FREEDOM OF INFORMATION

Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Alexander Wood and the
Manchester Journal Inquirer,
Complainant(s)
against

Chief Public Defender, State of Connecticut, Office of the Chief Public Defender, Division of Public Defender Services; and State of Connecticut, Office of Chief Public Defender, Division of Public Defender Services,
Respondent(s)

Notice of Meeting

Docket #FIC 2012-276

April 15, 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, Ist floor, Hartford, Connecticut, at **2 p.m. on Wednesday, April 24, 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 April 18, 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 April 18, 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 April 18, 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: Alexander Wood
Terrence M. O'Neill, AAG
Peter C. Bowman, Esq.

2013-04-15/FIC# 2012-276/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by | Report of Hearing Officer

Alexander Wood and
the Manchester Journal Inquirer,

Complainants

against | Docket #FIC 2012-276

Chief Public Defender, State of
Connecticut, Office of the Chief
Public Defender, Division of
Public Defender Services; and
State of Connecticut, Office of
Chief Public Defender, Division
of Public Defender Services,

Respondents | April 15, 2013

The above-captioned matter was heard as a contested case on February 7, 2013, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Prior to the contested case hearing, Attorney George Flores and Attorney David Smith, whose records are at issue, moved to intervene in this case as full party respondents. No party objected or otherwise responded to these motions. Accordingly, the motions to intervene were granted.

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 April 29, 2012, Alexander Wood, on behalf of the complainants, made the following request for access to records:

> I request the opportunity to inspect all records in the possession of the Division of Public Defender Services, including the Office of the Chief Public Defender and offices of public defenders for particular judicial districts or geographical areas and specialty units such as the Habeas Corpus Unit and the Capital Defense and Trial Services Unit,

> concerning any arrests or other allegations of misconduct against the following attorneys: George D. Flores and David G.E. Smith. . . If any records are withheld, I request an itemized list of those records together with a statement of the legal rationale for withholding each record. . . .

3. It is found that, by letter dated May 14, 2012, the respondents' acknowledged the complainants' request for access to records. It is further found that acknowledgement letter enclosed ten pages of responsive records. It is found three of ten pages were identical copies of the same one-page letter dated October 8, 2009. It is further found that the respondents informed the complainants that the additional records in their possession were exempt from disclosure pursuant to the following provisions: 1) §1-210(b)(1), G.S.; 2) §1-210(b)(2), G.S.; 3) §1-210(b)(4), G.S.; 4) §1-210(b)(10), G.S.; 5) §1-210(b)(19), G.S.; 6) §1-200(1) and (2), G.S., as amended by Public Act No. 11-22; and 7) Public Act 11-220 §12.

4. By letter dated May 22, 2012 and filed May 23, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for access to public records.

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, 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.

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, (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.

7. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy

of any public record."

8. It is found that the respondents maintain the records described in paragraph 2, above, and it is therefore concluded that such records are "public records" and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

9. At the commencement of the contested case hearing, the complainants made a motion to have the hearing officer conduct an in camera review of the records claimed to be exempt from disclosure. No party objected to the Commission reviewing the records at issue in camera. Accordingly, the hearing officer granted the motion and ordered the records to be produced for an in camera inspection.

10. On February 28, 2013, the respondents submitted the records described in paragraph 2, above, to the Commission for an in camera review (hereinafter the "in camera records"). The in camera records, which were submitted in three separate packages, can be described as follows:

a) 14 pages of records pertaining to Attorney Flores, which shall be identified in the report as IC-AttyA-2012-276-01 through IC-AttyA-2012-276-14;

b) 41 pages of records pertaining to Attorney Smith, which shall be identified in the report as IC-AttyB-2012-276-01 through IC-AttyB-20012-41; and

c) one three-page memorandum prepared by the respondents' Director of Human Resources, which shall be identified in the report as IC-HR-2012-276-01 through IC-HR-2012-276-03.

11. At the hearing on this matter, the agency respondents clarified that the exemption to disclosure that they raised pursuant to §1-210(b)(10), G.S., included both the attorney-client privilege and the common law deliberative process privilege.

12. With regard to the records referred to in paragraphs 10.a, and 10.b, above, the interveners claimed that the records might be exempt from disclosure pursuant to the state's erasure statute or may be subject to a sealing order. The interveners further claimed that an exemption to disclosure may apply to these records based on a collective bargaining provision prohibiting the disclosure of public defenders' personnel files. Counsel represented at the hearing, that if a collective bargaining provision exempted these records in this case, he would clarify this argument in a brief. In addition, the interveners joined in the exemptions raised by the agency respondents pursuant to §1-200(1), G.S., as such section has been amended by Public Act 11-220; §1-210(b)(2), G.S.; and §1-200(b)(19), G.S.

13. In their reply brief, the interveners raise for the first time the following exemptions and/or arguments with regard to the records referred to in paragraphs 10.a and 10.b, above: a) that not all the records submitted for in camera inspection are responsive to

the underlying request for records in this case; b) that the records are exempt pursuant to the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d, et seq. ("HIPAA"); c) that the records are exempt pursuant to the Connecticut Insurance Information and Privacy Protection Act, §38a-975, et seq. ("CIIPPA"); and d) that the "documents may contain file material that may not be subject to disclosure under Federal law."

14. All exemptions or arguments raised will be addressed in this decision regardless of when they were raised. However, the parties' claims with regard to the state's erasure statute, a sealing order, and the exemption pursuant to §1-210(b)(2), G.S. will be addressed at the end of this decision.

15. The agency respondents contend that the in camera records described in paragraph 10.c, above, are exempt from disclosure pursuant to §1-210(b)(1), G.S. and the deliberative process privilege.

16. Section 1-210(b)(1), G.S., provides, in relevant part, that the FOI Act shall not require mandatory disclosure of:

> preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure....

17. Section 1-210(e)(1), G.S., additionally provides in relevant part as follows:

> (e) Notwithstanding the provisions of subdivisions (1) . . . of subsection (b) of this section, disclosure shall be required of:
>
> (1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency....

18. Section 1-210(b)(10), G.S., provides that the FOI Act shall not require mandatory disclosure of:

> (2) Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client

> relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or general statutes, including such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes. (Emphasis supplied).

