DOCKET NO. HHB-CV 13 5015745 S

EDWARD PERUTA, ET AL. : SUPERIOR COURT
: JUDICIAL DISTRICT FICAP# 2012-015
v. : OF NEW BRITAIN FIC# 2012-032
: Atty: KKR
FREEDOM OF INFORMATION :
COMMISSION ET AL. :
: NOVEMBER 7, 2013

MEMORANDUM OF DECISION

General Statutes § 29-28 (d) plainly and unambiguously exempts a public agency from disclosing, under the Freedom of Information Act ("FOIA"), the names and addresses of persons issued a permit to carry a pistol or revolver. This administrative appeal raises the important question of whether the legislature, by enacting this provision, also intended to exempt from the disclosure the names and address of persons who have applied for but not yet received a pistol carry permit. For the reasons set for the below, the court concludes that legislature intended to exempt from mandatory disclosure under the FOIA the names and address of individuals with pending applications for a pistol carry permit.

I

PROCEDURAL HISTORY

This administrative appeal is brought by the plaintiffs, Edward Peruta and American News and Information Services, Inc., from a decision of the Freedom of Information Commission ("Commission") upholding the partial denial of a freedom of information request filed with the Department of Emergency Services and Public Protection ("DESPP"). The defendants in this appeal are the Commission and Rueben Bradford in his capacity as the

Commissioner of the DESPP. The Commissioner was permitted by the trial court, *Cohn., J.*, to intervene in this appeal.

The record discloses the following facts and procedural history. On January 4, 2012, the plaintiffs sent by e-mail a freedom of information request to DESPP seeking disclosure of "any and all computerized information (Name and Town), regarding pending requests for State and National Criminal History Records checks that have yet to be submitted to the FBI CJIS for Permit to Carry Pistols or Revolvers by individuals **who have not yet been issued or are not in possession of a State Permit to Carry Pistols or Revolvers.** This request is for the name of the individual who is the subject of the request and the name of the submitting issuing authority only. This request is made with the knowledge that any information pertaining to an individual in possession of a **CURRENT AND VALID** Permit to Carry Pistols and Revolvers is exempt from disclosure." (Emphasis in original.)

DESPP interpreted this e-mail as a request for the names and addresses of all applicants for a pistol carry permit whose applications were pending as state criminal background checks and federal fingerprint checks were being performed with respect to their applications. On January 18, 2012, DESPP provided the plaintiffs a list of these records, but redacted the applicant's names and addresses.

The plaintiffs appealed to the Commission, challenging DESPP's decision to redact the names and address of individual with pending permit applications. On June 21, 2012, the Commission held a contested case hearing and, in a final decision dated November 14, 2012, concluded that DESPP had not violated the FOIA by redacting the names and addresses. Specifically, the Commission concluded that the records sought were public records within the meaning of the FOIA, but that General Statutes § 29-28 (d) "exempts from mandatory disclosure

the names and addresses of persons whose applications are pending; persons whose applications have been approved; persons whose applications were initially denied but later approved on appeal; and persons who have pending appeals of such denials."

On December 21, 2012, the plaintiffs, who are aggrieved by the decision of the Commission, timely filed this appeal. The parties have all filed written briefs and the court conducted a hearing on the merits of the appeal on September 25, 2013.

II

ANALYSIS

General Statute § 29-28 (d) provides in relevant part: "Notwithstanding the provisions of sections 1-210 and 1-211 [of the Freedom of Information Act], the name and address of a person issued a . . . state or a temporary state permit to carry a pistol or revolver issued pursuant to subsection (b) of this section . . . shall be confidential and shall not be disclosed . . . ."[1] The plaintiffs contend that because the statute plainly and unambiguously creates an exemption from disclosure for the names and addresses of a person *issued* a pistol carry permit but makes no explicit reference to the names and addresses of persons who have applied for, but not yet received, a pistol carry permit, the statute must be construed as creating a FOIA exemption only for the names and addresses of persons who have received a pistol carry permit. According to the plaintiffs, DESPP must disclose the name and address of any person who has a pending application for a permit regardless of whether the person is subsequently issued a permit.

