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FREEDOM OF INFORMATION



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Alexander Wood and the Manchester Journal
Inquirer,

Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-359

Executive Director, State of Connecticut, Board
of Pardons and Parole; Chairman, State of
Connecticut, Board of Pardons and Parole; and
State of Connecticut, Board of Pardons and
Parole,

Respondent(s)

May 7, 2014

Transmittal of Proposed Final Decision

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

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 28, 2014**. 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 May 14, 2014**. 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 May 14, 2014**. **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 May 14, 2014**, 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
Steven R. Strom, AAG

2014-05-07/FIC# 2013-359/Trans/wrbp/TCB//KKR

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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 2013-359

Executive Director, State of Connecticut,
Board of Pardons and Parole; Chairman,
State of Connecticut, Board of Pardons
and Parole; State of Connecticut, Board
of Pardons and Parole,

Respondents

May 7, 2014

The above-captioned matter was heard as a contested case on January 28, 2014, at which time the complainants and the 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. By e-mail dated June 3, 2013, the complainants requested the following from the respondents:

“Copies of any and all pardon certificates with one or more conditions attached that have been issued by the Board of Pardons and Parole (board) since January 1, 2008.”

The complainants stressed that the request was for unredacted copies of the records.

3. It is found that the complainants received a response on June 3, 2013, which indicated that there had been some staff changes and then, by letter dated June 5, 2013, the respondents denied the complainants' request for unredacted copies of the requested records stating that they “are not subject to the FOIA and any person who has custody or

has retained such records shall not disclose to anyone their existence or any information pertaining to such records..." and further that because there are reasonable grounds to believe that disclosure of the records unredacted may result in a safety risk, they are exempt from disclosure. It is found that the respondents provided the complainants with copies of the requested records with the name, date of birth, and information related to criminal record/history redacted.

4. By e-mail dated and received on June 13, 2013, the complainants appealed to this Commission alleging that the respondents violated the Freedom of Information (FOI) Act by denying their request for unredacted copies of the requested 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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

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 requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the hearing on this matter and in their brief, the complainants contended that:

- a. The erasure statute does not apply to the board's records. Section 54-142a(d)(1), G.S., describes the records to be erased as "all police and court records and records of the state's or prosecuting attorney pertaining to such case." Section 54-142a(d)(2), G.S., incorporates this list by reference to "such records." Notably absent from the list of records to be erased are the board's records.
- b. The erasure statute does not apply to pardons with conditions attached. Both §54-142a(d)(1) and (2), G.S., limit their coverage to cases in which a person has received an "absolute pardon."
- c. "Absolute" and "conditional" are opposite in meaning. The complainants offered several dictionaries that list "unconditional" as a synonym for "absolute" and stated that most significantly, the first definition of "absolute" in the Ninth Edition of Black's Law Dictionary, published in 2009, is "free from restriction, qualification, or condition."

and

- d. Connecticut's pardon statute also treats absolute and conditioned pardons as separate entities. Section 54-130a(b), G.S., provides, "the board shall have authority to grant pardons, conditioned, provisional or absolute, for any offense against the state at any time after the imposition and before or after the service of any sentence."

10. After the hearing in this matter, the respondents submitted unredacted copies of the 36 pardon certificates at issue in this matter for in camera inspection. Such records have been identified as IC 2013-359-1 through IC 2013-359-036.

11. The respondents claimed on the in camera index that §1-210(b)(2), G.S., exempts the redacted information found on line 7 of the in camera records and the name of the individual pardoned from mandatory disclosure.

12. Section 1-210(b)(2), G.S., exempts from mandatory disclosure "personnel or medical files and similar files the disclosure of which would constitute an invasion of privacy."

13. Section 1-210(b)(2), G.S., requires the respondents to prove that disclosure of the redacted information described in paragraph 11, above, would constitute an invasion of privacy according to the long-standing test articulated in Perkins v. Freedom of

Information Commission, 228 Conn. 158, 175 (1993), which test has been the standard for disclosure of records pursuant to that exemption since 1993. The Commission takes administrative notice of the multitude of court rulings, and Commission final decisions (Endnote 1), as well as instances of advice given by Commission staff members (Endnote 2), which have relied upon the Perkins test since its release in 1993.