19. It is the agency respondents' position that the deliberative process privilege is a common law privilege which was incorporated into the FOI Act by way of the 2011 amendment of §1-210(b)(10), G.S. [1]

20. The deliberative process privilege has so little presence in Connecticut's common law that it is necessary to look to federal law for a description of what the law says and the rationale behind it. The deliberative process privilege "has been applied to protect from disclosure intra-governmental documents 'comprising part of the process by which governmental decisions are formulated.'" Zinker v. Doty, 637 F.Supp. 138, 140 (D. Conn. 1986). It is a privilege that is based on the policy of "protecting the decision making process of government agencies," with a focus on the protection documents "reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 150-51 (1975) (internal citations omitted).

21. In 1980, the Connecticut Supreme Court interpreted the phrase "preliminary drafts and notes" in the FOI Act as identical to the deliberative process privilege found in 5 U.S.C. § (b)(5) of the federal Freedom of Information Act, with the exception that, under Connecticut's FOI Act, the public agency carried the additional burden to show that "the public interest in withholding such document clearly outweighs the public interest in disclosure." See Wilson v. FOIC, 181 Conn. 324, 333-340, 435 A.2 353 (1980).

22. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, and added to the FOI Act the language now codified in §1-210(e)(1). See ¶ 17, above.

23. It is found that with adoption of Public Act 81-431, the Connecticut Legislature made clear that the Connecticut FOI Act required more robust disclosure than is required by the deliberative process privilege permitted at the federal level. The Commission will not read the general "common law" language in the 2011 amendments to §1-210(b)(1), G.S., which do not mention the deliberative process privilege, as implicitly overruling the

---

[1] In 2011, the Legislature, with the adoption of Public Act 11-242, amended §1-210(b)(10), G.S., to not require mandatory disclosure of the following kinds of records: "Records, tax returns, reports and statements exempted by federal law or [state] the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or general statutes, including such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes." The underlining signifies language added to the statute, while the bracket signifies language which was deleted.

specific provisions contained in §1-210(e)(1), G.S., nor would such a reading be proper. It is a well settled principle of construction that the specific terms covering the given subject matter will prevail over general language of the same statute which might otherwise prove controlling: "Where there are two provisions in a statute, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one case or subject within the scope of a general provision, then the particular provision must prevail; and if both cannot apply, the particular provision will be treated as an exception to the general provision." Tomlinson v. Tomlinson, 305 Conn. 539, 552-53, 46 A.3d 112 (2012) (internal citations omitted). Furthermore, "implied repeal of a statute is not favored and will not be presumed where, as here, the old and the new statutes can coexist peaceably." Miller's Pond Co. LLC v. New London, 273 Conn. 786, 813, 873 A.2d 965 (2005) (internal citations omitted).

24. Therefore, it is concluded that the specific provisions of §§1-210(b)(1), G.S., and 1-210(e)(1), G.S., control the analysis in this case.

25. While the agency respondents contend that IC-HR-2012-276-01 through IC-HR-2012-276-03 are preliminary drafts or preliminary notes, upon a careful review of these records, it is found that these records comprise a fully developed, cohesive memorandum concerning a single subject.

26. It is found that the Director of Human Resources prepared the memorandum for use by the Chief Public Defender in an executive session portion of a public meeting of the Public Defender Services Commission. It is found that the Public Defender Services Commission meeting was convened, in part, to resolve a matter concerning employee misconduct. It further found that the memorandum was drafted in response to and as a means of advising the Chief Public Defender on options available to the agency upon learning of a public employee's criminal arrest. It is found that careful thought by the Director of Human Resources went into preparing this memorandum. It is found that the memorandum was to be used by the Chief Public Defender in connection with her meeting with the Public Defenders Services Commission. Finally, it is found that the meeting of Public Defender Services Commission resulted in a decision which drew upon and reinforced the pubic agency's administrative precedent regarding the management of employees alleged to have violated the criminal law or otherwise engaged in misconduct.

27. In Strillacci v. FOI Commission, CV084018120S, 2009 Conn. Super. LEXIS 1046, at *7 (Conn. Super. Ct. Apr. 20, 2009), the superior court upheld the Commission's decision that a list containing notes jotted down as a memory aide by the Chief of Police, consisting of his own thoughts, interpretations, and comments about lawsuits filed against him and the officers in his department, was a "note" within the meaning of §1-210(b)(1), G.S., but that such note was not preliminary, and therefore must be disclosed. Citing Shew v. Freedom of Information Commission, 245 Conn. 149, 165, 714 A.2d 664 (1998), the court explained that a document is "preliminary" if it "precedes formal and informed decision making. . . . It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass." In addition, as our Supreme Court has stated, a "preliminary" record is one containing "data not required or

germane to the eventual purpose for which [it] was undertaken and it was therefore modified to excise the material that was irrelevant to its. . . purpose." Van Norstrand v. Freedom of Information Commission, 211 Conn. 339, 343, 559 A.2d 200 (1989).

28. In the present case, as in Strillacci, it is found that the memorandum was used by the Chief Public Defender in the course of her public duties. The document contained fully formed administrative advice from a manager to the Chief. The document was not subject to revision nor did it contain information not "required or germane" to its ultimate purpose. Accordingly, it is found that memorandum is not preliminary, and therefore, is not exempt from disclosure pursuant to §1-210(b)(1), G.S.

29. It is also found that the memorandum is a report comprising part of the process by which governmental decisions and policies were formulated, within the meaning of §1-210(e)(1), G.S.

30. Accordingly, it is concluded that the memorandum is not exempt from disclosure pursuant to §1-210(b)(1), G.S.

31. The agency respondents next contend that the in camera records described in paragraph 10.c, above, are exempt from disclosure pursuant to §1-210(b)(4), G.S.

32. Section 1-210(b)(4), G.S., provides that the FOI Act shall not require mandatory disclosure of:

> Records pertaining to strategy and negotiations which respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled. (Emphasis supplied).

33. It is found that there is no evidence that the agency respondents in this case are involved in a pending claim, or are themselves considering taking legal action of any kind. In fact, the agency respondents' witness readily conceded that the public agency respondents are not currently involved in any such matters concerning the records in question, nor is the agency considering taking "action to enforce or implement legal relief or a legal right" concerning the records in question. See §§1-200(8),(9), G.S.

