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FREEDOM OF INFORMATION



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Don Stacom and the Hartford Courant,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-711

Chief, Police Department, City of New Britain;
and Police Department, City of New Britain,
Respondent(s)

July 5, 2012

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 25, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE July 13, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE July 13, 2012**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE July 13, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Don Stacom
Joseph E. Skelly, Jr., Esq.
Joseph W. McQuade, Esq.

7/5/12/FIC# 2011-711/Trans/wrbp/SDL/LFS/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Don Stacom and the Hartford Courant,

Complainants

against

Docket #FIC 2011-711

Chief, Police Department, City of New Britain;
and Police Department, City of New Britain,

Respondents

June 30, 2012

The above-captioned matter was heard as a contested case on May 2, 2012, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

Anthony Paventi requested and received permission to join as an intervenor in this matter.

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)(A), G.S.
2. It is found that on October 14, 2011, the complainants requested access to the internal investigation concerning Captain Anthony Paventi, along with all supporting records.
3. It is found that on December 29, 2011, the respondents refused to provide the investigation records to the complainants.
4. By letter dated December 29, 2011, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for copies of records. At the hearing in this matter, the complainants requested the imposition of civil penalties.
5. Section 1-200(5), G.S., provides:

Public records or files means any recorded data or information relating to the conduct of the public's business prepared, owned,

used, received or retained by a public agency, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides, in relevant part:

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 ... or (3) receive a copy of such records in accordance with the provisions of section 1-212.

7. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

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

9. The respondents and the intervenor claim that §§1-210(b)(2) and 1-214(b) G.S., permitted them to withhold access to the records.

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. In Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993) ("Perkins"), the Supreme Court set forth the test for an invasion of personal privacy, necessary to establish the exemption at §1-210(b)(2), G.S. The claimant must first establish that the records 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. The Commission takes administrative notice of the multitude of court rulings, Commission final decisions¹, and instances of advice given by the Commission and staff members², which have relied upon the Perkins test, since its release in 1993.

12. It is found that the requested records consist of the internal investigation and supporting records and that they are part of the intervenor's personnel file or similar file, within the meaning of §1-210(b)(2), G.S.

13. Following the hearing in this matter, the respondents submitted the requested records for in camera inspection.

14. Upon careful review of the in camera records, it is found that such records concern serious misconduct allegations against the intervenor, who was a senior commander and head of the professional standards division of the respondent police department.

15. Based on the in camera inspection, it is found that all of the requested records pertain to a legitimate matter of public concern, with the exception of the records identified in paragraph 18, below.

16. It is also found that the information in the requested records is not highly offensive to a reasonable person.

17. It is concluded, therefore, that, with the exception of the records identified in paragraph 18, below, disclosure of the requested records would not constitute an invasion of privacy, within the meaning of §1-210(b)(2), G.S.

18. It is found that the names, dates of birth, home addresses, phone numbers, and photographs of the individuals identified as complainants 1, 2, and 3 in the in camera records do not pertain to a legitimate matter of public concern, and that disclosure of such information would be highly offensive to a reasonable person.

19. It is concluded, therefore, that disclosure of the information referenced in paragraph 18, above, would constitute an invasion of privacy, within the meaning of §1-210(b)(2), G.S.

20. It is found that the respondents refused to provide the requested records to the complainant based on the intervenor's objection to disclosure.

21. With respect to whether it was proper for the respondents to notify the intervenor of the complainants' request and whether it was proper for the respondents to rely on the intervenor's objection, §1-214(b) and (c) provide, in relevant part:

- (b) 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.
- (c) A public agency which has provided notice under subsection (b) of this section shall disclose the records requested unless it

receives a written objection from the employee concerned ... within seven business days from the receipt by the employee ... Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. (Emphasis added.)

22. It is well-settled that personnel records pertaining to the job performance of public officials are not ordinarily subject to any exemption from mandatory disclosure. Personnel records "are presumptively legitimate matters of public concern." *Perkins*, supra, 228 Conn. 168.

23. It is found that the requested records at issue in this matter relate in their entirety to the investigation of serious misconduct by the intervenor. As the complainants noted at the hearing in this matter and in their brief, the investigation in this case was prompted by public allegations of on-duty sexual misconduct by the intervenor when he held a high rank in the respondent police department.

24. Furthermore, it is found that the intervenor was still employed by the respondents when the report was delivered to the town on October 11, 2011, and when the complainants made their request for a copy of the report on October 14, 2011. It is found that the intervenor and the city signed a settlement on December 29, 2011, whereby the intervenor would retire with his pension and the city would forego a pending disciplinary hearing.

25. It is found that it was not reasonable for the respondents to believe that disclosure of the report and supporting would legally constitute an invasion of privacy, except for the few instances where "complainant 1, 2 and 3" are identified, as described in paragraph 18, above.

26. It is concluded, therefore, that the respondents had no duty under §1-214(b), G.S., to notify the intervenor of the complainants' request and should have promptly disclosed the records to the complainants.

27. Furthermore, it is found that the intervenor's objection did not conform to the requirements of §1-214(c), G.S., in that it was not on a form prescribed by the respondents, nor was it signed by Paventi or his collective bargaining representative "under the penalties of false statement that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay."

28. It is found that the intervenor failed to file an objection to disclosure in accordance with the requirements of §1-214(c), G.S.

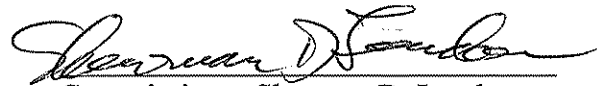
29. Consequently, it is also concluded that the respondents were not entitled to rely on the intervenor's objection in withholding the requested records.

30. Accordingly, it is concluded that the respondents violated §§1-214(b) and (c), G.S., as well as the promptness requirements of §§1-210(a) and 1-212(a), G.S., by refusing to disclose the records requested by the complainants, except for the information referenced in paragraph 18, above.

31. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondents.

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

1. Forthwith, the respondents shall provide the complainants with a copy of the records described in paragraph 2 of the findings, above, free of charge, except for the information that may be redacted, described in paragraph 18 of the findings.


Commissioner Sherman D. London
as Hearing Officer