Jr. v. Chief, Police Department, Town of Madison; and Police Department, Town of Madison (April 26, 2000); Docket #FIC 1999-502; Christopher Hoffman and New Haven Register v. Director of Personnel, State of Connecticut, Southern Connecticut State University; and Personnel Office, State of Connecticut, Southern Connecticut State

University (April 26, 2000); Docket #FIC1999-440; Anne Hamilton and The Hartford Courant James Martino, Chief, Police Department, Town of Avon; Peter A. Agnesi, Lieutenant, Police Department, Town of Avon; and Police Department, Town of Avon (March 8, 2000); Docket #FIC1999-333; Lynn Fredricksen and New Haven Register v. Chief, Police Department, Town of Madison; and Police Department, Town of Madison (March 8, 2000); Docket #FIC 1999-289; Thomas Moran v. Director, Human Resources, Town of Simsbury; and Department of Human Resources, Town of Simsbury (Feb. 9, 2000); Docket #FIC 1999-328; Victor Zigmund v. Director, State of Connecticut, Department of Mental Health and Addiction Services, Human Resources Operations, Connecticut Valley Hospital, Whiting Forensic Division (Jan. 26, 2000); Docket #FIC 1999-100; Janice D'Arcy and The Hartford Courant v. Chief, Police Department, Town of Cheshire; Police Department, Town of Cheshire; Town Manager, Town of Cheshire; and Town of Cheshire (Jan. 26, 2000); Docket #FIC 1999-355; Wayne Mercier v. Patricia C. Washington, Director of Personnel, City of Hartford; and Department of Personnel, City of Hartford (Nov. 10, 1999); Docket #FIC 1998-391; Jonathan F. Kellogg and The Republican American v. Department of Education, City of Waterbury (Oct. 13, 1999); Docket #FIC 1999-161; Michael W. Cahill v. Chief, Police Department, Town of Hamden; and Police Department, Town of Hamden (Sept. 22, 1999); Docket #FIC 1998-294; Robert J. Bourne v. Department of Public Utilities, City of Norwich, and City of Norwich (Sept. 22, 1999); Docket #FIC 1998-293; Joseph J. Cassidy v. Department of Public Utilities, City of Norwich, and City of Norwich (Sept. 22, 1999); Docket #FIC 1999-040; Judith F. Machuga and State of Connecticut, Division of Public Defender Services, Superior Court, G.A. 13 v. Chief, Police Department, Town of East Windsor; and Police Department, Town of East Windsor (Aug. 25, 1999); Docket #FIC 1999-144; Robert H. Boone and Journal Inquirer v. William Gifford, Chief, Police Department, Town of Windsor Locks; Police Department, Town of Windsor Locks; and Windsor Locks Police Commission (July 28, 1999); Docket #FIC 1999-096; Paul Marks and The Hartford Courant v. Chief, Police Department, Town of Windsor Locks; and Police Department, Town of Windsor Locks (July 28, 1999); Docket #FIC 1999-064; Joan Coe v. First Selectman, Town of Simsbury; Director, Human Resources Department, Town of Simsbury; and Town of Simsbury (July 28, 1999); Docket #FIC 1999-150; Andrew Nargi v. Office of Corporation Counsel, City of Torrington; and City of Torrington (July 14, 1999); Docket #FIC 1999-135; Warren Woodberry, Jr. and The Hartford Courant v. Acting Town Manager, Town of Rocky Hill and Town of Rocky Hill (July 14, 1999); Docket #FIC 1999-015; Richard Manuel Rivera v. Superintendent of Schools, Torrington Public Schools; and Board of Education, Torrington Public Schools (June 9, 1999); Docket #FIC 1998-372; William C. Kaempffer and New Haven Register v. Police Department, City of New Haven; City of New Haven; and James Sorrentino (June 9, 1999); Docket #FIC 1997-361; Dominick L. Santarsiero v. Director, Human Resources, City of Stamford (June 10, 1998); Docket #FIC 1999-019; David K. Jaffe v. State of Connecticut, Connecticut Lottery Corporation, Human Resources; State of Connecticut, Connecticut Lottery Corporation, Security Division; and State of Connecticut, Connecticut Lottery Corporation (April 28, 1999); Docket #FIC1998-325; Virginia Groark and The Day v. Freedom of Information Officer, State of Connecticut, Department of Public Health, Office of Special Services, Communications Division; and Agency Personnel Administrator, State of Connecticut, Department of Public Health,