34. It is therefore concluded that the agency respondents failed to prove that the records in question are exempt from disclosure pursuant to the provisions §1-210(b)(4), G.S.

35. The agency respondents next content that the in camera records described in paragraph 10.c, above, are exempt from disclosure pursuant to §1-210(b)(10), G.S., which permits an agency to withhold from disclosure records of "communications privileged by the attorney-client relationship."

36. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

37. Section 52-146r(2), G.S., defines "confidential communications" as:

> all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

38. The Supreme Court has stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra. at 149.

39. The agency respondents contend that the memorandum prepared by the Director of Human Resources is a privileged attorney-client communication and, at the contested case hearing, they identified the client in such communication as the Division of Public Defender Services.

40. It is found that the respondent agency sought administrative direction from its Director of Human Resources. It is found that the Director of Human Resources is not an attorney. Based on the testimony, it is found that the memorandum, which was not dated, "was prepared to provide the Chief Public Defender with information for discussion with the Commission regarding a personnel matter that did involve misconduct." It is further found that the memorandum contains human resources advice, not legal advice, with a focus on ensuring that the public agency made the very best administrative decision upon learning that a public defender had been arrested with illegal narcotics. It is found that, while this document may have been prepared at the behest of and in consultation with counsel, the weight of the evidence in this case reveals that the Director prepared the memorandum in the course of her regular public duties as the agency's human resources professional.

41. Moreover, based on a careful review of review of the in camera records, it is found the memorandum does not contain attorney-client privileged information, nor does it contain any sort of label indicating that it is a "Confidential Attorney-Client

Communication."

42. It is found that the agency respondents have failed to prove that the documents described in paragraph 10.c, above, are exempt from disclosure pursuant to the attorney-client privilege.[2]

43. The agency respondents next contend, along with the interveners, that all of the in camera records described in paragraph 10, above, are exempt from disclosure pursuant to §1-210(b)(19)(B), G.S.

44. Section 1-210(b)(19)(B), G.S., provides, in relevant part, that the FOI Act shall not require mandatory 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 . . . (B) by the Chief Court Administrator with respect to records concerning the Judicial Department. . . . 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;

[2] In their reply brief, the interveners quote the language of §1-210(b)(10), G.S., and then state the following: "Should any of the documents contain information related to these privileges, the documents should not be disclosed." It is impossible to discern what exemptions to disclosure the interveners seek to invoke with this assertion. As the general rule is disclosure, exemptions are narrowly construed. See Hartford v. FOIC, 201 Conn. 421, 430, 518 A.2d 49 (1986). The party claiming an exemption from the disclosure requirements of the FOI Act bears the burden of establishing the applicability of the exemption. See New Haven v. Freedom of Information Commission, 205 Conn. 767, 775, 535 A.2d 1297 (1988). "This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." Id., at 776. Because this assertion does not contain the kind of specificity necessary to raise an exemption to disclosure, the Commission cannot address it further.

> (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;

45. Section 1-210(d), G.S., provides, in relevant part, as follows:

> In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively, or, in the case of records concerning <u>Judicial Department facilities</u>, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management. (Emphasis supplied).

46. It is found that in-house counsel for the agency respondents determined that the disclosure of records concerning the arrests and/or other allegations of misconduct of two fellow public defenders would constitute a security risk.

47. It is found that, subsequent to this initial determination, there was no consultation with the Chief Court Administrator as to whether there were "reasonable grounds" to believe disclosure of the requested records would constitute a safety risk, pursuant to §1-210(b)(19), G.S. To be clear, it is found that, as of the date of the contested case hearing, 284 days had passed since the agency respondents received the complainants' request for records, and the agency respondents had yet to engage in any consultation with the Chief Court Administrator with regard to this request.

48. Moreover, it is found that records "concerning the arrest or other allegations of misconduct" concerning public defenders do not seem to be the kind of records that §1-210(b)(19), G.S., was meant to address. It is found that this section of the FOI Act is primarily concerned with the safety of government facilities. Section 1-210(d), G.S., which refers back to §1-210(b)(19), G.S., lends support to such construction, as it anticipates that the Chief Court Administrator will be the final authority in determining whether there are reasonable grounds to believe that disclosure of any of the records of the kind described in §1-210(b)(19), G.S., may result in a safety risk to "Judicial Department facilities."

49. While §1-210(b)(19), G.S., does mention "the risk to any person," if the agency respondents sincerely thought that the disclosure of records having to with the criminal arrests and other misconduct of public defenders implicated the kind of safety risk contemplated by this exemption, they should have brought such belief to the attention of the statutory decision maker. See Director, Dep't of Info. Tech. of the Town of Greenwich v. FOIC, et al., 274 Conn. 179, 189, 874 A.2d 785 (2005) (party seeking to invoke §1-210(b)(19), G.S., bears the burden of seeking the required public safety consultation with the applicable decision maker).

50. It is therefore concluded that the agency respondents failed to prove that the records in question are exempt from disclosure pursuant to the provisions §1-210(b)(19), G.S.

51. The agency respondents next contend, along with the interveners, that all of the in camera record described in paragraph 10, above, are exempt from disclosure pursuant to §1-200(1), G.S, as such statutory provision has been amended by Public Act 11-220. In their acknowledgement letter, the agency respondents initially maintained that the records were exempt from disclosure pursuant to both §1-200(1), G.S., and §1-200(2), G.S., and the subsequent amendment of such provisions by Public Act 11-220. However, the claim of exemption pursuant to §1-200(2), G.S., was withdrawn at the contested case hearing.

52. Section 1-200(1), G.S., the first definitional section in the FOI Act, provides as follows:

> "Public agency" or "agency" means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any "implementing agency", as defined in section 32-222.

53. In 2011, the Legislature, with the adoption of Public Act 11-220, amended §18-101f, G.S., entitled "Prohibition against disclosure of certain employee files to inmates under the Freedom of Information Act," in the following manner:

> A personnel or medical file or similar file concerning a current or former employee of <u>the Division of Public Defender Services</u>, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department <u>or division</u> or an investigation by the department <u>or division</u> of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction or confined in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital. For the purposes of this section, an "employee of the Department of Correction" includes a member or employee of the Board of Pardons and Paroles within the Department of Correction. (Emphasis supplied).