Conversely, DESPP and the Commission contend the plaintiffs' construction of § 29-28 (d) as requiring disclosure of the names and addresses of persons with pending applications vitiates the legislature's intent to protect the confidentiality of permit holders because it would

[1] The statute then provides three exceptions to the general prohibition on disclosure. Only one of these exceptions, however, is relevant to the issue in this appeal. That exception is discussed later in this opinion.

allow an individual to obtain the names and addresses of persons who have applied for a pistol carry permit, compare that list against a list of persons who have been denied a pistol carry permit, and from that comparison discover the names and addresses of persons who have been issued a pistol carry permit. The plaintiffs' construction of the statute, according to DESPP and the Commission, would destroy the very confidentiality the legislature intended by exempting from disclosure the name and address of a person issued a permit. Although the plaintiffs' interpretation carries some surface appeal, because the Commission's long-standing construction of the statute is reasonable and therefore entitled to great weight under the circumstances of this case, the court agrees with the defendants.

This court reviews the Commission's decision pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq. As our Supreme Court recently summarized: "Under the UAPA, it is not the function of [the court] to retry the case or to substitute its judgment for that of the administrative agency. Even for conclusions of law, the court's ultimate duty is only to decide whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. Thus, conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Citation omitted; internal quotation marks omitted) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, 310 Conn. 276, 281-82 (2013).

This case raises a pure question of law because the underlying facts in the administrative record are not in dispute and the parties agree that resolution of this appeal turns on the proper construction of General Statutes § 29-28 (d). Nevertheless, citing *Longley* v. *State Employees Retirement Commission*, 284 Conn. 149, 166, 931 A.2d 890 (2007), the Commission contends that its construction of § 29-28 (d) should be accorded deference because its construction of the statute is "time-tested and reasonable."[2]

In *Longley*, our Supreme Court emphasized that, even if an agency's construction of a statute has not been the subject of judicial scrutiny, the agency's interpretation of the statute is still entitled to significant deference if the agency has consistently followed its construction over a long period of time, that construction has been formally articulated, and its construction is reasonable. Id., 163-64. "Such deference is warranted because a time-tested interpretation, like judicial review, provides an opportunity for aggrieved parties to contest that interpretation. Moreover, in certain circumstances the legislature's failure to make changes to a long-standing agency interpretation implies its acquiescence to the agency's construction of the statute. . . . For these reasons, this court long has adhered to the principle that when a governmental agency's time-tested interpretation of a statute is reasonable it should be accorded great weight by the courts." (Citations omitted; internal quotation marks omitted.) Id., 164.

The Commission first formally articulated it interpretation of § 29-28 (d) over 14 years ago in a 1999 contested case decision. See *Sherman* v. *Board of Firearm Permit Examiners*, FIC Docket # 1998-327 (August 25, 1999). In *Sherman*, the complainant sought to inspect all files of open and closed appeals maintained by the Board of Firearms Examiners, including the names

[2] DESPP also claims that its construction of the statute is entitled to deference. Because the court agrees with the Commission that its construction of § 29-28 (d) is entitled to deference, it is not necessary to reach DESPP's deference argument.

and addresses of each applicant.[3] Following an appeal to the Commission from the denial of the FOIA request, the Commission concluded that, with respect to closed files, the names and addresses of the individuals who had prevailed in their appeal and received a permit were confidential pursuant to General Statutes § 29-28 (d), but that the names and addresses of individuals who were unsuccessful in their appeal must be disclosed. With respect to pending appeals, the Commission concluded that the names and addresses of the applicants were confidential because such applicants may ultimately be issued a pistol permit upon successful prosecution of the appeal.