Human Resources Division (April 28, 1999); Docket #FIC 1998-208; Thedress Campbell v. City Treasurer, City of Hartford; and City of Hartford (April 14, 1999); Docket #FIC 1998-265; Benjamin M. Wenograd and Service Employees International Union Local 760 v. John Roughan, Executive Director, East Hartford Housing Authority; and East Hartford Housing Authority, Town of East Hartford (March 24, 1999); Docket #FIC 1997-363; Diana R. Raczkowski v. Mayor, Town of Naugatuck (March 11, 1998); Docket #FIC 1997-307; Krystin Bratina v. Chief, Hartford Fire Department, City of Hartford (March 11, 1998); Docket #FIC 1998-288; Christian Miller and the New Haven Register v. Superintendent, Branford Public Schools; and Board of Education, Branford Public Schools (Feb. 24, 1999); Docket #FIC 1998-255; Joan O'Rourke v. Chief, Police Department, City of Torrington; and Police Department, City of Torrington (Jan. 27, 1999); Docket #FIC 1998-251; John Ward v. Beverly L. Durante, Personnel Administrator, Housatonic Area Regional Transit; and Housatonic Area Regional Transit (Jan. 27, 1999); Docket #FIC 1998-163; Lawrence A. Butts v. Director, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (Dec. 9, 1998); Docket #FIC 1998-162; Lawrence A. Butts Chairperson, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (Dec. 9, 1998); Docket #FIC 1998-232; Scott Clark, Amy Kertesz, Michael Gates and the Ridgefield Police Union v. First Selectman, Town of Ridgefield; and Town of Ridgefield (Nov. 18, 1998); Docket #FIC 1998-193; Daniel P. Jones and The Hartford Courant v. Commissioner, State of Connecticut, Department of Environmental Protection; and State of Connecticut, Department of Environmental Protection (Nov. 18, 1998); Docket #FIC 1998-121; Ernie Cantwell and International Association of Firefighters, Local No. 1073 v. Director, Personnel Department, City of Middletown and Personnel Department, City of Middletown (Oct. 14, 1998); Docket #FIC 1998-120; Ernie Cantwell and International Association of Firefighters, Local No. 1073 v. Director, Personnel Department, City of Middletown (Oct. 14, 1998); Docket #FIC 1998-094; Janice D'Arcy and The Hartford Courant v. Chief, Meriden Police Department, City of Meriden and Meriden Police Department (Oct. 14, 1998); Docket #FIC 1997-422; Joseph A. Johnson, Jr. and Greenwich Time v. Chief, Greenwich Police Department, Town of Greenwich; and Greenwich Police Department, Town of Greenwich (Sept. 9, 1998); Docket #FIC 1998-023; Deborah Maynard v. Superintendent, Voluntown School District; and Principal, Voluntown Elementary School, Voluntown School District (Aug. 12, 1998); Docket #FIC 1997-298; Allan Drury and The New Haven Register v. Chief, East Haven Police Department, Town of East Haven; and Town of East Haven (June 10, 1998); Jonathan Lucas and Greenwich Times v. Director, Department of Human Resources, Town of Greenwich; and Town of Greenwich (May 27, 1998); John C. Rettman v. Meriden Police Department, Internal Affairs Division; and Paul Rowen (May 13, 1998); Docket #FIC 1997-318; Dennis Carnot v. Chief, Meriden Police Department, City of Meriden; Internal Affairs Division, Meriden Police Department, City of Meriden; Meriden Police Department, City of Meriden; and Paul Rowen (May 13, 1998); Docket #FIC 1997-175; Matthew Brown, Ken Byron and The Hartford Courant v. Superintendent of Schools, Plymouth Public Schools; and Board of Education, Town of Plymouth (February 18, 1998); Docket #FIC 1997-123; John Christoffersen and The

