



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Ioannis Kaloidis,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-047

Chief, Police Department, City of Waterbury; and
Police Department, City of Waterbury,

November 22, 2013

Respondent(s)

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 **special meeting** which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at 2 p.m. **on Wednesday, December 18, 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 November 29, 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, an **original and fourteen (14) copies** must be filed *on or before November 29, 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 November 29, 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: Jason M. Lipsky, Esq.
Kevin J. Daly, Esq.

11/22/13/FIC# 2013-047/SpecialMtgTrans/wrbp/MS/PSP/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ioannis Kaloidis,

Complainant

Docket # FIC 2013-047

against

Chief,
Police Department,
City of Waterbury; and
Police Department,
City of Waterbury,

Respondents

November 22, 2013

The above-captioned matter was heard as a contested case on July 8, 2013, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated January 21, 2013, the complainant made a request to the respondents for copies of the following:

[a] Any and all internal affairs reports and/or civilian complaints pertaining to Officer John Sanchez, Badge Number 773;

[b] Any and all internal affairs reports and/or civilian complaints pertaining to Officer Martin Scanlon, Badge Number 748; and

[c] Any and all internal affairs reports and/or civilian complaints pertaining to Officer Ryan Cubells, Badge Number 780.

3. By letter dated January 28, 2013, and filed February 1, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information

("FOI") Act by failing to provide him with copies of the requested records, described in paragraph 2, above. In addition, the complainant requested the assessment of civil penalties against the respondents. The request for civil penalties was later withdrawn at the hearing in this matter.

4. Section 1-200(5), G.S., defines "public records or files" as:

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

5. Section 1-210(a), G.S., 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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

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

8. The respondents contend that, based on a series of cases,¹ whether or not the records at issue are disclosable to the complainant is a determination to be made by the courts and not by the Commission. According to the respondents, since the complainant plans to use the information gleaned from the requested records in the investigation and defense of a client in a pending criminal action, the complainant and his client have to seek relief from the court to obtain the records at issue. In addition, the respondents contend that the courts have gone beyond the privacy standard in Perkins v. FOIC, 228 Conn. 158, 175 (1993) when reviewing a criminal defendant's request to review the personnel files of police officers; therefore, according to the respondents, if the Commission is determined to decide the present matter, it must determine whether the criminal defendant made a showing of having knowledge of some specific information in an officer's personnel file that is related to an issue in the criminal trial.

¹ The respondents cite State v. Betances, 265 Conn. 493 (2003), State v. Erickson, 297 Conn. 164 (2010) and State v. Jones, 140 Conn. App. 455 (2013).

9. The complainant acknowledges that he is an attorney who practices criminal defense law, and that the requested information might prove helpful in the defense of criminal charges against a particular client. However, the complainant also maintains that his request for records was never keyed to any specific law firm client. In addition, the complainant contends that the respondents have failed to prove that the disclosure of the requested records would constitute an invasion of privacy of the officers whose records are at issue.

10. It is found that the complainant's right to access records under the FOI Act and under discovery laws are separate and independent of each other. See Chief of Police v. Freedom of Information Commission, 252 Conn. 377, 386 (2000) ("requests for records under the act are to be determined by reference to the provisions of the act, irrespective of whether they are or otherwise would be disclosable under the rules of discovery...whether civil or criminal"); see also §1-213(b)(1), G.S. ("Nothing in the Freedom of Information Act shall be deemed in any manner to...limit the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state...").

11. It is also found that the complainant's motivation for his records request is irrelevant as to his right to information from the government. See Chief of Police v. Freedom of Information Commission, 252 Conn. 377, 387 (2000) (status or motive of the applicant for disclosure is irrelevant because the FOI Act vindicates the public's right to know, rather than the rights of an individual); Groton Police Department v. Freedom of Information Commission, 104 Conn. App. 150, 165 (2007).

12. It is further found that the cases relied upon by the respondents are cases in which the courts analyzed whether a defendant in a criminal proceeding is entitled to discovery or inspection of personnel records that were sought to impeach the credibility of a witness' testimony. The cases do not interpret the FOI Act and whether the defendants therein have a right to access officers' personnel records under the Act; rather, the cases discuss and decide a criminal defendant's right to discovery or inspection.

13. At the conclusion of the hearing, the respondents submitted unredacted copies of the records, described in paragraph 2, above, to the Commission for an in camera inspection. Such records are hereinafter identified as IC-2013-047-1 through IC-2013-047-37.