The Commission next addressed the scope of the exemption from disclosure contained in §29-28 (d) in a 2008 contested case decision. See *Brown* v. *Chief, Police Department, City of Bridgeport*, Docket #FIC 2007-268 (March 26, 2008). In *Brown*, the complainants sought to inspect "any and all pistol applications" submitted over an eleven year period between January 1, 1996 and January 15, 2007. The City of Bridgeport denied the FOIA request with respect to any pistol permit applications that had ultimately been approved, but granted the request with respect to applications that had been rejected. Following an appeal to the Commission, the Commission rejected the same plain language argument that is asserted in the present case, concluding that disclosure of the name and addresses contained on the pistol carry permit applications that were pending or had been approved would frustrate the purpose and intent of the exemption from disclosure contained in § 29-28 (d).

In considering whether the Commission's interpretation of § 29-28 (d) is entitled to significant deference, it is important to note that since the Commission first formally articulated it interpretation of § 29-28 (d) in its 1999 *Sherman* decision, § 29-28 has been amended

[3] Any person who is denied a permit to carry a pistol or revolver may appeal the denial to the Board of Firearm Permit Examiners. See General Statutes § 29-32b (b)

numerous times by the legislature. See Public Acts 2001, No. 01-130; Public Acts 2005, No. 05-283; Public Acts 2007, No. 07-163; Public Acts 2011, No. 11-80; Public Acts 2012, No. 12-77. In each instance, however, the legislature did not amend or clarify subsection (d) in any manner that would suggest disagreement with the Commission's interpretation of it in the *Sherman* or *Brown* decisions. "[W]e have employed the [legislative acquiescence] doctrine not simply because of legislative inaction, but because the legislature affirmatively amended the statute subsequent to a judicial or administrative interpretation, but chose not to amend the specific provision of the statute at issue." *Berkley* v. *Gavin*, 253 Conn. 761, 777, n.11, 756 A.2d 248 (2000). Legislative concurrence is particularly strong if the legislature makes unrelated changes to the same statute. *State* v. *Salamon*, 287 Conn. 509, 525, 949 A.2d 1092 (2008).

Additionally, in the 2013 legislative session, our General Assembly comprehensively reviewed and amended Connecticut's gun laws in the wake of the tragic events at Sandy Hook Elementary School. As part of that process, Representative Dargan of the 115th District introduced House Bill No. 5112, 2013 Sess., which would have amended § 29-28 (d) to eliminate the FOIA exemption for disclosure of the name and address of a person issued a pistol carry permit. House Bill No. 5112 was referred to the Joint Committee on Public Safety and Security, but no public hearing was ever held on the bill and it died in committee.

Therefore, despite repeated amendments to § 29-28 and significant reform of Connecticut's gun laws generally in the 2013 legislative session, there is nothing to indicate any legislative disagreement with the Commission's long-standing interpretation of § 29-28 (d) or any intent to weaken the confidentially protections that the legislature has afforded permit holders. Indeed, the legislature's decision over many years not to amend the provision strongly suggests legislative acquiescence to the Commission's long-standing interpretation of it.

In light of this history, this court concludes that the Commission's interpretation of § 29-28 (d) is long-standing, has been formerly articulated in at least two contested cases and has apparently been acquiesced to by the legislature. The court, therefore, turns to the question of whether the Commission's interpretation of the statutes is reasonable.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, supra, 310 Conn. 283.

There is no dispute in this case that the statute unambiguously exempts from disclosure the name and address of a person issued a pistol carry permit. What is less than clear, however, is whether the confidentiality attaches from the commencement of the permit application process or only after the permit has been issued.