Advocate v. Superintendent of Schools, Stamford Public Schools and Director of Personnel, Stamford Public Schools (Feb. 11, 1998); Docket #FIC 1997-088; John B. Harkins v. Acting Town Manager, Town of Tolland (Jan. 28, 1998); Docket #FIC 1997-085; Joe Johnson and Greenwich Time v. Chief of Police, Greenwich Police Department (Jan. 28, 1998); Docket #FIC 1997-142; Laura Amon v. Program Manager, Affirmative Action Division, State of Connecticut, Department of Transportation (Dec. 3, 1997); Docket #FIC 1996-572; Ken Byron and The Hartford Courant v. Chief of Police, Town of Wethersfield (Nov. 12, 1997); Docket #FIC 1997-238; Kimberley A. Thomsen and the Republican-American v. Acting Superintendent, Waterbury Police Department (Oct. 29, 1997); Docket #FIC 1997-089; Steven Edelman v. Commissioner, State of Connecticut, Department of Mental Retardation; and State of Connecticut, Department of Mental Retardation (Oct. 22, 1997); Docket #FIC 1996-551; Judith A. Amato v. Executive Director, New Britain Housing Authority; and New Britain Housing Authority (Aug. 27, 1997); Docket # FIC 1996-539; Ann Marie Derwin v. Legal Advisor, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety (Aug. 27, 1997); Docket #FIC 1996-592; Francine Karp v. Mayor, City of Bristol; Director of Personnel, City of Bristol; and Dennis Daigneault (July 23, 1997); Docket #FIC 1996-243; Joanne C. Tashjian v. Personnel Officer, State of Connecticut, Workers' Compensation Commission; and State of Connecticut, Workers' Compensation Commission (June 4, 1997); Docket #FIC 1996-322; Carolyn Moreau and The Hartford Courant v. Chief of Police, Southington Police Department; and Susan Williams (May 28, 1997); Docket #FIC 1996-465; John Gauger, Jr., Joseph Cadrain and Richard Westervelt v. Kenneth H. Kirschner, Commissioner, State of Connecticut, Department of Public Safety; Dawn Carnese, Legal Advisor, State of Connecticut, Department of Public Safety; and Lt. David Werner, Commanding Officer, Troop "B", State of Connecticut, Department of Public Safety, Division of State Police (April 9, 1997); Docket #FIC 1996-315; David W. Cummings v. Christopher Burnham, Treasurer, State of Connecticut (April 9, 1997); Docket #FIC 1996-521; Carol Butterworth v. Town Council, Town of Tolland (March 26, 1997); Docket #FIC 1996-421; John B. Harkins v. Chairman, Tolland Town Council (March 26, 1997); Docket #FIC 1996-314; David W. Cummings v. Christopher Burnham, Treasurer, State of Connecticut (April 9, 1997); Docket #FIC 1996-119; David W. Cummings v. Jesse M. Frankl, Chairman, State of Connecticut, Workers' Compensation Commission (March 26, 1997); Docket #FIC 1996-215; Alice M. Gray v. Chief of Police, Manchester Police Department, and Assistant Town Attorney, Town of Manchester (Feb. 26, 1997); Docket #FIC 1996-159; Carolyn Moreau and The Hartford Courant v. Police Chief, Southington Police Department (Jan. 22, 1997); Docket #FIC 1996-124; Donald H. Schiller, Michael Kelley and The Record-Journal Publishing Company v. Police Chief, Town of Southington Police Department, and Town of Southington Police Department (Jan. 22, 1997); Docket #FIC 1996-134; Betty Halibozek v. Superintendent of Schools, Middletown Public Schools; and Supervisor of Maintenance and Transportation, Board of Education, City of Middletown (Dec. 11, 1996); Docket #FIC1996-006; Joseph Cadrain and Richard Westervelt v. Gerald Gore, Legal Affairs Unit, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety, Division of State Police (Dec. 11, 1996); Docket #FIC 1996-153; Tracey Thomas and The Hartford Courant v. Legal Affairs Unit, State of Connecticut, Department of Public Safety (Nov. 20, 1996); Docket



#FIC1995-419; Robie Irizarry v. Warden, Willard Correctional Institution, State of Connecticut, Department of Correction (Oct. 23, 1996); Docket #FIC 1995-368; Thomas Lally v. Executive Director, State of Connecticut Board of Education and Services for the Blind, and Special Projects Coordinator, State of Connecticut, Board of Education and Services for the Blind (Oct. 9, 1996); Docket #FIC 1995-403; Jesse C. Leavenworth and The Hartford Courant v. Superintendent of Schools, Regional School District #7 (Sept. 25, 1996); Docket #FIC 1995-361; Christopher Hoffman and the New Haven Register v. James J. McGrath, Chief of Police, Ansonia Police Department and Eugene K. Baron, Brian Phipps, and Howard Tinney as members of the Ansonia Board of Police Commissioners (Sept. 25, 1996); Docket #FIC1995-358; Lyn Bixby and The Hartford Courant v. State of Connecticut, Department of Administrative Services (Sept. 25, 1996); Docket #FIC 1996-056; Francine Cimino v. Chief of Police, Glastonbury Police Department; Town Manager, Town of Glastonbury; and Town of Glastonbury (Sept. 25, 1996); Docket #FIC 1995-343; John J. Woodcock, III v. Town Manager, Town of South Windsor (July 24, 1996); Docket #FIC 1995-324; John J. Woodcock, III and Kathryn A. Hale v. Dana Whitman, Jr., Acting Town Manager, Town of South Windsor (July 24, 1996); Docket #FIC 95-251; Lyn Bixby & The Hartford Courant v. Commissioner, State of Connecticut, Department of Correction (July 10, 1996); Docket #FIC 1995-252; Valerie Finholm and The Hartford Courant v. Commissioner, State of Connecticut, Department of Children and Families (May 22, 1996); Docket #FIC 1995-193; Terence P. Sexton v. Chief of Police, Hartford Police Department (May 8, 1996); Docket #FIC 1995-125; Chris Powell and Journal Inquirer v. Commissioner, State of Connecticut, Department of Social Services (March 13, 1996); Docket #FIC 1995-081; Bruce Bellm, Kendres Lally, Philip Cater, Peter Hughes, Carol Northrop, Brad Pellissier, Todd Higgins and Bruce Garrison v. State of Connecticut, Office of Protection and Advocacy for Persons with Disabilities, Sharon Story and Marlene Fein (March 13, 1996); Docket #FIC 1995-074; Jeffrey C. Cole and WFSB/TV 3 v. James Strillacci, Chief of Police, West Hartford Police Department (Jan. 24, 1996); Docket #FIC 1995-026; Curtis R. Wood v. Director of Affirmative Action, State of Connecticut, Department of Correction (Jan. 24, 1996); Docket #FIC 1995-132; Michael A. Ingrassia v. Warden, Walker Special Management Unit, State of Connecticut Department of Correction (Dec. 27, 1995); Docket #FIC 1995-048; Jane Holfelder v. Canton Police Department (June 14, 1995); Docket #FIC 1994-351; Edward A. Peruta v. O. Paul Shew, Rocky Hill Town Manager and Director of Public Safety; Donald Unwin, Mayor of Rocky Hill, William Pacelia, Deputy Mayor of Rocky Hill; and Curt Roggi, Rocky Hill Town Attorney (May 28, 1995); Docket #FIC 1994-160; John Springer and The Bristol Press v. Chief of Police, Bristol Police Department (April 5, 1995); Docket #FIC 1994-077; Kathryn Kranhold and The Hartford Courant v. Director, New Haven Health Department (Feb. 8, 1995); Docket #FIC 1994-099; Frank Faraci, Jr. v. Middletown Police Department, Mayor of Middletown, and Middletown City Attorney (Feb. 2, 1995); Docket #FIC 1994-011; Robert Grabar, Edward Frede and The News-Times v. Superintendent of Schools, Brookfield Public Schools and Brookfield Board of Education (Aug. 24, 1994); Docket #FIC 1993-279; Jay Lewin v. New Milford Director of Finance (March 23, 1994).

