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FREEDOM OF INFORMATION



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David Godbout,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-260

Chief, Police Department, City of Stamford;
Police Department, City of Stamford;
Commissioner, State of Connecticut,
Department of Emergency Services and Public
Protection; and State of Connecticut,
Department of Emergency Services and Public
Protection,

Respondent(s)

March 12, 2013

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 Thursday, March 28, 2013**. 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 March 20, 2013**. 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 March 20, 2013**. **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 March 20, 2013**, 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: David Godbout; Burt Rosenberg, Esq.; Neil Parille, AAG

3/12/13/FIC# 2012-260/Trans/wrbp/MES/CAL

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

David Godbout,

Complainant

against

Docket #FIC 2012-260

Chief, Police Department, City of
Stamford; Police Department, City
of Stamford; Commissioner, State
of Connecticut, Department of
Emergency Services and Public
Protection; and State of Connecticut,
Department of Emergency Services
and Public Protection,

Respondents

March 12, 2012

The above-captioned matter was first heard as a contested case on October 18, 2012, at which time the complainant and the Stamford respondents appeared and presented testimony, exhibits and argument on the complaint. The matter was again heard on January 15, 2013, for the purpose of receiving evidence from the State of Connecticut respondents, which were added as parties by the hearing officer. At such time, the complainant and all respondents appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated May 12, 2012, the complainant requested that the Stamford respondents provide him with access to ten enumerated categories of records, including the following:
 - a. documents that contain photographs or other renderings that identify all of the city's police officers, either as individuals or otherwise;
 - b. any documents relating to the current police chief (Chief Nivakoff) including but not limited to: resume or CV, academic

courses taken, training records, other records detailing his qualifications, experience, academic experience, and reprimands or similar documents;

c. any documents relating to the current police officer, Lt. Noto including but not limited to: resume or CV, academic courses taken, training records, other records detailing his qualifications, experience, academic experience, and reprimands or similar documents;

d. any documents relating to the current Assistant Police (Chief Fontneau) including but not limited to: resume or CV, academic courses taken, training records, other records detailing his qualifications, experience, academic experience, and reprimands or similar documents;

e. any and all documents relating to the city's or police department's completion of this FOIA request. Documents regarding communications between parties (city & non-city person(s)) produced from the date of receivership of this request to the completion of the FOI request by the city or police department.

3. By letter of complaint dated May 14, 2012 and filed May 15, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for public records. At the outset of the October 18, 2012, hearing in this matter, the complainant stated that his complaint insofar as the five other categories of records listed in his May 12, 2012 request letter was withdrawn, and that the only records remaining at issue in this matter were those listed in paragraph 2, above.

4. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

5. Section 1-210(a), G.S., states, in relevant parts:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or

business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. Section 1-212(a), G.S., state, respectively, in relevant parts:

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

7. It is concluded that, to the extent that they exist, the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. With respect to the records described in paragraph 2.b, 2.c, and 2.d, above, it is found that such records are maintained in the Internal Affairs Division of the respondent police department.

9. It is found that, by email dated June 12, 2012, the Stamford respondents notified the complainant that the records described in paragraph 2.b, 2.c, and 2.d, above would be available for inspection on Friday June 15, 2012 at 3 PM.

10. At the hearing in this matter, the complainant testified that he did not go to the police department to inspect the records because the appointment was for 4 PM and he believed that the Internal Affairs Division closes at 4:30 PM, thereby not giving him enough time to view the records. However, the Commission notes, first, that the appointment was for 3 PM, not 4 PM; and, second, that there is no evidence in the record which suggests that the Stamford respondents would have curtailed his inspection of the records had he kept the appointment, regardless of the closing time of a particular department.

11. Based upon the facts and circumstances of this case, it is concluded that the Stamford respondents did not violate the FOI Act, with respect to the request described in paragraph 2.b, 2.c, and 2.d, above.

12. With respect to the records described in paragraph 2.e, above, it is found that what the complainant was seeking were records which would be created as a result of his request, such as emails or correspondence between members of the respondent police department regarding his request. It is further found that such records were not in existence at the time of the complaint's May 1, 2012 request, and therefore, it is concluded that such records were not public records at such time.

13. It is concluded that the Stamford respondents did not violate the FOI Act, with respect to the request described in paragraph 2.e, above.

14. With respect to the records described in paragraph 2.a, above, the respondents contend that such records are exempt from mandatory disclosure by virtue of §1-210(b)(19), G.S.

15. Section 1-210(b)(19), G.S., provides that nothing in the FOI Act requires the disclosure of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined ... by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency.... Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel;
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and
- (ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water

company operating facilities, collection and distribution systems or sources of supply;

16. In turn, §1-210(d), G.S., provides in relevant part:

Whenever a public agency ... receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the ... Commissioner of Emergency Services and Public Protection ... of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act If the commissioner, after consultation with the chief executive officer of the applicable agency ... believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person....

17. It is found that, upon receiving the request described in paragraph 2.a, above, by letter dated May 3, 2012, the Stamford respondents requested that the respondent Commissioner determine whether such records are exempt from disclosure pursuant to §1-210(b)(19), G.S. In such letter, the Stamford respondents informed the respondent Commissioner of their opinion that disclosure of the requested photographs would present a safety risk to the police officers. It is further found that, by such letter, the Stamford respondents contended that certain police officers are actively engaged in undercover assignments where it is necessary to conceal their identities. By such letter, the Stamford respondents also contended that, since assignments change over time, even if an officer is currently not working undercover, he or she may be required to do so in the future.

18. It is found that, by letter dated May 11, 2012, the respondent commissioner informed the Stamford respondents that he had determined that, with the exception of the Chief and Assistant Chief of the department, disclosure of photographs of all officers would present a safety risk within the meaning of §1-210(b)(19), G.S., since such disclosure could lead to the identification of undercover officers.

19. At the October 18, 2012 hearing, the complainant introduced evidence that in the past, the respondent police department had issued photographs of certain police officers for inclusion in newspaper articles and had included group photographs of certain police officers in annual reports. Additionally, the complainant contended that many officers appear in public in uniform, thereby identifying themselves as officers.

20. Additionally, the complainant contended that Glik v. Cunniff, 655 F. 3d 78 (2011) should apply in this instance. In that case, the federal Court of Appeals for the First Circuit held in part the Boston Police Department violated an individual's First Amendment rights when it stopped him from video recording an arrest made on a public street. That case is distinguishable on its facts from the matter herein. Under Glik, the complainant has a First Amendment right to

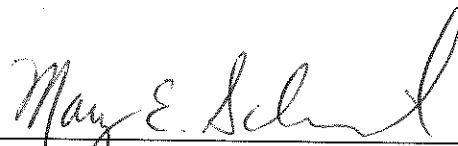
film government officials in public places. That right does not equate to an FOI right to obtain pictures from the police department if an exemption applies.

21. Based upon the facts and circumstances of this case, it is concluded that the respondent Commissioner had reasonable grounds to believe that disclosure of the photographs of every Stamford police officer may result in a safety risk, within the meaning of §1-210(b)(19), G.S.

22. Based upon the foregoing, it is concluded that the respondent Commissioner did not violate the FOI Act when he directed the Stamford respondents to withhold records responsive to the request described in paragraph 2.a, above, from the complainant.

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

1. The complaint is dismissed.



Mary E. Schwind
as Hearing Officer