The plaintiffs contend that the absence of any language explicitly exempting names and addresses from disclosure if they are contained on an application for the permit requires a

conclusion that the legislature intended to require the disclosure of the names and addresses of all applicants for a permit, even if some of those applicants are ultimately issued a permit. In other words, relying on *State* v. *Bunkley*, 202 Conn. 629, 640, 522 A.2d 795 (1987), the plaintiffs argue that this court cannot adopt a strained construction of the statute by reading into the words of the provision an exemption that does not plainly appear there.[4]

This court concludes that subsection (d) is not plain and unambiguous because the plaintiffs' construction of it would lead to absurd or bizarre results. See, e.g., *Pictometry International Corp.* v. *Freedom of Information Commission*, 307 Conn. 648, 687-88, 59 A.3d 172 (2013). Indeed, our Supreme Court has emphasized that "[a]lthough we frequently adhere to the literal language of a statute, we are not bound to do so when it leads to unconscionable, anomalous or bizarre results. See, e.g., *Clark* v. *Commissioner of Correction*, 281 Conn. 380, 400-01, 917 A.2d 1 (2007) (rejecting literal construction of statutory language because that construction would be inconsistent with legislative scheme governing same subject matter); *Connelly* v. *Commissioner of Correction*, 258 Conn. 394, 404-05, 780 A.2d 903 (2001) (rejecting literal construction of statute if that construction would result in inequitable and unintended consequences); *Levey Miller Maretz* v. *595 Corporate Circle*, 258 Conn. 121, 133, 780 A.2d 43 (2001) (declining to apply statutory language literally when to do so would lead to bizarre results); *State* v. *Brown*, 242 Conn. 389, 402, 699 A.2d 943 (1997) (declining to apply literal language of statute and rules of practice when that language could not be applied sensibly

[4] This Court also recognizes that there is well-established policy under the FOIA that favors the disclosure of public records and that exceptions to disclosure should be narrowly construed. Nevertheless, as the court recognized in *Gifford* v. *Freedom of Information Commission*, 227 Conn. 641, 652, 631 A.2d 252 (1993), "[t]his rule of construction is not determinative. Indeed, although the act was intended as a general matter to promote openness in government, the act itself recognizes competing interests and the need for some governmental records to remain confidential, at least initially." (Citation omitted).

in that fashion)." (Internal quotation marks omitted) *State* v. *Salamon*, 287 Conn. 509, 524-25, 949 A.3d 1092 (2008).[5]

The plaintiffs' construction of § 29-28 (d) would lead to the bizarre result of destroying the confidentiality of permit holders intended by the statute by requiring local and state officials to disclose the names and addresses of person contained on the permit applications, which applications were obviously necessary for them to file to obtain the permit in the first place. Under the plaintiffs' interpretation, an interested person could make a FOIA request for a list of the names and addresses of all individuals who filed a permit application during a particular period, and then subsequently obtain the names and addresses of all individuals whose applications are subsequently denied. A quick cross-referencing of those two lists would then allow the person to discover the name and address of any "person issued a permit." The legislature could not have intended in one stroke to create confidentiality for persons issued a permit, but to leave a gaping hole in the same provision that would allow the confidentiality to be so easily eviscerated.

Instead, a more reasonable construction of the statute is that the legislature intended to protect the confidentiality of the names and addresses of individuals who are ultimately issued a pistol carry permit. The identity of individuals who fall into that universe or class of persons cannot be finally determined until the permit application process is complete. Under the Commission's reasonable construction of the statute, if a person applies for but is ultimately denied a permit, his name and address must then be disclosed upon request. If, however, that person is granted a permit, then his or her name and address must remain confidential throughout the entire permitting process.

[5] *State* v. *Salamon*, supra, 287 Conn. 509, was decided more than three years after the legislature's adoption of General Statutes § 1-2z, which codified the plain meaning canon of statutory construction.

It is in no way unusual for the legislature to create a statutory scheme in which a public agency's obligation to disclose records cannot be finally determined until an underlying administrative or court proceeding has concluded. For example, certain records of law enforcement agencies may be exempt from disclosure during the pendency of any underlying criminal proceedings. See, e.g., General Statutes § 7-282 (police accident reports available to public after final disposition of related criminal action); General Statutes § 1-215 (after arrest, police must disclose to public either the arrest report, incident report, news release or other similar report of the arrest, but are not required to release all information); accord *Gifford* v. *Freedom of Information Commission*, 227 Conn. 641, 631 A.2d 252 (1993); *Commissioner of Public Safety* v. *Freedom of Information Commission*, 137 Conn. App. 307, cert. granted, 307 Conn. 918, 54 A.3d 562 (2012). At the conclusion of the case, the records may continue to be exempt, or conversely, must be disclosed, depending upon the particular disposition of the criminal proceeding. See, e.g., General Statutes § 54-142a (a) ("Whenever in any criminal case . . . the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased . . . ."); *State* v. *Morowitz*, 200 Conn. 440, 451, 512 A.2d 175 (1986) ("purpose of the erasure statute . . . is to protect innocent persons from the harmful consequences of a criminal charge which is subsequently dismissed" [emphasis altered; internal quotation marks omitted]).