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2. Affidavit of Eric Turner, January 9, 2002.

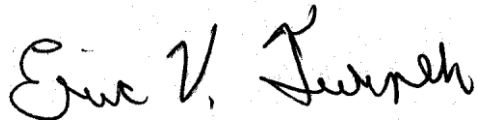
AFFIDAVIT OF ERIC V. TURNER

Eric V. Turner, having been duly sworn, does hereby depose as follows:

1. I am over the age of eighteen (18) years and understand the obligation of an affirmation.
2. I am a member of the Connecticut Bar and am currently employed as Director of Public Education for the Connecticut Freedom of Information Commission, having first been employed by said commission in 1996.
3. I am providing this affidavit in light of the Supreme Court decision in *Director, Retirement & Benefits Services Division v. Freedom of Information Commission*, 256 Conn. 764 (2001), in which the court apparently invites a reconsideration of *Perkins v. Freedom of Information Commission*, 228 Conn. 158 (1993). See, *Director*, supra at 782, fn 13, 785 (Zarella, J. concurring).
4. As part of my responsibilities as Director of Public Education for said commission, I have developed, organized and scheduled speaking engagements, seminars and programs explaining the duties and rights established under the Connecticut Freedom of Information Act.
5. Since I assumed my current position in 1996, there have been approximately 290 such speaking engagements, seminars and programs in Connecticut and I have personally lectured in approximately 80 such speaking engagements, seminars and programs.
6. As part of the presentation I have prepared for such speaking engagements, seminars and programs, the subject of the Connecticut General Statutes Section 1-210(b)(2) exemption for personnel, medical and similar files the disclosure of which would constitute an invasion of personal privacy is stressed because of the great interest in that exemption and the confusion generated by a series of inconsistent and contradictory court decisions prior to *Perkins*, supra. See, e.g., *Chairman v. Freedom of Information Commission*, 217 Conn. 193 (1991) (establishing “reasonable expectation of privacy” test; query whether subjectively or objectively applied) and *Board of Education v. Freedom of Information Commission*, 210 Conn. 590 (1989) (confirming a “balancing” test), which was overruled by the *Chairman* case.
7. Since the Supreme Court ruling in *Perkins*, supra, all Freedom of Information Commission staff members who conduct such speaking engagements, seminars and programs discuss in detail the rulings in that case and its progeny.
8. As part of my responsibilities as Director of Public Education, I also answer telephone and other inquiries from public officials and the public. Since my employment with said

commission, I have answered thousands of such inquiries, including hundreds of inquiries concerning the Connecticut General Statutes Section 1-210(b)(2) exemption. In responding to such inquiries I discuss in detail the *Perkins* case and its progeny.

9. Based on the foregoing experiences, it is my opinion that the *Perkins* decision, and its progeny, have had a beneficial effect on public officials and the public itself because they can rely on a now long-standing and clear test with respect to the Connecticut General Statutes Section 1-210(b)(2) exemption, which helps them determine whether that exemption is applicable to the practical problems they encounter with respect to personnel, medical and similar information. Indeed, the many court and Freedom of Information Commission decisions applying the *Perkins* test have given public officials and the public a now consistent body of law concerning that statutory exemption.



Eric V. Turner

**COUNTY OF HARTFORD**

**ss: Hartford**

**STATE OF CONNECTICUT**

Subscribed and attested to before me this 9th day of January, 2002.



Mitchell W. Pearlman  
Commissioner of the Superior Court

## JUST THE FACTS, M'AAM, JUST THE FACTS

### The scene is the Not So Pleasantville Superintendent's Office

*(As our drama unfolds, a woman walks into the department and addresses the desk secretary)*

**REQUESTER:** Good afternoon, I'd like to take a look at some of your records.

**SECRETARY:** *(Eyes visitor warily)* records? Yes, of course. They are, for the most part, public records, but there are a lot of reasons I can't let you see some of them.

