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FREEDOM OF INFORMATION



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Greenwich Silver Shield Association,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-546

Director, Human Resources Department, Town
of Greenwich; Human Resources Department,
Town of Greenwich; and Town of Greenwich,
Respondent(s)

June 18, 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, July 9, 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 June 27, 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 June 27, 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 June 27, 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


Wendy Paradis

Acting Clerk of the Commission

Notice to: Kevin Greco, Esq.
John Wayne Fox, Esq.
Deborah L. McKenna, Esq.

2014-06-18/FIC# 2013-546/Trans/wrbp/MS/PSP/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Greenwich Silver Shield Association,

Report of Hearing Officer

Complainant

Docket # FIC 2013-546

against

Director, Human Resources Department,
Town of Greenwich; Human Resources
Department, Town of Greenwich; and
Town of Greenwich,

Respondents

June 17, 2014

The above-captioned matter was heard as a contested case on March 27, 2014, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On March 17, 2014, Attorney Deborah L. McKenna filed a motion to intervene in the above-captioned matter on behalf of Captain Pamela Gustovich, who is the subject of the requested records at issue in this matter. At the March 27th hearing, the motion to intervene was granted and Captain Gustovich was granted intervenor status.

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 in May 2013 Pamela Gustovich, who is a Town of Greenwich Police Captain, filed a hostile work environment and discrimination complaint with the Town's Human Resources Department against certain members of the Town's police department, the Chief and Deputy Chief of Police. It is found that the Town hired a third party, Marcum LLP ("Marcum") to conduct an investigation of such complaint. It is also found that, as part of the investigation, Marcum investigators interviewed a number of police department employees and reviewed certain documents provided by Captain Gustovich to Marcum. It is found that Marcum completed and generated a final report relating to Captain Gustovich's claims ("Marcum Report") and submitted the report to the Town.

3. It is found that, by email dated August 19, 2013, the complainant, which represents sworn police officers in the Town of Greenwich Police Department, made a request to the respondents for a copy of the Marcum Report described in paragraph 2, above.

4. It is found that, by email dated August 21, 2013, the respondents informed the complainant that they would send the complainant a copy of the Marcum Report as soon as Captain Gustovich authorized the release.

5. It is found that on or about August 22, 2013, the respondents provided notice to Captain Gustovich that a request was made for a copy of the Marcum Report and informed her that they had yet to release the requested information since its release may constitute an invasion of her privacy. It is also found that Captain Gustovich filed a written objection to the disclosure of the Marcum Report and all other documents pertaining to such report and her complaint of a hostile and discriminatory work environment.

6. It is found that, by email dated August 27, 2013, the respondents informed the complainant that Captain Gustovich objected to the disclosure of the requested records.

7. It is further found that, subsequent to filing the hostile work environment and discrimination complaint with the Town, as described in paragraph 2, above, Captain Gustovich filed a complaint with CHRO¹ that relied upon the facts and circumstances that created the alleged hostile work and discriminatory environment investigated by Marcum as well as other issues that arose subsequent to the Marcum investigation.

8. By letter dated September 4, 2013, and filed on September 11, 2013, the complainant appealed to the Freedom of Information (FOI) Commission alleging that the respondents violated the FOI Act by failing to provide the complainant with a copy of the Marcum Report, described in paragraph 2, above, and requested that the respondents be sanctioned for their failure to produce the records.

9. 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.

10. 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

¹ The Commission takes administrative notice that CHRO is the State of Connecticut Commission on Human Rights and Opportunities.

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. [Emphasis added.]

11. 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.”

12. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

13. The respondents and intervenor claim that the records at issue as described in paragraph 2, above, are exempt from disclosure pursuant to §1-210(b)(2), G.S. Subsequent to the hearing, the respondents submitted an unredacted copy of such records (consisting of 76 pages) to the Commission for an in camera inspection.²

14. 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....”

15. 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.

16. The complainant contends that the Marcum Report at issue does not qualify as a “personnel file.” The complainant also argues that if the Commission concludes that such report qualifies as a “personnel file” for purposes of this matter, the disclosure of the report would not constitute an invasion of Captain Gustovich’s personal privacy. In addition, the complainant argues that if the pending CHRO complaint, described in paragraph 7, above, was filed regarding the same allegations as contained in Captain Gustovich’s hostile work environment and discrimination complaint to the Town, then Captain Gustovich cannot claim privacy concerns.