Records of complaints filed against judges with the Judicial Review Council are confidential unless and until the Judicial Review Council determines whether there is probable cause to believe the judge engaged in misconduct. See General Statutes § 51-51*l*. If no probable cause is found, the records may not be disclosed; if probable cause is found, then the records of the proceeding are public. See *Kamasinski* v. *Judicial Review Council*, 44 F.3d 106, 122 (2d Cir.

1992)("Once the JRC has determined whether or not there is probable cause that judicial misconduct has occurred, even Connecticut's most compelling interests cannot justify a ban on the public disclosure of judicial misconduct.")

The Commission's interpretation of § 29-28 (d) is also buttressed when considered in context with its other subsections and the permitting process as a whole. Section 29-28 establishes a two-step permitting process for individuals seeking a permit to carry a pistol. First, the individual seeking to carry a pistol must file an application for a "temporary state permit" with the chief of police or other statutorily designated official of the jurisdiction in which the individual resides or maintains a business. § 29-28 (b). If the applicant demonstrates that he suitable and not otherwise statutorily ineligible for such a permit; see § 29-28 (b) (1) to (10); then the local official may issue a temporary state carry permit to that applicant.

After issuing a temporary state permit, the local issuing authority forwards the original application to the commissioner of DESPP. § 29-28(b). The statute then provides that "[n]ot later than sixty days after receiving a temporary state permit, an *applicant* shall appear at a location designated by the commissioner to receive a state permit." (Emphasis added.) § 29-28(b).

Accordingly, in subsection (b) of the statute, a person issued a temporary state permit is still considered an applicant unless and until the commissioner issues the applicant a state permit. Subsection (d), however, provides that the "name and address of a person issued . . . a state *or temporary state permit*" shall be confidential and not subject to disclosure pursuant to FOIA. (Emphasis added.) Thus, the plaintiffs' contention that subsection (d) does not exempt from disclosure the name and address *of an applicant* for a state permit but does protect the identity of

a person issued a state or temporary state permit conflicts with the legislature's reference to a person issued a temporary state permit *as an applicant.*

In light of this language, a more reasonable interpretation of the statute is that the legislature intended that the permitting process be treated as a continuum of events during which an applicant's name and address should be treated as confidential unless he or she is ultimately denied a permit.

At oral argument in this proceeding, the court inquired whether the Commission and DESSP's construction of §29-28 (d) could be harmonized with subsection (c) of the same statute, which provides that "[n]o [permit] issuing authority may require any sworn member of [a state or local police department] to furnish such sworn member's residence address in a permit application." At first glance, this language would appear superfluous if, as the Commission and DESPP contend, the name and address of an individual who had applied for a permit is already exempt from disclosure unless and until the application is denied.

These provisions, however, may be harmonized when placed in context of the timing of their enactment and the statutory scheme as a whole. First, it is important to note that subsection (c) of § 29-28 was enacted in 1992, that is, prior to the legislature's passage in 1994 of subsection (b), which created the much broader confidentiality protection for the name and address of a person issued a pistol carry permit. Consequently, when subsection (c) was enacted in 1992 the statute did not exempt the names and addresses of any applicant for a pistol carry permit, and subsection (c) was necessary to prevent the disclosure of the home addresses of law enforcement officers.