**REQUESTER:** *(Ignoring the caveat)* OK then, I'd like to see the record of your legal bills for the last ten years.

**SECRETARY:** Well, we have a list of law firms that handle the superintendent's legal problems, you can start with that. But you can't see the bills themselves.

**REQUESTER:** But why can't I just have all the invoices? If you have them in your office here, then they're public records, you know.

**SECRETARY:** Yes, they are public records, but some of them, or at least parts of some of them, can't be given out. Most of those bills identify the kids whose special ed. issues the lawyers were working on. So you're not entitled to see those invoices. Some of the legal bills refer to things that are confidential between the superintendent and the lawyer. So you can't see those bills at all. And some have to do with teacher grievances. So you can't have those, either.

**REQUESTER:** Sounds to me like a lot of double talk and legal mumbo-jumbo. The FOI Act says specifically that you could release those legal bills, if you wanted to. I want to see them.

**SECRETARY:** You are right to a point, but the FOI Act also says that there are certain exemptions allowed to protect the rights of some people and to keep legal advice confidential. So, rather than go around and around, do you want to tell me what you're looking for? If you narrow it down, it will save us some time.

**SECRETARY:** Well, it looks like I don't have much choice and I don't want to bicker with you, so I'll do that. But, I am warning you, I'm going to contact our local advisory board and if they tell me you're making a mistake here, then I will have to file an FOI complaint with the commission in Hartford.

**REQUESTER:** For now, I'll just take records going back five years, to make things easier for you.

**SECRETARY:** *(sighs)* OK, I'll get on this right away. It will take a couple of days, at least.

**REQUESTER:** Days? I don't have that kind of time. I want them now. And you know what else, I need them on a computer disc.

**SECRETARY:** Well guess what? You're going to have to wait a couple of days, because that's as quickly as I can get them for you. And it's going to cost you to get the records on the disc.

**REQUESTER:** That's got to be illegal, but once again, I have no choice. You're holding all the cards.

**SECRETARY:** Trust me, I'm not being difficult, I'm just trying to get you what you have a right to in a reasonable amount of time. And I'll have to scan all our bills onto our computer to be able to put them on a disc for you, the way you want.

*(A few days pass and the Requester returns)*

**REQUESTER:** I'm back. I hope you've got what I'm looking for.

**SECRETARY:** Here's your original list and here is the disc of the legal records that you have a right to see. I also gave you a printout of everything on the disc.

**REQUESTER** *(looking at the printout):* Hey, wait a minute. Why can't I have numbers two and seven on my list?

**SECRETARY:** Those involve a lawsuit by a fired teacher. Those are not disclosable.

**REQUESTER:** That sounds fishy, but how about number five? There's a lot of stuff blacked out on this form. What's the big idea?

**SECRETARY:** The blacked-out material is redacted material. There's information there that could reveal students' identities.

**REQUESTER:** Ooh, sounds very top-secret to me. And why can't I see number 12?

**SECRETARY:** That bill lists all sorts of things that are confidential between the superintendent and her lawyer.

**REQUESTER:** OK, OK, more rhetoric. Just let me look at what you've given me here to make sure I'm not missing anything. Ok, how much do I owe you?

**SECRETARY:** Here, I've got it all broken down for you. You owe us 50 cents per page for the printout. I had to track down all those bills going back five years. And then I had to scan all those records onto the computer and then transfer them to the disc. That took

hours of my time. So you also have to pay my hourly rate, plus the cost of the disc, of course. But I didn't make you pay my overtime – which was a lot!

**REQUESTER:** Big deal. I shouldn't have to pay for you to find the records and put them on the disc. That's not "formatting and programming," like the FOI Act says.

**SECRETARY:** I'm sorry, you are wrong on this one. You're taking up a lot of my time with this silliness. I don't know what statute you're citing, but I've never heard of it. All I know is that we've spent a lot of time and money on this, so you better pay up!

**REQUESTER:** Well, you've told me a lot of stuff I've never heard of either. Either one of us is a good bluffer, or we need some answers on the Freedom of Information Act.

**SECRETARY:** You know, that's one of the most logical things you've said since you walked in here. Before you and I go at it again, how about we call the Freedom of Information Commission and get some guidance.

**REQUESTER:** OK, we'll call a truce. Let's get them on the phone and see what they say.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Rick Guinness and the  
New Britain Herald,

Complainants

against

Docket #FIC 2008-164

Board of Finance,  
City of New Britain,

Respondent

January 29, 2009

The above-captioned matter was heard as a contested case on July 25, 2008, at which time the complainants and the respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with docket #FIC 2008-162, Rick Guinness and the New Britain Herald v. Fire and Police Pension Trustees, City of New Britain; and docket #FIC 2008-172, Rick Guinness and the New Britain Herald v. Mayor's Downtown Steering Committee, City of New Britain.