54. The underlined language in paragraph 53, above, reveals the language added by Public Act 11-220.

55. The respondents contend that, because Complainant Wood is a member of the press, providing records contained in the personnel file of an employee of the respondent agency to him might lead to the disclosure of these same records to "an individual committed to the custody or supervision of the Commissioner of Correction or confined in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital" because a story reported on by Complainant Wood might reference the personnel records and then such report might be contained in a newspaper that ultimately arrives at a correctional institution or the Whiting Forensic Division of the Connecticut Valley Hospital. The agency respondents did concede at the contested case hearing that they were construing §18-101f, G.S., in an extremely broad manner.

56. Section 1-2a, G.S., entitled, Plain meaning rule, provides as follows:

> The meaning of a statute shall, in the first instance, be ascertained from 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

57. It is found that the plain meaning of the amendments to §18-101f, G.S., evidence the Legislature's desire to prohibit inmates and residents of Whiting Forensic Institute from directly receiving by way of an FOI request tendered by such inmate or such resident the records contained in personnel file an employee of the Division of Public Defenders Services.

58. It is concluded that the meaning of the §18-10f, G.S., is plain and unambiguous. Accordingly, the Commission declines the agency respondents' invitation to include "reporters" alongside inmates and Whiting Forensic Institute residents as an additional class of persons intended to be covered by the amendments contained in Public Act 11-220. Moreover, §1-200(1), G.S., of the FOI Act is a section of the FOI Act containing definitional information, not exemptions to disclosure.

59. It is therefore concluded that the respondents failed to prove that the records in question are exempt from disclosure pursuant to the provisions §1-200(1), as amended by Public Act 11-220.

60. At the contested case hearing, the interveners contended that an exemption to disclosure may apply to the records described in paragraphs 10.a and 10.b, above, based on a collective bargaining provision prohibiting the disclosure of public defenders' personnel files. This argument was not developed by the interveners at the hearing nor was it raised in their post-hearing brief. To the extent that the interveners intended with this language to raise an exemption to disclosure based on Pub. Act No. 11-220, such a contention has already been addressed. However, to the extent that the interveners seek to raise a separate and distinct exemption pursuant to a collective bargaining provision, there is no basis in

the record, either in law or fact, which would allow the Commission to consider such an alternate contention.

61. The agency respondents next contend that the in camera records described in paragraph 10.c, above, are exempt from disclosure pursuant to Public Act 11-51, §12.

62. Section 12 of Public Act 11-51 provides as follows:

> (a) As used in this section:
>
> (1) "Person" means an indigent defendant, as defined in section 51-297 of the general statutes, as amended by this act;
>
> (2) "Confidential communications" means all oral and written communications transmitted in confidence between a public defender and a person the public defender has been appointed to provide legal representation to relating to legal advice sought by the person and all records prepared by the public defender in furtherance of the rendition of such legal advice; and
>
> (3) "Public Defender" means the Chief Public Defender, Deputy Chief Public Defender, public defenders, assistant public defenders, deputy assistant public defenders, Division of Public Defender Services assigned counsel and the employees of the Division of Public Defender Services.
>
> (b) In any civil or criminal case or proceeding or in any legislative or administrative proceeding, all confidential communications shall be privileged and a public defender shall not disclose any such communications unless the person who is represented by the public defender provides informed consent, as defined in the Rules of Professional Conduct, to waive the privilege and allow such disclosure. (Emphasis supplied).

63. It is found that the only evidence in this case that the Division of Public Defender Services is representing a "client" is found in the agency respondents' acknowledgement letter in which Deborah Del Prete Sullivan, Legal Counsel and Executive Assistant Public Defenders, informed the complainants of the following: "Please be advised that as Legal Counsel to this agency I represent Senior Assistant Public Defenders George Flores and David G. E. Smith."

64. However, it is found that evidence presented at the contested case hearing clearly establishes that the agency respondents have never represented a particular external

client with regard to the records at issue in this case, or with regard to the matters which such records concern. It is further found that none of in camera records in this case evidence a communication between a "public defender" and a "person," as such terms are defined within the context of Public Act 11-51, §12.

65. It is therefore concluded that the agency respondents failed to prove that the records in question are exempt from disclosure pursuant to the provisions of Public Act 11-51, §12.

66. With regard to the arguments raised in their reply brief, the interveners first contend that there may be records within the agency respondents' in camera submission that may not be responsive to the underlying request for records. Specifically, the interveners contend that "the [agency] respondents have produced, [for in camera inspection] several pages of the intervening parties' personnel file to the hearing officer and the Freedom of Information Commission. Within this documentation is [sic]several pages of documents that may not be responsive to the request of the complainant. . . . if the information is not related to an arrest, then the information must deal with an 'allegation of misconduct.' If a document does not directly deal with an 'allegation of misconduct' then it is not responsive to the request."

67. It is found that the complainants in this case sought access to records in the agency respondents' possession "concerning" any arrests or other allegations of misconduct of two public defenders. Based on a review of the in camera records submitted, it is found that all of the records submitted for an in camera inspection relate to (and thus "concern") the "arrests [of] or other allegations of misconduct against" two public defenders. Accordingly, it is found that the interveners have failed to prove the records submitted for in camera submission are outside the scope of the underlying request for access in this case.

68. The interveners next contend in their reply brief that the records described in paragraphs 10.a and 10.b, above, are exempt from disclosure pursuant to both HIPAA and CIIPPAA. The interveners cite no specific sections of either the federal or state statute, do not identify which particular records might be exempt under their provisions, and their brief contains no analysis of the law as it applies to the records at issue.[3]

69. With regard to HIPAA, it is found this statute was enacted to safeguard medical information and "to improve the efficiency and effectiveness of the health care system by facilitating the electronic exchange of information with respect to financial and administrative transactions carried out by health plans, health care clearinghouses, and

---

[3] The exact language with regard to both statutes is contained in the interveners' reply brief in a single paragraph, as follows: "Any medical and personal information that may be contained with the [in camera records] should not be disclosed. Under the Health Insurance Portability and Accountability Act, 42 U.S.C. § 38a-975 et seq. (HIPAA) and the Connecticut Insurance Information and Privacy Act, §38a-975 et seq., medical records or documents containing information regarding a persons [sic] health and well-being are precluded from disclosure. This is also the exact type of information sought to be precluded from disclosure under General Statutes §1-210(b)(2). Should the materials contain this medical information, it is precluded from disclosure under the above statutes."

health care providers." See Standards of Privacy of Individually Identifiable Health Information, 67 Fed. Reg. 14776 (Mar. 27, 2002).