Second, in the 1994 July Special Session, the legislature debated the passage of House Bill No. 7501, which, as amended, resulted in the enactment of Public Acts, Spec., July 1994,

No. 94-1. The original version of the bill would have removed subsection (c) from § 29-28 as unnecessary, because the bill included the existing language, later codified as subsection (d), that exempts from disclosure the names and addresses of *any* person issued a pistol carry permit. During the legislative debate on House Bill 7501, Representative Prelli of the 63rd assembly district inquired with Representative Lawlor regarding why subsection (c) was being removed, and thereby making public the names and addresses of police officers. Representative Lawlor of the 99th assembly district responded: "[B]ecause we've decided to apply that protection to everyone who holds a permit to carry or certificate of eligibility[6] . . . . So the name and address of everyone who holds a carry permit or a certificate of eligibility will now not be accessible through FOI by any private person, not only police officers and corrections officials." 37 H.R. Proc., Pt. 26, July 1994 Spec. Sess., p. 9531; remarks of Representative Lawlor.

Representative Prelli then raised the point that, even after extending the confidentiality to everyone, it was possible that the name and address of a law enforcement official might still be released under one of the statutory exceptions to confidentiality contained in subsection (d) of § 29-28. Id., 9531. Subsection (d) prohibits disclosure of a person's name and address, except the authority issuing the permit may disclose the information to the extent necessary to comply with a request made pursuant to General Statutes § 29-33. Section § 29-33 makes it a felony for any person to sell or transfer any pistol or revolver to another person who does not have a pistol carry permit or a certificate of eligibility and thus requires sellers to verify with the department that the buyer has a valid carry permit or certificate of eligibility.

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[6] A certificate of eligibility permits a certificate holder to lawfully possess a pistol or revolver but does not authorize the certificate holder to carry the pistol or revolver upon his person. See General Statutes § 29-36g (f). General Statutes § 29-36g (e) makes confidential the names and addresses of persons "issued a certificate of confidentiality" in language virtually identical to that found in § 29-28 (d).

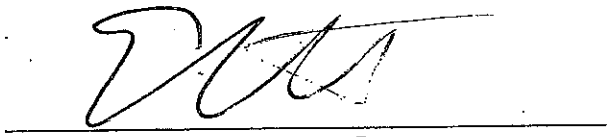
In response to this colloquy, Representative Prelli introduced an amendment (LCO No. 3080; House Amendment I) to House Bill 7501. The amendment restored subsection (c) to § 29-28. In support of the amendment, Representative Prelli remarked that even though he understood that Representative Lawlor had assured the chamber that the names and addresses *all* permit holders would not be available through FOIA, he remained concerned that the names and addresses of law enforcement officials could be disclosed through some loophole. 37 H.R. Proc., supra, pp. 9552-53, remarks of Representative F. Philip Prelli. Representative Lawlor viewed the amendment as friendly and well-intentioned, and supported its passage. Id., p. 9554. The House then restored subsection (c) to the version of the bill that ultimately passed and became Public Acts, Spec. Sess., July 1994, No. 94-1.

This legislative history makes clear, therefore, that the legislature chose not to repeal subsection (c) when subsection (d) was enacted out of an abundance of caution to ensure that the names and addresses of police officers would not be disclosed under any circumstances. Consequently, subsection (c) and (d) can be harmonized and this court's construction of subsection (d) does not render subsection (c) superfluous. If anything, this history suggest the importance placed by the legislature on ultimately protecting the confidentiality of the names and addresses of person ultimate issued a pistol carry permit.

Thus, for all of the reasons set forth above, this court concludes that the Commission properly interpreted § 29-28 (d) to conclude that the legislature intended to exempt from disclosure of the names and addresses contained on the pistol carry permit applications that were pending or had been approved. A contrary conclusion would frustrate the purpose and intent of the explicit exemption from disclosure contained in § 29-28 (d). At the very least, the

Commission's interpretation of the statute is reasonable and therefore, under the circumstances of this case, entitled to deference. Accordingly, the decision of the commission is affirmed.

Judgment shall enter accordingly.



Prescott, J.