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. By letter dated March 12, 2008, and filed with the Commission on March 13, 2008, the complainants alleged that the respondent violated the Freedom of Information (hereinafter "FOI") Act by conducting an illegal meeting and denying them access to a portion of a meeting held by the respondent on March 11, 2008. In such complaint, the complainants requested the imposition of a civil penalty against the members of the respondent.
3. It is found that, on March 11, 2008, the Director of Finance for the Town of New Britain conducted a gathering to discuss the budget of New Britain's Board of Education. Two members of the seven-member respondent board were present, as well as several officials from the New Britain Board of Education.
4. It is found that the Director of Finance scheduled the March 11, 2008 gathering to discuss budget recommendations in preparation for a regular meeting of the respondent scheduled to take place on March 24, 2008.
5. It is also found that the respondent did not file any notice or minutes for the gathering held on March 11, 2008.

6. It is found that the complainants were at the March 11, 2008 gathering and were asked to leave at the point where the two members of the respondent were going to discuss the recommended budget.

7. At the hearing on this matter and in its brief to the Commission, the respondent claimed that the May 11, 2008 gathering was a workshop and was not a meeting of the respondent, since a quorum of its members were not present. The complainants assert that the gathering was a meeting.

8. Section 1-225(a), G.S., provides in relevant part that “. . . [t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.”

9. Section 1-200(2), G.S., further provides that:

. . . ‘meeting’ means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency . . . to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.  
(Emphasis added.)

10. It is found that the respondent is a multimember public agency, consisting of seven members, and that two members of the respondent, not comprising a quorum, convened or assembled on March 11, 2008 for a gathering to discuss the New Britain Board of Education’s budget.

11. It is also found that the discussions that took place at the March 11, 2008 gathering did not constitute communication to a quorum of the respondent, but they did concern substantive issues over which the respondent has “supervision and advisory power”, within the meaning of §1-200(2), G.S.

12. It is found that Article X of the Charter of the City of New Britain requires officers of various departments of the City of New Britain to submit budget estimates “using the forms, systems, and/or methods prescribed by the Mayor or his designee.” In this matter, the Director of Finance is such designee.

13. It is found that the method prescribed by the Director of Finance involved submissions of budget recommendations from various New Britain town departments followed by scheduled “budget hearings with individual departments.” It is also found that, although the respondent refers to such budget hearings as “workshops,” Article X of the New Britain City Charter describes the gatherings as “hearings.”



14. The Connecticut Supreme Court has stated, as an application of the general FOIA principle that exceptions to disclosure are narrowly construed, that: “the statutory definition of public meetings contained in §1-18a(b) [re-codified as §1-200(2), G.S.] must be read to limit rather than to expand the opportunities for public agencies to hold closed hearings.” Glastonbury Education Association v. Freedom of Information Commission, 234 Conn. 704, 713-714 (1995). It is also specifically concluded that it is not necessary to have a quorum in order to have a “hearing” or “proceeding”, and therefore a “meeting” pursuant to §1-200(2), G.S. As the Appellate Court stated in Emergency Medical Services Commission of the Town of East Hartford v. Freedom of Information Commission, 19 Conn. App. 352, 355 (1989):

The plain language of General Statutes §1-18a(b) [re-codified as §1-200(2), G.S.] does not require a quorum as a necessary precondition to “any hearing or other proceeding of a public agency....” The word “quorum” does not appear in the clause dealing with “any hearing or other proceeding of a public agency....” The legislature did not define a meeting as any hearing or proceeding of a quorum of a public agency, as it might have done.

*But see* Town of Windham v. Freedom of Information Commission, 48 Conn. App. 529, (1998), appeal dismissed, 249 Conn. 291 (1999), where the Supreme Court declined to clarify the conflict between these two Appellate Court decisions; *See also* Meriden Board of Education v. Freedom of Information Commission, 27 Conn. L. Rptr. 298 (2000); Common Council of the City of Middletown v. Freedom of Information Commission, 16 Conn. L. Rptr. 163 (1996); East Hartford Town Council v. Freedom of Information Commission, 16 Conn. L. Rptr. 121 (1996); Ansonia Library Board of Directors v. Freedom of Information Commission, 42 Conn. Sup. 84 (1991); Bristol v. Freedom of Information Commission, Docket No. 254667, Superior Court, Judicial District of Hartford-New Britain at Hartford, Memorandum of Decision dated April 13, 1983 (Ripley, J.)

15. It is concluded that the March 11, 2008 “budget hearing” or “workshop” was a “hearing” or “proceeding” within the meaning of §1-200(2).

16. It is therefore concluded that the gathering described in paragraphs 3 and 10, above, was a “meeting” of the respondent within the meaning of §1-200(2), G.S.

17. Because the budget hearing was a meeting of the respondent, it is finally concluded that all the FOIA requirements for meetings were applicable (notice, openness and minutes). It is also concluded that the March 11, 2008 meeting of the respondent therefore violated the requirements of §1-225, G.S., as alleged in the complaint.