14. Section 1-214, G.S., sets forth, in relevant part:

(b) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned, 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.... [emphasis added].

15. It is found that the respondents notified Officers Cubells and Scanlon of the request in this matter, and gave them an opportunity to object to disclosure, which they did. The respondents also attempted to notify Officer Sanchez, who is serving in Afghanistan, but were unable to contact him. In addition, it is found that the respondents notified the union representatives of the three officers whose records are at issue, and gave them, on behalf of such officers, an opportunity to object to disclosure. The union submitted a written objection on behalf of Officers Cubells, Scanlon and Sanchez.

16. Section 1-210(b)(2), G.S., provides that disclosure is not required of “[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy....”

17. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. FOIC, 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 the disclosure of such information is highly offensive to a reasonable person. The Commission takes administrative notice of the multitude of court rulings, commission final decisions (*see endnote 1*), and instances of advice given by the

Commission staff members (*see endnote 2*), which have relied upon the Perkins test, since its release in 1993.

18. It is found that disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern. Perkins, supra, at 174. “[W]hen a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person’s reasonable expectation of privacy is diminished...” Id. at 177. “The public has a right to know not only who their employees are, but also when their public employees are and are not performing their duties.” Id.

19. It is found that the in camera records constitute personnel or similar files within the meaning of §1-210(b)(2), G.S.

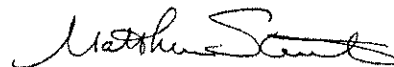
20. An extensive line of cases before the Commission and the courts establish that disclosure of reports of internal investigations of police misconduct does not constitute an invasion of personal privacy, except in the rare case where the misconduct does not relate to official business, and the misconduct is unsubstantiated by the investigation. See e.g., Department of Public Safety v. FOI Commission, 242 Conn. 79, 85 (1997) (report of even unsubstantiated claim of use of excessive force by state trooper not exempt from disclosure).

21. After a careful review of the in camera records at issue, it is found that such records are not exempt from disclosure pursuant to §1-210(b)(2), G.S.

22. Based on the facts and circumstances of this case, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of the records, described in paragraph 2, above, to the complainant.

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

1. Forthwith, the respondents shall provide the complainant with copies of the records, described in paragraph 2, above, free of charge.



Commissioner Matthew Streeter
as Hearing Officer

ENDNOTE 1

A. Court Cases

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

B. FOIC Decisions

Docket #FIC 2003-285; Frank C. Violissi, Jr. v. First Selectman, Town of Chester (May 26, 2004); Docket #FIC 2003-074; Heather M. Henderson v. State of Connecticut, Department of Public Safety, Legal Affairs Department (Dec. 10, 2003); Docket #FIC 2003-020; Hugh Curran v. Mayor, City of Waterbury (Sept. 10, 2003); Docket #FIC 2002-580; Ken Byron and The Hartford Courant v. First Selectman, Town of Westbrook (Sept. 10, 2003); Docket #FIC 2003-038 Chris Dehnel and The Journal Inquirer v. First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2002-531 Chris Dehnel and Journal Inquirer First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2003-055; Robert Mack v. Director, State of Connecticut, Department of Correction, Labor Relations (July 23, 2003); Docket #FIC 2002-345; Josh Kovner, Chris Keating, and The Hartford Courant v. Chief, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-338; Amy L. Zitka and The Middletown Press v. Chief, Police Department, City of Middletown; and Professional Standards Unit Supervisor, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-465; Fred Radford v. Chairman, Police Commission, Town of Trumbull; and Chief, Police Department, Town of

Trumbull (July 9, 2003); Docket #FIC 2002-118; Kimberly W. Moy and the Hartford Courant v. Superintendent of Schools, Southington Public Schools (Feb. 26, 2003); Docket #FIC 2002-020; Maurice Timothy Reidy and The Hartford Courant v. Chief, Police Department, Town of Newington and Brendan Fitzgerald (Oct. 23, 2002); Docket #FIC 2001-489 Jonathan Kellogg, Trip Jennings and Waterbury Republican-American Chief, Police Department, Borough of Naugatuck and Rick Smolicz (Sept. 25, 2002); Docket #FIC 2002-173; Carrie J. 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. Wynn v. Board of Directors, Ansonia Public Library, Town of Ansonia (Dec. 13, 2000); Docket #FIC 2000-136; Thomas E. Lee v. Board of Education, Trumbull Public Schools; and Superintendent of Schools, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC 2000-135; Thomas E. Lee v. Board of