70. It is found that HIPAA applies to any entity that is: a health care provider that conducts certain transactions in electronic form; a health care clearinghouse; or a health plan. See 45 C.F.R. §160.103 (2010). It is found that an entity that is one or more of these types of entities is referred to as "a covered entity" in the Administrative Simplification regulations that govern HIPAA and are required to comply with those regulations. See 45 C.F.R. Parts 160, 162, and 164) (2010).

71. As an initial matter, it is found that the agency respondents are not covered entities required to comply with HIPAA regulations. Moreover, it is found that 45 C.F.R. §164.512(a)(1) further provides, in relevant part, as follows:

> (a) Standard: Uses and disclosures required by law.
> (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and use or disclosure complies with and is limited to the relevant portions of such law.

72. It is further found that 45 C.F.R. §164.103 defines "required by law" as:

> a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law [which includes]. . . but is not limited to. . . an administrative body authorized to require the production of information. . . and statutes or regulations that require the production of information. . . .

73. It is concluded that the FOI Act requires by law the disclosure of non-exempt requested records, within the meaning of 45 C.F.R. §164.103. See State of Nebraska ex re. Adams County Historical Society v. Kinyoun, 277 Neb. 749 (2009); Abbott v. Texas Dep't of Mental Health, 212 S.W. 3rd 648 (Tex. 2006); State ex rel. Cincinnati Enquirer v. Daniels, 108 Ohio St. 3d 518 (2006) (state public records laws which require disclosure of records are not in conflict with HIPAA privacy rules exceptions, even for covered entities). Accordingly, it is concluded that none of the in camera records are exempt pursuant to HIPAA regulations.

74. Based on the foregoing, it is concluded that the interveners failed to prove that the records described in paragraphs 10.a and 10.b, above, are exempt from disclosure pursuant to the provisions of HIPAA.

75. With regard to CIIPPA, it is found that §38a-977, G.S., provides as follows:

(a) The obligations imposed by sections 38a-975 to 38a-998, inclusive, shall apply to those insurance institutions, agents or insurance-support organizations which, on or after October 1, 1982: (1) In the case of life, health or disability insurance: (A) Collect, receive or maintain information in connection with insurance transactions which pertains to individuals who are residents of this state or (B) engage in insurance transactions with applicants, individuals or policyholders who are residents of this state, and (2) in the case of property or casualty insurance: (A) Collect, receive or maintain information in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state or (B) engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state.

76. Section 38a-976, G.S., provides the following definitions:

(c) "Agent" shall have the same meaning as "insurance producer", as defined in section 38a-702a.

. . . .

(l) "Insurance institution" means any corporation, limited liability company, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance, including health care centers, as defined in section 38a-175, medical service corporations, as defined in section 38a-214, managed care organizations, as defined in section 38a-478 and hospital service corporations, as defined in section 38a-199. It shall not include agents or insurance-support organizations.

. . . .

(m)(1) "Insurance-support organization" means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information concerning individuals for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including: (A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction, (B) the collection of personal

> information from insurance institutions, agents or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity, or (C) collecting medical record information from, disclosing medical record information to, or collecting medical record information on behalf of an insurance institution or agent in the ordinary course of business, including, but not limited to, utilization review companies, benefit management entities, including, but not limited to, pharmaceutical benefit and disease management entities and information or computer management entities. (2) Notwithstanding subdivision (1) of this subsection, the following persons shall not be considered "insurance-support organizations" for purposes of sections 38a-975 to 38a-998, inclusive: Agents, government institutions, insurance institutions, medical care institutions, medical professionals, pharmacies, universities and schools. (Emphasis supplied).

77. It is found that the interveners have failed to produce any evidence from which it can be determined that the agency respondents are agents, insurance institutions, or insurance-support organizations, as such terms are set forth in CIIPPA. It is therefore concluded that the interveners failed to prove that the records described in paragraphs 10.a and 10.b, above, are exempt from disclosure pursuant to the provisions of CIIPPA.

78. Finally, the interveners contend that the records described in paragraph 10.a and 10.b, above, may be exempt from disclosure pursuant to federal law.[4] To the extent that the interveners intend with such language to raise an exemption to disclosure pursuant to HIPAA, such a contention has already been addressed. However, to the extent that the interveners seek to raise separate and distinct exemptions pursuant to "federal law," there is no basis in the record, either in law or fact, which would allow the Commission to consider such alternate contentions.

79. Finally, the interveners claim that the records described in paragraphs 10.a and 10.b, above, might be exempt from disclosure pursuant to the state's erasure statute, or may be subject to a sealing order. In addition, the agency respondents, along with the interveners, contend that all of in camera records are exempt from disclosure pursuant to §1-210(b)(2), G.S.

[4] The exact language used by the interveners in their reply brief with regard to exemptions to disclosure pursuant to "federal law" is contained in two sentences, as follows: "Also, these documents may contain file material that may not be subject to disclosure under Federal law. The Federal Government, and the employees to which the information is applicable, have not been notified of this case and the disclosure of certain documentation may present a risk of security or other violation of Federal law."

80. Section 54-142a, G.S., entitled "Erasure of Criminal Records," provides, in relevant part, as follows:

> (a) Whenever in any criminal case, on or after October 1, 1969, 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 upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. . . .
>
> . . . .
>
> (e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

81. Section 54-142c, G.S., further provides, in relevant part, as follows:

> (a) The clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records shall not

> disclose to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter.

82. For purposes of §54-142c, G.S., a "criminal justice agency" is defined as including "any . . . government agency created by statute which is authorized by law and engages, in fact, as it principal function in activities constituting the administration of criminal justice."