18. The Commission declines to consider the imposition of a civil penalty in this matter.

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

1. Henceforth, the respondent shall require the budget hearings to comply with all of the requirements of §1-225, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 29, 2009.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Marlin James Lively,

Complainant

against

Docket #FIC 2002-008

Mary Moran, Chairman, Police  
Commission, Town of Trumbull;  
John Riordan, James McNamara,  
Lino Constantini, David Wilson,  
as Members, Police Commission,  
Town of Trumbull; and Police  
Commission, Town of Trumbull,

Respondents

December 11, 2002

The above-captioned matter was heard as a contested case on September 4, 2002, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this case was consolidated with Docket #FIC 2002-009; Marlin James Lively v. Mary Moran, Chairman, Police Commission, Town of Trumbull; John Riordan; James McNamara; Lino Constantini; David Wilson, as members, Police Commission, Town of Trumbull; and Police Commission, Town of Trumbull.

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. By letter of complaint dated December 31, 2001, and filed with the Commission on January 7, 2002, the complainant alleged that the respondents violated the Freedom of Information [hereinafter "FOI"] Act with respect to a December 12, 2001, meeting by not notifying him in writing that his employment would be discussed during an executive session prior to such session; by excluding the complainant from the executive session, and by failing to post motions and votes of such meeting within forty-eight hours. The complainant requested that all actions taken at the December 12, 2001, meeting of the respondent commission be declared null and void; the complainant also asked that the named respondents be assessed civil penalties and that he be awarded costs and attorney's fees.

3. Section 1-225(a), G.S., provides, in relevant part:

[t]he meetings of all public agencies, except executive sessions as defined in subdivision (6) of section 1-200, shall be open to the public....

4. Section 1-200(6), G.S., defines “executive session” to include:

...a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled....

5. It is found that the complainant was acting chief of the Trumbull police department on December 11, 2001. It is also found that the complainant and the respondent chairman met on December 11, 2001, in the complainant’s office. There was conflicting testimony at the hearing in this matter as to what information was given to the complainant at such time; however, it is found that the respondent chairman informed the complainant that his job performance would be discussed under the agenda item “executive session personnel matters” at the meeting of December 12, 2001; that there was concern as to the complainant’s ability to perform his job because of his claim in a federal lawsuit filed against the respondent commission that he had suffered emotional distress; that there was concern, because of such claim, about the complainant carrying a weapon; that the commission was contemplating placing the complainant on administrative leave at the December 12, 2001 meeting; and that the complainant might want to have an attorney with him at the December 12, 2001 meeting.

6. It is found that the complainant and his attorney attended the regular meeting of the respondent commission on December 12, 2001. It is also found that, during such meeting, the respondent Wilson made a motion to convene in executive session for the stated purpose of discussing “personnel matters” [hereinafter “the first executive session”]. It is found that the respondent commission thereupon voted to convene in such session. It is found that the respondent commission did not specify which personnel matters were to be discussed in such session, nor did the respondent commission inform the complainant or any other staff member who might be discussed therein that such person could require that such discussion be held during open session. It is also found that, notwithstanding the fact the complainant had been informed that his job

performance would be discussed under “personnel matters,” neither the complainant nor his attorney objected to the executive session at such time.

7. It is found that the first executive session lasted approximately one hour and included the members of the respondent commission, the first selectman, and at times, the town attorney and the town labor attorney. It is also found that, upon returning to public session, the complainant’s attorney objected to the participation of commissioner Constantini, in any discussion concerning the complainant, including the first executive session, on the grounds of a conflict of interest. It is also found that commissioner Moore, a member of the respondent commission not individually named as party, objected to the first executive session at such time. It is further found that, after some discussion as to the by-laws, commissioner Wilson then stated, “I would like to move ahead with this and ask Chief Lively if he would like the rest of our conversation to be a public session or whether it be in executive session...”

8. It is found that the complainant’s attorney then elected that the discussion be conducted in executive session and that, thereupon, the respondent commission, the first selectman, the town attorney, the complainant, and his attorney convened in executive session [hereinafter “the second executive session.”] It is found that such session lasted a minimum number of minutes, and that, upon entering such session, the complainant was informed that he would be placed on administrative leave with full wage benefits and be required to submit to a fitness for duty review.

9. It is found that, upon reconvening in open session, the respondent commission voted to place the complainant on administrative leave with full wage benefits. It is found that the respondent commission then voted to have a fitness for duty review for the complainant.

10. With respect to the complainant’s allegation that he was improperly excluded from the first executive session, §1-231(a), G.S., provides in relevant part that:

[a]t an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion.....

11. It is concluded that the complainant has no independent right under the FOI Act to attend any executive session of the respondent commission, including a discussion of his job performance. Accordingly, it is further concluded that the respondents did not violate the FOI Act, as alleged in paragraphs 2 and 10, above.

12. With respect to the complainant's allegation that he was not notified in writing that his employment would be discussed during an executive session prior to such session, it is concluded that the FOI Act does not require written notification; however, a public agency must provide meaningful notification to an employee before entering executive session to discuss such employee.

13. The respondents contend that the first executive session was convened to discuss strategy and negotiations with respect to pending litigation, within the meaning of §1-200(6)(B), G.S.