Education, Trumbull Public Schools; and Superintendent of Schools, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC2000-086; Mitchell D. Poudrier v. Superintendent of Schools, Killingly Public Schools (Sept. 13, 2000); Docket #FIC 2000-173; Robert H. Boone and the Journal Inquirer v. Anthony Milano, District Manager, Metropolitan District Commission; and Metropolitan District Commission (Aug. 23, 2000); Docket #FIC 2000-094; James D. Goodwin v. Communications Specialist, State of Connecticut, Department of Social Services, Public and Government Relations Unit (Aug. 9, 2000); Docket #FIC 2000-022; Thedress Campbell v. City Treasurer, City of Hartford (Aug. 9, 2000); Docket #FIC 2000-137; Robert H. Boone and Journal Inquirer v. Metropolitan District Commission (July 12, 2000); Docket #FIC 1999-560; Leo F. Smith v. Robert H. Skinner, First Selectman, Town of Suffield; and Selectmen's Office, Town of Suffield (July 12, 2000); Docket #FIC 1999-556; Delores Annicelli v. Director, New Haven Housing Authority, City of New Haven; and New Haven Housing Authority, City of New Haven (July 12, 2000); Docket #FIC 1999-548; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 1999-547; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 1999-525; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 2000-118; Elizabeth Ganga and Connecticut Post v. Police Department, Town of Stratford (June 28, 2000); Docket #FIC 2000-095; Ron Robillard and the Chronicle v. Chairman, Board of Education, Eastford Public Schools; and Board of Education, Eastford Public Schools (June 28, 2000); Docket #FIC 2000-093; Megan J. Bard and The Norwich Bulletin v. Chairman, Board of Education, Eastford Public Schools; and Board of Education, Eastford Public Schools (June 28, 2000); Docket #FIC 1999-575; Bruce Kaz v. Robert Skinner, First Selectman, Town of Suffield; and Ted Flanders, Building Inspector, Town of Suffield (June 28, 2000); Docket #FIC 1999-519; Robert J. Fortier v. Personnel Director, Town of East Hartford; and Mayor, Town of East Hartford (June 14, 2000); Docket #FIC1999-550; James and Susanne Milewski v. Deputy Chief, Police Department, Town of Clinton; and Police Department, Town of Clinton (May 24, 2000); Docket #FIC 2000-005; Fred B. Feins v. President and Chief Executive Officer, Granby Ambulance Association, Inc., Town of Granby (May 10, 2000); Docket #FIC1999-606; Robert L. Corrado and IBEW Local 90 v. Town Attorney, Town of Hamden; and Electrical Contractors, Inc. (May 10, 2000); Docket #FIC 1999-533; Donald J. Lanouette, Jr. v. Chief, Police Department, Town of Madison; and Police Department, Town of Madison (April 26, 2000); Docket #FIC 1999-502; Christopher Hoffman and New Haven Register v. Director of Personnel, State of Connecticut, Southern Connecticut State University; and Personnel Office, State of Connecticut, Southern Connecticut State University (April 26, 2000); Docket #FIC1999-440; Anne Hamilton and The Hartford Courant James Martino, Chief, Police Department, Town of Avon; Peter A. Agnesi, Lieutenant, Police Department, Town of Avon; and Police Department, Town of Avon (March 8, 2000); Docket #FIC1999-333; Lynn Fredricksen and New Haven Register v. Chief, Police Department, Town of Madison; and Police Department, Town of Madison (March 8, 2000); Docket #FIC 1999-289; Thomas Moran v. Director, Human Resources, Town of Simsbury; and Department of Human Resources, Town of Simsbury (Feb. 9, 2000); Docket #FIC 1999-328; Victor Zigmund v. Director, State of Connecticut, Department of Mental Health and Addiction Services, Human Resources Operations, Connecticut Valley Hospital, Whiting Forensic Division (Jan. 26, 2000); Docket #FIC 1999-100; Janice D'Arcy and The Hartford Courant v. Chief, Police Department, Town of Cheshire; Police Department, Town