83. Based on an in camera review of the records, it is found that records described in paragraph 10.b, above, are police and court records (and a few agency records concerning such police and court records), which deal with criminal charges that have been dismissed and erased. It is found that both the dismissal and the erasure of these records occurred before the complainants made the underlying request for access in this case. With regard to the records described in paragraph 10.a, above, it is found that these are neither police nor court records, but rather records received and/or gathered, and created by the respondent agency with regard to, inter alia, an underlying criminal arrest.

84. The complainants contend that, even if the in camera records deal with dismissed criminal charges, the provisions of the erasure statute cited above do not, by their own terms, reach records in the possession of the agency respondents in this case because they are not "the clerk of the court," "any person charged with retention and control of records in the records center of the Judicial Department," or "any law enforcement agency having information contained in such records." Moreover, §54-142(a)(e)(1), G.S., makes clear that the information on erasure is to be forwarded to any law enforcement agency known to have received information on the arrest and to be erased there, just as in the original law enforcement agency.

85. In Estate of Joshua Putnam, et al. v. State of Connecticut, CV095010669, 2009 Conn. Super. LEXIS 3519, at *4-5 (Conn. Super. Ct. 2009), the administratrix of her deceased son's estate brought a wrongful death action against the Department of Correction ("DOC") after her son committed suicide in the DOC's custody. The administratrix noticed depositions of the public defender that represented her son in the underlying criminal matter which resulted in his incarceration, as well as the psychiatrist who had met with her son. The administratrix subpoenaed the public defender and the psychiatrist, ordering them to produce at their depositions the records of the public defender regarding her son. The public defender and the psychiatrist moved to quash the subpoenas, relying on the erasure statutes. In response to the motions, the court reasoned as follows:

> As a result of Joshua's untimely death, the criminal charges against him were dismissed. . . . This statute [§54-142a (a), G.S.] provides that upon dismissal, 'all police and court records and records of any state's attorney pertaining to such charge shall be erased.' The erasure statute does not

> apply to the records of the office of the public defender. This court has found no statute, nor have the attorneys for the [public defender and the psychiatrist] cited any statute, which requires the office of the public defender to erase any records regarding a case which has been dismissed. The court has found no statute, nor have the attorneys for the [public defender and the psychiatrist] cited any statutes, which charges the office of the public defender with the retention of erased records. Section 54-142s(e) does place some restrictions on 'any law enforcement agency having information contained in such erased records' from the disclosure of same. To be sure, the office of the public defender would be loathe to be described as a law enforcement agency. The erasure statute does not apply to the records of the office of the public defender nor to information known to a public defender. (Internal citations omitted).

86. It is found that the erasure provisions of §54-142a, G.S., do not reach records in the possession of the agency respondents, which records were gathered or received by such respondents in connection with the investigation of an employee's misconduct or criminal arrest. It is therefore concluded that the interveners failed to prove that the records described in paragraphs 10.a and 10.b, above, are exempt from disclosure pursuant to the provisions of the state's erasure statute.

87. The interveners also claim that the records described in paragraph 10.a and 10b, above, may be exempt from disclosure pursuant to a sealing order.[5]

88. It is found that there was negligible evidence presented at the hearing (and none was gleaned upon review of the in camera records) to substantiate that the records in this case are subject to the provisions of a sealing order. Counsel questioned Attorney Flores at the contested case hearing as follows: "Is it possible that there are records responsive to Mr. Wood's request that may or may not deal with any arrests that you may or may not have had?" Attorney Flores responded, "It is possible, yes sir." Counsel then asked Attorney Flores, "If there were any orders of any sort-- would you object if there were orders that precluded the disclosure of any documentation to Mr. Wood's request?" Attorney Flores responded, "Yes." This colloquy was the only testimony brought forward with regard to the existence of a sealing order. It is found that such conditional and speculative testimony is not sufficient to prove that the records at issue are subject to a sealing order, let alone that such a sealing order should be construed as an exemption to disclosure.

89. It is therefore concluded that the interveners failed to prove that the records described in paragraphs 10.a and 10.b, above, are exempt from disclosure pursuant to a

[5] The exact language used by the interveners in their reply brief is as follows: "The materials that have been sought by the complainant may include documents that were sealed by Court order. . . ."

sealing order.

90. Finally, the agency respondents and the interveners contend that all of the in camera records are exempt from disclosure pursuant to §1-210(b)(2), G.S.

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

92. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993). 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. The Commission takes administrative notice of the multitude of court rulings, Commission final decisions (Endnote 1), and instances of advice given by the Commission and staff members (Endnote 2), which have relied upon the Perkins test, since its release in 1993.

93. Section 1-214, G.S., provide in relevant part that:

> (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, provided such notice shall not be required to be in writing where impractical due to the large number of employees 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 or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days

> from the date the notice is actually mailed, sent, posted or otherwise given. 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.

94. It is found that the agency respondents timely notified the two public defenders whose records are at issue of the request for access in this case, and that both attorneys timely filed objections to the disclosure of the records, within the meaning of §1-214, G.S.

95. It is found that the records at issue constitute a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

96. At the contested case hearing both of the public defenders testified that it was their belief that the disclosure of any of the in camera records would constitute an invasion of their personal privacy. The public defenders testified that they reviewed IC-AttyA-2012-276-01 through IC-AttyA-2012-276-14, and IC-AttyB-2012-276-01 through IC-AttyB-20012-41, respectively, and that they believed the information contained in these records was personal and private information, which had no bearing on how they performed their jobs or how they handled the criminal cases assigned to them as public defenders. In effect, they testified that the events described in the in camera records did not affect their ability to practice law or defend their clients. They further testified that the records contained information concerning their health, well-being and certain family matters, which if disclosed could cause embarrassment to them and to their families. While they testified that they did not believe that the public had a legitimate interest in the records, they did concede that there were records within the in camera submissions which were responsive to the complainants' request.

97. In addition, the individual public defenders contended that, while they were not permitted to review IC-HR-2012-276-01 through IC-HR-2012-276-03, if these records contained personal, medical or embarrassing information, they would object to their disclosure as well.