14. It is found that the complainant and the respondent commission are parties in a federal lawsuit that is pending, which the complainant brought, and in which the complainant claimed that he suffered emotional distress caused by the respondent commission.

15. There was conflicting testimony at the hearing as to what was actually discussed during the first executive session. However, it is found that both the lawsuit and the complainant's employment were discussed therein within the meaning of §§1-200(6)(B) and 1-200(6)(A), G.S.

16. It is found that, notwithstanding the discussion between the respondent chairman and the complainant on December 11, 2001, described in paragraph 5, above, the complainant did not question, or object to, the first executive session until after it ended, as described in paragraphs 6 and 7, above. Based upon the facts and circumstances of this case, it is found that the respondents provided the complainant with meaningful notification that his employment would be discussed in the first executive session, within the meaning of §1-200(6)(B), G.S. Accordingly, it is concluded that the respondents did not violate the FOI Act, as so alleged by the complainant.

17. With respect to the complainant's allegation that the respondents failed to post motions and votes of the December 12, 2001, meeting within forty-eight hours, §1-225(a), G.S., provides in relevant part that: "[t]he votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours."

18. It is found that the record of votes of the December 12, 2001, meeting was made available on December 18, 2001. It is also found that such record fails to indicate the vote to enter the first executive session. Accordingly, it is concluded that the respondents violated §1-225(a), G.S., by failing to timely make available such record within forty-eight hours.

19. It is found that, subsequent to the meeting of December 12, 2001, the complainant filed a separate lawsuit in federal court by which he seeks to reverse the actions taken by the respondents relative to his employment at such meeting. It is found that such matter was pending at the time of the hearing in this matter.

20. The Commission declines to declare null and void the actions taken by the respondents at its December 12, 2001, meeting.

21. The Commission declines to assess civil penalties in this matter, and is without jurisdiction to assess costs and attorney's fees.

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

1. The respondent commission shall forthwith amend its meeting minutes of December 12, 2001, to accurately reflect the vote to convene in the first executive session.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 11, 2002.

*The Town of Pleasantville's Board of Finance is about to hold their regular meeting.*

*This is their agenda:*

Town of Pleasantville  
Board of Finance  
AGENDA  
Regular Meeting  
April 3, 2012  
6:00 p.m.

1. Call to order.
2. Discussion of :
  - a. Business Item 1
  - b. Business Item 2
  - c. Business Item 3
3. Possible Executive Session.
4. Adjourn.

*Two board members are huddled in a corner of the room having an intense looking conversation. At the end of their discussion they "fist bump" and walk to the meeting table to take their seats.*

**Chairman:** The regular meeting of the Pleasantville Board of Finance is hereby called to order. I note for the record that all members are in attendance and even though it's only 5:45, we're going to get started. The sooner we start this, the sooner we can get home to dinner!

**Member 1:** But the notice and agenda say six. Don't you think we should wait until 6 o'clock?

**Member 2:** Oh come on...let's just start.

**Chairman:** Yes, thank you. Okay, we're going to take up the First Selectman's request for additional funds under business item one of the agenda.

*Citizen 1 walks in unaware that the meeting has already started.*

**Citizen 1:** Hey folks! How's everybody doing?

**Chairman:** Hey to you too. Please take a seat - we've already started the meeting.

**Citizen 1:** What? But it's not even ten minutes to six!



**Member 1:** Don't worry ... we haven't gotten very far.

*Citizen 1 takes his seat muttering something about calling someone named Tom.*

**Chairman:** Okay, back to business.

**Member 2:** Why does the First Selectman need the extra money?

**Chairman:** Says here for winter snow removal.

**Member 1:** What!?! It only snowed once all winter!

*New Citizen walks in and takes a seat. A brief discussion takes place with Citizen 1 in which they both look at their watches noting that it's just six o'clock.*

**Member 2:** Well maybe it was a mistake. I heard that she was looking for funds for an Easter parade. Maybe we should table it and call a special meeting before Sunday.

**Chairman:** No...I think we should vote on it and if she intended something else, let her make the request. Does everyone have their secret ballot sheets?

**New Citizen:** Aah... excuse me but did you say secret ballot sheets?

**Chairman:** Yes. We're about to vote...please do not interrupt.

**New Citizen:** Well hold on here...I'm new in town but I think I have a right to be heard. I don't think you can vote by secret ballot. I'm mean... you've already started the meeting earlier than the time on the notice that was posted. And the agenda for this meeting is terrible...the only thing a person can figure out is that you're going to discuss three items but it doesn't say what those items are! And now you're going to vote in secret. This is ridiculous!

**Member 1:** Listen, we only started a few minutes early and you can find out what you missed in the minutes.

**Chairman:** And there is nothing wrong with the agenda. We have it that way so we can change what we want to talk about without the hassle of voting. And we have to vote by secret ballot because it helps us vote without fear of retaliation from voters if we don't vote they way they want us.

**New Citizen:** Are you kidding me?

**Citizen 1** (*shaking head in shame*): No...no they are not.

**END**