of Cheshire; Town Manager, Town of Cheshire; and Town of Cheshire (Jan. 26, 2000); Docket #FIC 1999-355; Wayne Mercier v. Patricia C. Washington, Director of Personnel, City of Hartford; and Department of Personnel, City of Hartford (Nov. 10, 1999); Docket #FIC 1998-391; Jonathan F. Kellogg and The Republican American v. Department of Education, City of Waterbury (Oct. 13, 1999); Docket #FIC 1999-161; Michael W. Cahill v. Chief, Police Department, Town of Hamden; and Police Department, Town of Hamden (Sept. 22, 1999); Docket #FIC 1998-294; Robert J. Bourne v. Department of Public Utilities, City of Norwich, and City of Norwich (Sept. 22, 1999); Docket #FIC 1998-293; Joseph J. Cassidy v. Department of Public Utilities, City of Norwich, and City of Norwich (Sept. 22, 1999); Docket #FIC 1999-040; Judith F. Machuga and State of Connecticut, Division of Public Defender Services, Superior Court, G.A. 13 v. Chief, Police Department, Town of East Windsor; and Police Department, Town of East Windsor (Aug. 25, 1999); Docket #FIC 1999-144; Robert H. Boone and Journal Inquirer v. William Gifford, Chief, Police Department, Town of Windsor Locks; Police Department, Town of Windsor Locks; and Windsor Locks Police Commission (July 28, 1999); Docket #FIC 1999-096; Paul Marks and The Hartford Courant v. Chief, Police Department, Town of Windsor Locks; and Police Department, Town of Windsor Locks (July 28, 1999); Docket #FIC 1999-064; Joan Coe v. First Selectman, Town of Simsbury; Director, Human Resources Department, Town of Simsbury; and Town of Simsbury (July 28, 1999); Docket #FIC 1999-150; Andrew Nargi v. Office of Corporation Counsel, City of Torrington; and City of Torrington (July 14, 1999); Docket #FIC 1999-135; Warren Woodberry, Jr. and The Hartford Courant v. Acting Town Manager, Town of Rocky Hill and Town of Rocky Hill (July 14, 1999); Docket #FIC 1999-015; Richard Manuel Rivera v. Superintendent of Schools, Torrington Public Schools; and Board of Education, Torrington Public Schools (June 9, 1999); Docket #FIC 1998-372; William C. Kaempffer and New Haven Register v. Police Department, City of New Haven; City of New Haven; and James Sorrentino (June 9, 1999); Docket #FIC 1997-361; Dominick L. Santarsiero v. Director, Human Resources, City of Stamford (June 10, 1998); Docket #FIC 1999-019; David K. Jaffe v. State of Connecticut, Connecticut Lottery Corporation, Human Resources; State of Connecticut, Connecticut Lottery Corporation, Security Division; and State of Connecticut, Connecticut Lottery Corporation (April 28, 1999); Docket #FIC 1998-325; Virginia Groark and The Day v. Freedom of Information Officer, State of Connecticut, Department of Public Health, Office of Special Services, Communications Division; and Agency Personnel Administrator, State of Connecticut, Department of Public Health, Human Resources Division (April 28, 1999); Docket #FIC 1998-208; Thedress Campbell v. City Treasurer, City of Hartford; and City of Hartford (April 14, 1999); Docket #FIC 1998-265; Benjamin M. Wenograd and Service Employees International Union Local 760 v. John Roughan, Executive Director, East Hartford Housing Authority; and East Hartford Housing Authority, Town of East Hartford (March 24, 1999); Docket #FIC 1997-363; Diana R. Raczkowski v. Mayor, Town of Naugatuck (March 11, 1998); Docket #FIC 1997-307; Krystin Bratina v. Chief, Hartford Fire Department, City of Hartford (March 11, 1998); Docket #FIC 1998-288; Christian Miller and the New Haven Register v. Superintendent, Branford Public Schools; and Board of Education, Branford Public Schools (Feb. 24, 1999); Docket #FIC 1998-255; Joan O'Rourke v. Chief, Police Department, City of Torrington; and Police Department, City of Torrington (Jan. 27, 1999); Docket #FIC 1998-251; John Ward v. Beverly L. Durante, Personnel Administrator, Housatonic Area Regional Transit; and Housatonic Area Regional Transit (Jan. 27, 1999); Docket #FIC 1998-163; Lawrence A. Butts v. Director, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection,

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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).

ENDNOTE 2

AFFIDAVIT OF ERIC V. TURNER

January 9, 2002

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

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

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

Eric V. Turner

COUNTY OF HARTFORD

ss: Hartford

STATE OF CONNECTICUT

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

Mitchell W. Pearlman
Commissioner of the Superior Court