14. Specifically, under the Perkins test, the claimant must first establish that the records in question constitute 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 disclosure of such information is highly offensive to a reasonable person.

15. In Connecticut Alcohol and Drug Abuse Commission, et al, v. Freedom of Information Commission, et al. ("CADAC"), 233 Conn. 28, 41 (1995), the Supreme Court further expounded on the threshold test for the exemption contained in §1-210(b)(2), G.S:

We conclude that such a determination requires a functional review of the documents at issue. Just as a "medical" file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual, a "personnel" file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. If a document or file contains material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is "similar" to a personnel file. Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered "similar" to a personnel file for the purposes of §1-[210](b)(2). (Emphasis added.)

16. It is found that the respondents failed to prove that the in camera records, taken as a whole, are used by the respondents to assist in making employment or medical decisions.

17. It is found that the respondents failed to prove that the in camera records constitute personnel or medical and similar files within the meaning of §1-210(b)(2), G.S.

18. The respondents claimed on the in camera index that §1-210(b)(10), G.S., exempts the redacted information on line 7 of the in camera records from mandatory disclosure.

19. In relevant part, §1-210(b)(10), G.S., permits the nondisclosure of "communications privileged by the attorney-client relationship...."

20. Established Connecticut law defining the attorney-client privilege governs the applicability of the exemption contained in §1-210(b)(10), G.S. Such law is 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.

21. 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....

22. Upon review of the in camera records, it is found that such records are not communications transmitted in confidence between attorneys for the respondents and employees or officials of the respondents relating to legal advice sought by their employees or officials, nor are they records prepared by attorneys for the respondents in furtherance of the rendition of such legal advice, within the meaning of §52-146r(2), G.S.

23. It is found, therefore, that the in camera records are not communications privileged by the attorney-client relationship, within the meaning of §1-210(b)(10), G.S.

24. The respondents also claimed on the in camera index that Conn. Prac. Book §4-7 exempts the redacted information found on line 8 of the in camera records from mandatory disclosure.

25. Connecticut Practice Book §4-7 requires redaction of personally identifying information from documents filed with the court. The rule specifically excludes a person's name from the definition of personal identifying information.

26. It is found, however, that §4-7 of the Connecticut Practice Book is a rule of court. It is concluded that rules of court are not state statutes and, therefore, do not provide an exception to the disclosure requirements of §1-210(a), G.S.

27. The respondents further claimed on the in camera index that §54-63d, G.S., exempts the redacted information found on line 8 of the in camera records from mandatory disclosure.

28. Section 54-63d, G.S., provides:

(e) Except as provided in subsections (f) and (g) of this section, all information provided to the Court Support Services Division shall be for the sole purpose of determining and recommending the conditions of release, and shall otherwise be confidential and retained in the files of the Court Support Services Division, and not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.

(f) The Court Support Services Division shall establish written procedures for the release of information contained in reports and files of the Court Support Services Division, such procedures to be approved by the executive committee of the judges of the Superior Court. Such procedures shall allow access to (1) nonidentifying information by qualified persons for purposes of research related to the administration of criminal justice; (2) all information provided to the Court Support Services Division by probation officers for the purposes of compiling presentence reports; and (3) all information provided to the Court Support Services Division concerning any person convicted of a crime and held in custody by the Department of Correction.

(g) Any files and reports held by the Court Support Services Division may be accessed and disclosed by employees of the division in accordance with policies and procedures adopted by the Chief Court Administrator. (Emphasis added.)

29. It is concluded that §54-63d, G.S., by its terms applies only to information “provided to” the Court Support Services Division (“CSSD”).