17. At the hearing and in her post-hearing brief, Captain Gustovich, who was granted

² On the in camera index the respondents claim that the in camera records are exempt pursuant to §1-210(a)(2), G.S. However, it is clear from the administrative record that the respondents and intervenor claim that the records at issue are exempt pursuant to §1-210(b)(2), G.S.

intervenor status, maintained that disclosure of the Marcum Report would be an invasion of her personal privacy and is exempt from disclosure pursuant to §1-210(b)(2), G.S. Captain Gustovich testified that disclosure of the information in the Marcum Report would be highly offensive because it would be used to retaliate against her and others who support her, and would make the situation in the workplace even more volatile. She also argued that the Marcum Report should not be disclosed because she was provided assurances by the respondents that the investigation and any materials provided by her to Marcum, as part of the investigation, would remain confidential, and because the release of such records would discourage public employees from filing discrimination and harassment complaints in the future. In addition, Captain Gustovich suggested that the status of the requester weighs against the disclosure of the records at issue because the requester has its own motivations for seeking the records.

18. It is found that the in camera records, described in paragraph 13, above, constitute personnel or similar files within the meaning of §1-210(b)(2), G.S. See Connecticut Alcohol & Drug Abuse Commission v. Freedom of Information Commission, 233 Conn. 28 (1995) (investigative file of sexual harassment complaint by one employee of state agency against coworker constituted personnel or similar file); see also Docket #FIC 2010-630; Carol Lambiase and the Connecticut Independent Labor Union Local 222 v. City Manager, City of Norwich; and City of Norwich (2011) (preliminary and final recommendations created in connection with a hostile work environment investigation constituted personnel records within the meaning of §1-210(b)(2), G.S.).

19. Section 1-214(b), G.S., provides, 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. [Emphasis added].

20. Section 1-214(c), G.S., provides, in relevant part:

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.... 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...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.

21. It is found that, as described in paragraphs 5 and 6, above, upon receipt of the complainant's request, the respondents notified Captain Gustovich, who lodged an objection to disclosure, and the respondents consequently refused to disclose the requested records, as required by §1-214(c), G.S. However, it is further found that the respondents offered no evidence at the hearing in this matter that any person, on behalf of the respondents, upon receipt of the complainant's request, reviewed the requested records and, based upon such review, reasonably believed that disclosure of such records would legally constitute an invasion of privacy, prior to notifying Captain Gustovich of such request. It is therefore found that the respondents failed to prove that they had a reasonable belief that the disclosure of the Marcum Report would legally constitute an invasion of Captain Gustovich's privacy, as required by §1-214(b), G.S.

22. Based upon the foregoing, it is concluded that the respondents violated §1-214(b), G.S., with regard to the complainant's request for the Marcum Report.

23. It is further found that there is a legitimate public concern in the information contained in the Marcum Report pertaining to an investigation of claims alleging civil rights violations and the creation of a hostile work environment. It is also found that there is a legitimate public interest in the on-duty conduct of police officers and the effective operation of a municipal police agency. See e.g., Rocque v. FOIC, 255 Conn. 651 (2001) (legitimate public concern in information such as the date when and location where harassment allegedly occurred; a letter to the complainant from the assistant commissioner who investigated the complaint, seeking the complainant's cooperation; certain questions posed to witnesses as part of the department's investigation; portions of certain answers to those questions; procedure in questioning witnesses; and the complainant's concern for job-related consequences from the alleged harassment). Based upon careful review of the in camera records, it is further found that disclosure of the Marcum Report would not be highly offensive to a reasonable person.

24. In addition, it is found that any alleged assurances or promises of confidentiality by the Town to Captain Gustovich neither provides an exemption to the disclosure of the Marcum Report, nor in itself establishes the reasonableness of an expectation of privacy. Moreover, in the absence of explicit legal authority for the confidentiality of any information contained in the records at issue, it is further found that any such assurances are contrary to public policy. See Kuresczka v. Freedom of Information Commission, 228 Conn. 271, 280 (1994) (an agency cannot shield public records from disclosure simply by giving assurances of confidentiality). Moreover, it is found that Captain Gustovich's argument regarding a public employee's reticence to file future complaints is without foundation.

25. It is also found that the complainant's motivation for its records request is irrelevant as to its 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).

26. It is concluded that the requested records are not exempt from mandatory disclosure by virtue of §1-210(b)(2), G.S.

27. It is further concluded that the respondents violated §1-210(a), G.S., by withholding the records from the complainant.

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

1. The respondents shall forthwith provide the complainant with copies of the Marcum Report described in paragraph 2 of the findings, above.


Commissioner Matthew Streeter
as Hearing Officer

ENDNOTE 1A. 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. Wynnicks 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,

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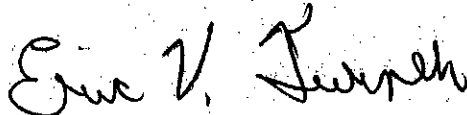
ENDNOTE 2

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