98. Upon careful review of the in camera records described in paragraphs 10, above, as well as records submitted into evidence by the complainants, it is found that the records at issue in this case concern separate instances of off-duty conduct resulting in the criminal arrests of two public defenders. It is found that that the public defenders to whom the records pertain have been employed by the Division of Public Defenders Services for over ten years. It is found that there is no evidence in this case that there has ever been a

break in pay for either public defender, especially during the course of the incidents described in the records at issue. It is found that public has a legitimate interest in the criminal arrests or misconduct of any of its public employees, especially public employees who are also officers of the court. It is further found that the public defenders at times represent clients who have associations or involvement in crime and illegal conduct, and who are cooperating in the investigation or prosecution of other people. It is found that an allegation (or evidence) that a public defender has a personal association or involvement with crime or illegal conduct is a legitimate matter of public concern. It is found that a criminal arrest is an allegation of criminal misconduct which gives rise to a legitimate public interest in the underlying allegations.

99. However, based on the finding in paragraph 83, above, it is found that the public has no legitimate interest in arrest records that been erased and, thus, no longer have any legal existence. It is further found that the disclosure of such erased records would be highly offensive to a reasonable person.

100. It is therefore concluded that the disclosure of IC-AttyB-2012-276-01 through IC-AttyB-20012-41 would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. It is therefore concluded that these records are exempt from mandatory disclosure by virtue of §1-210(b)(2), G.S. It further concluded that the agency respondents did not violate the FOI Act by withholding such records from the complainants.

101. It is further found that, to the extent that IC-HR-2012-276-01 through IC-HR-2012-276-03 discusses or identifies any employee in the context of a criminal arrest which has been erased, the public has no legitimate interest in such information and that disclosure of such information would be highly offensive to a reasonable person.

102. It is therefore concluded that the disclosure of those portions of IC-HR-2012-276-01 through IC-HR-2012-276-03 which discuss or identify an employee in the context of an erased criminal arrest would constitute an invasion of person privacy within the meaning of §1-210(b)(2), G.S. It is therefore concluded that such portions of IC-HR-2012-276-01 through IC-HR-2012-276-03 are exempt from mandatory disclosure by virtue of §1-210(b)(2), G.S. It further concluded that the agency respondents did not violate the FOI Act by withholding such portions of the records from the complainants.

103. However, it is found that other than the portions described in paragraph 102, above, the remainder of the records comprising IC-HR-2012-276-01 through IC-HR-2012-276-03 contain information which formed the basis for a personnel decision. It is further found that these records are necessary to and facilitate the public's understanding and evaluation of the agency respondents investigative process, decision-making and overall handling of an important matter involving a fellow public defender.

104. It is therefore found that, other than those portions described in paragraph 102, above, the records described in paragraph 10.c, above, pertain to legitimate matters of public concern. It is further found that, upon redaction of the portions of the records

described in paragraph 102, above, disclosure of the remaining portions of the records would not be highly offensive to a reasonable person.

105. With regard to the contention that the remaining in camera records may include medical information or information concerning the "well-being" of a public defender the disclosure of which would constitute an invasion of personal privacy, the following is found: the disclosure of records pertaining to public employees is presumptively a legitimate matter of public concern. The fact that a personnel file contains evidence of misconduct which may be linked to a medical condition does not, in and of itself, render such records exempt from public disclosure. It is found that remaining in camera records evidence a course of conduct that pertains to the ability of a public defender to effectively and safely perform his public duties. It is found that the behavior described in these records is very serious. It is further found that the more serious the specific behavior, the more a finding of legitimate public concern is warranted concerning the records describing the behavior. It is further found that §1-210(b)(2), G.S., was not intended to shield such conduct from public knowledge.

106. It is concluded, therefore, that with the exception the in camera records specifically identified in paragraph 100, above, and those portions of the in camera records described in paragraph 102, above, disclosure of the remaining records would not constitute an invasion of privacy within the meaning of §1-210(b)(2), G.S. It is further concluded that that the agency respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by denying the complainants' request for access to such records.

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

1. The agency respondents shall forthwith provide the complainants with a copy of the records described in paragraphs 10.a and 10.c., of the findings, above, free of charge. In complying with this order, the agency respondents may redact from the records described in paragraph 10.c, of the findings, above, any information contained in such records that discusses or identifies an employee in the context of an erased criminal arrest.

Valicia Dee Harmon
as Hearing Officer

1. ENDNOTES

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); Town of Enfield v. Freedom of Information Commission, Super Ct JD NB CV 06 4012219 S (Cohn, J. 2007); Chairman, Board of Ethics, Town of Greenwich and Board of Ethics, Town of Greenwich v. Freedom of Information Commission and Michael Aurelia, Super Ct JD NB CV 05 400 7004 S (Owens, J. 2006); 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).

FOIC Decisions

Docket #FIC 2007-580; Town of Putnam and Putnam Board of Education v. Commissioner, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety (May 28, 2008); Docket #FIC 2007-447; Daniel Mathena v. Chief, Police Department, Town of Simsbury (April 23, 2008); Docket #FIC 2007-560; Kenneth D. Goldberg v. Executive Director, Greater Hartford Transit District; and Greater Hartford Transit District (April 9, 2008); Docket #FIC 2007-513; Elizabeth Benton and the New Haven Register v. Chairman, Board of Commissioners, Housing Authority, Town of Derby (April 9, 2008); Docket #FIC 2007-317; James Baker v. Warden, State of Connecticut, Department of Correction, Osborn Correctional Institution (April 9, 2008); Docket #FIC 2007-221; Jon Lender and The