30. It is found that there is no evidence in the record of this case that the in camera records were submitted to CSSD.

31. It is found, therefore, that the respondents failed to prove that such records contain information provided to CSSD.

32. Finally, the respondents contended at the hearing on this matter that disclosure of the redacted information would completely undermine the policy behind, and the purpose of, the pardon. They claimed that individuals who receive a pardon are given the assurance that their criminal records are erased and that they can swear under oath that they have not been convicted of a crime. The respondents argued that the certificate is issued to the judicial department as required under §54-130a(d), G.S., and that the criminal information is the same information that is required to be expunged or erased. They argued that to disclose unredacted pardon certificates would make the erasure provisions meaningless.

33. Section 54-124a(d), G.S., provides that “[t]he chairperson shall be the executive and administrative head of said board and shall have the authority and responsibility for ... (4) adopting policies in all areas of pardons and paroles including, but not limited to, granting pardons, commutations of punishments or releases, conditioned or absolute, in the case of any person convicted of any offense against the state and commutations from the penalty of death, risk-based structured decision making and release criteria....”

34. Our United States Supreme Court has stated that “Connecticut’s pardons statute ... grants the board unfettered discretion in the exercise of its power.” *Connecticut Bd. of Pardons and Paroles v. Dumschat*, 452 U.S. 458, 462, 101 S. Ct. 2460, 69 L.Ed.2d 158 (1981). See also *McLaughlin v. Bronson*, 206 Conn. 267, 271, 537 A.2d 1004, 1007 (“the statute vests in the board unfettered discretion in making its pardon and commutation decisions; it imposes no definitions, no criteria, and no mandates....”)

35. Section 54-130a(b), G.S., grants to the respondents “authority to grant pardons, conditioned, provisional or absolute, for any offense against the state at any time after the imposition and before or after the service of any sentence.”

36. Section 54-142a, G.S., the erasure statute, provides:

(d)(1) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction ... and the Superior Court or records center of the Judicial Department shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(2) Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased.

37. It is concluded that the respondent board has the authority to grant three types of pardons: absolute, which is not defined in the statute; conditional, which is also not defined in the statute; and provisional, which removes one or more enumerated barriers to employment or forfeiture of professional licenses.

38. It is found that the respondents have a policy in which any pardon (other than a provisional pardon), whether expressly absolute or whether a condition is attached, is treated as an absolute pardon and results in the erasure of the underlining case file and criminal record. It is found that, to date, the only condition imposed has been the prohibition against obtaining a pistol, revolver or handgun and that in those cases, the respondent board intends for those pardons to be treated as absolute pardons resulting in the erasure of the case file and criminal record.

39. It is found, therefore, that in practice, the respondent board only issues two types of pardons; those that result in expungement/erasure and those that do not (which are provisional pardons).

40. It is found that the respondents have by policy and practice created a subcategory of absolute pardons namely those that are described by the respondents as “full, complete, absolute, conditional” pardons.

41. It is also found that the respondents’ policy and practice in this regard has been publically declared¹ and has been accepted and applied by all affected agencies for over 20 years.

42. However, the Commission has already concluded that a pardon that is absolute cannot also be conditional; that a conditioned absolute pardon is, in fact, a conditioned pardon within the meaning of §54-130a, G.S.; and finally, that the erasure statute does not apply to conditioned pardons. See Docket #FIC 2013-082, Alexander Wood and the Manchester Journal Inquirer v. Chairperson, State of Connecticut, Board of Pardons and Paroles; and State of Connecticut, Board of Pardons and Paroles.

43. Consequently, it is found that the in camera records are conditioned pardons and not absolute pardons and as such, it is concluded that the erasure statute does not apply to the redacted information contained in them.


44. It is concluded, therefore, that the respondents violated §§1-210(a), and 1-212(a), G.S., by failing to provide the complainants with unredacted copies of the requested pardon certificates.

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

¹ See Claimant’s Exhibit F which is a copy of the respondent board’s web page in which the types of pardons that are available are defined.

1. Forthwith, the respondents shall provide the complainants with an unredacted copy of the records described in paragraph 10, above.

2. Henceforth, the respondents shall comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.



Attorney Tracie C. Brown
as Hearing Officer

FIC2013-359/hor/tcb/20140506

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 2002-531 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. Champion 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,

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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,

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(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 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