Hartford Courant v. Executive Director, State of Connecticut, Office of State Ethics; General Counsel, State of Connecticut Office of State Ethics; Citizen's Ethics Advisory Board, State of Connecticut, Office of State Ethics; and State of Connecticut, Office of State Ethics (March 26, 2008); Docket #FIC 2007-469; Lawrence C. Sherman v. Board of Education, West Hartford Public Schools (March 12, 2008); Docket #FIC 2007-315; Dawne Westbrook v. Commissioner, State of Connecticut, Department of Correction (January 23, 2008); Docket #FIC 2007-298; Josh Kovner and the Hartford Courant v. Chief, Police Department, City of Middletown (November 14, 2007); Docket #FIC 2007-416; Junta for Progressive Action, Inc.; Unidad Latina en Accion; and The Jerome N. Frank Legal Services Organization v. John A. Danaher III, Commissioner, State of Connecticut, Department of Public Safety (November 8, 2007); Docket #FIC 2006-502; David P. Taylor v. Commissioner, State of Connecticut, Department of Correction (September 12, 2007); Docket #FIC 2007-123; Jessica Crowley and Isabella O'Malley v. Commissioner, State of Connecticut, Department of Public Health (August 8, 2007); Docket #FIC 2006-467; Charlie Santiago Zapata v. Commissioner, State of Connecticut, Department of Correction (August 8, 2007); Docket #FIC 2006-374; Burton Weinstein v. Commissioner, State of Connecticut, Department of Public Safety (July 11, 2007); Docket # 2006-343; Stephanie Reitz and the Associated Press v. Commissioner, State of Connecticut, Department of Correction (June 27, 2007); Docket #FIC 2006-098; Louis J. Russo v. Director, State of Connecticut, University of Connecticut Health Center, Office of Health Affairs Policy Planning; and Dr. Jacob Zamstein (February 28, 2007); Docket #FIC 2006-258; John Orr v. First Selectman, Town of Essex (January 24, 2007); Docket #FIC 2006-242; Ismael Hernandez III v. Director of Labor Relations, Labor Relations Office, City of Bridgeport (January 24, 2007); Docket #FIC 2006-292; Mary Ellen Fillo and The Hartford Courant v. Chief, Volunteer Fire Department, Town of Newington (January 10, 2007); Docket #FIC 2006-121; John Bolton v. Personnel Director, Civil Service Commission, City of Bridgeport; and Civil Service Commission, City of Bridgeport (December 13, 2006); Docket #FIC 2005-571; Alexander Wood and the Manchester Journal Inquirer v. Director, Human Resources Department, Town of Windsor (October 25, 2006); Docket #FIC 2005-535; Alexander Wood and The Manchester Journal-Inquirer v. Director of Human Resources, Town of Windsor (October 25, 2006); Docket #FIC 2005-511; Don Stacom and the Hartford Courant v. John Divenere, Chief, Police Department, City of Bristol (October 11, 2006); Docket #FIC 2005-508; Connecticut State Conference of NAACP Branches v. Chief, Police Department, City of Bristol (October 11, 2006); Docket #FIC 2005-478; Doreen Guarino and the Manchester Journal-Inquirer v. Chief, Police Department, Town of Enfield (September 13, 2006); Docket #FIC 2005-473; Alexander Wood, Heather Nann Collins, and the Manchester; Journal-Inquirer v. Executive Director, State of Connecticut, Board of Education; and Services for the Blind (September 13, 2006); Docket #FIC 2005-448; Susan Raff and WFSB TV v. Mayor, City of Middletown (September 13, 2006); Docket #FIC 2005-615; James E. Simpson v. Chief, Police Department, Town of Seymour (August 23, 2006); Docket #FIC 2005-436; Suzanne Risley and the Waterbury Republican-American v. Chief, Police Department, City of Torrington (August 23, 2006); Docket #FIC 2005-242; Michelle Tuccitto and The New Haven Register v. Chief, Police Department, City of New Haven (May 10, 2006); Docket #FIC 2005-096; Richard Fontana, Jr. v. Board of Fire Commissioners, West Shore Fire District (February 8, 2006); Docket #FIC 2005-058; Glenn C. Morron and William Hertler,

Jr. v. J. Edward Brymer, Chief, Police Department, City of Middletown; Phillip Pessina, Deputy Chief, Police Department, City of Middletown; and Lyn Baldoni, Deputy Chief, Police Department, City of Middletown (January 25, 2006); Docket #FIC 2005-081; Megan Bard and the New London Day v. Superintendent of Schools, Canterbury Public Schools; and Board of Education, Canterbury Public Schools (October 26, 2005); Docket #FIC 2004-289; Lisa A. Coleman v. Chief, Police Department, Town of New Milford (June 22, 2005); Docket #FIC 2004-408; Michael Aurelia v. Chairman, Board of Ethics, Town of Greenwich; and Board of Ethics, Town of Greenwich (May 11, 2005); Docket #FIC 2004-197; Maria McKeon v. Town Manager, Town of Hebron (March 23, 2005); Docket #FIC 2004-159; Jason L. McCoy v. Town Manager, Town of Rocky Hill (March 23, 2005); Docket #FIC 2004-119; Dawne Westbrook v. Chief, Police Department, Town of Rocky Hill; and Robert Catania (February 9, 2005); Docket #FIC 2004-092; Dan Levine v. Public Information Officer, Police Department, City of Hartford (February 9, 2005); Docket #FIC 2004-005; Ralph W. Williams Jr. and The Manchester Journal Inquirer v. State Connecticut, Office of the Governor (Oct. 13, 2004); Docket #FIC 2003-456; Thomas O'Brien v. Chief, Police Department, Town of Waterford (Oct. 13, 2004); Docket #FIC 2003-454; Michael C. Bingham and Business New Haven v. Commissioner, State of Connecticut, Department of Banking (Sept. 22, 2004); Docket #FIC 2003-382; Michael J. McMullen v. Town Administrator, Town of Vernon (Sep. 22, 2004); Docket #FIC 2004-100; Jerry Romaniello and the Greenwich Firefighters Association v. First Selectman, Town of Greenwich (Sept. 8, 2004); Docket #FIC 2003-348; Alexander Wood and the Journal Inquirer, v. Town Manager, Town of South Windsor (Sep. 8, 2004); Docket #FIC 2003-386; Mathew L. Brown and the Willimantic Chronicle, v. President and Chief Executive Officer, Windham Mills Development Corp. (Aug. 11, 2004); 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 2002-531Chris 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. Campion 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. Wynnick 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. Corraro 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; 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 1997-361; Dominick L. Santarsiero v. Director, Human Resources, City of Stamford (June 10, 1998); 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).

2. ENDNOTES

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.

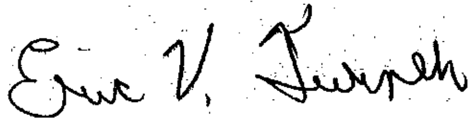
5. Since I assumed my current position in 1996, there have been approximately 290 such speaking engagements, seminars and programs in Connecticut and I have personally lectured in approximately 80 such speaking engagements, seminars and programs.

6. As part of the presentation I have prepared for such speaking engagements, seminars and programs, the subject of the Connecticut General Statues 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