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Patricia Cofrancesco,
Complainant(s)
against

Chief, Police Department, Town of Monroe; Police Department, Town of Monroe and Town of Monroe,
Respondent(s)

Notice of Meeting

Docket #FIC 2015-545

April 6, 2016

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, April 27, 2016.** At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE April 15, 2016***. 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 April 15, 2016***. **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 **fifteen (15) copies** be filed ***ON OR BEFORE April 15, 2016***, 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: Patricia Cofrancesco
John P. Fracassini, Esq.

2016-04-05/FIC# 2015-545/Trans/wrbp/VB//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Patricia Cofrancesco,

Complainant

against

Chief, Police Department, Town of Monroe; Police Department, Town of Monroe; and Town of Monroe,

Respondents

Report of Hearing Officer

Docket #FIC 2015-545

April 5, 2016

The above-captioned matter was heard as a contested case on January 25, 2016, 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, on July 10, 2015, the complainant made a written request to the respondents for records "reflective of calls for assistance at 23 Grist Mill Road, Monroe, CT in calendar year 2013, 2014, and 2015."

3. It is found that upon receipt of the complainant's request, the respondents located responsive records, which consisted of a police report identified as CFS No. 1400022366, which report was in response to a call for service at 23 Grist Mill Road but claimed that the records were exempt from mandatory disclosure in accordance with §1-210(b)(2), G.S.

4. By letter filed on August 20, 2015, the complainant appealed to this Commission, alleging that the respondents failed to provide the responsive records referenced in paragraph 3, above, in violation of the Freedom of Information Act.

5. 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.

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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

8. It is found that the responsive records described in paragraph 3, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the hearing in this matter, the complainant challenged the respondents' reliance on the exemption contained in §1-210(b)(2), G.S., that was claimed by the respondents for the responsive records described in paragraph 3, above.[1]

10. The respondents contended that the responsive records constituted "personnel or medical files and similar files" that are exempt from disclosure in accordance with §1-210(b)(2) due to the records allegedly being related to an incident involving a psychological issue and emergency medical services.

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

12. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993). The claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal

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[1]The Commission notes that the respondents' counsel initially stated that the respondents were only relying on the exemption contained in §1-210(b)(2), G.S., during the hearing in this matter. However, during closing argument, respondents' counsel cited to the confidentiality provision of the Health Insurance Portability and Accountability Act (hereinafter referred to as "HIPPA") but provided no legal analyses regarding its applicability to the present matter in either his closing argument or in respondents' post-hearing brief. HIPAA prohibits a "covered entity" from using or disclosing protected health information. 45 C.F.R. §164.502(a). Covered entities include a "health plan," a "health care clearinghouse," and a "health care provider who transmits any health information in electronic form in connection with a transaction" that HIPAA covers. 45 C.F.R. §164.104(a). The Commission notes briefly that the respondents do not fit within any of those categories.

privacy, the claimant must establish both of two elements; first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

13. Upon order of the hearing officer, the respondents submitted the responsive records described in paragraph 3, above, to the Commission for an in camera inspection (hereinafter referred to as the "in camera records"), which respondents describe as a case incident report and supplemental case incident report (collectively referred to as "Incident Report"). The in camera records consists of three (3) pages, which shall be identified as IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03.

14. Based on the in camera inspection, it is found that IC-2015-545-01 and IC-2015-545-02 consist of an incident report that details a call for service at the residence of a police officer, and IC-2015-545-03 is an incident report detailing follow-up to that call for service.

15. In accordance with the Perkins test, the first determination is whether the record at issue is a personnel or medical file or similar file. That analyses is well established. "We interpret the term 'similar files' to encompass only files similar in nature to personnel or medical files. This interpretation is consistent with our policy of narrowly construing exceptions to the [a]ct." Superintendent of Police v. Freedom of Information Commission, 222 Conn. 621, 627–28 (1992); Hartford v. Freedom of Information Commission, 201 Conn. 421, 432 n. 11 (1986). "The determination whether a file is a "personnel or medical files and similar files" requires "a functional review of the documents at issue." Connecticut Alcohol & Drug Abuse Commission v. Freedom of Information Commission, 233 Conn. 28, 40-41 (1995).

16. With respect to whether a record is a personnel file or similar to a personnel file, the law is also well settled. "[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)." Connecticut Alcohol & Drug Abuse Commission v. Freedom of Information Commission, 233 Conn. 41.

17. It is found that the police officer identified in the Incident Report is not employed by the respondent Monroe Police Department, and that therefore IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03 cannot be used for the purpose of "furnishing of information for making personnel decisions regarding the individual involved." Despite respondents' assertion in their post-hearing brief that disclosure of those records "might have an effect in the personnel file" of the police officer, such speculation about the possible effects of disclosure does not meet the threshold requirement that the file have a "principal purpose" of furnishing information for making personnel decisions for purposes of the exemption contained in §1-210(b)(2), G.S.

18. Consequently, it is concluded that IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03 are neither personnel files nor similar to personnel files.

19. Whether IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03 constitute medical files depends on the purpose of those records. As Connecticut courts have aptly stated, "a medical file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual . . . " Connecticut Alcohol & Drug Abuse Commission v. Freedom of Information Commission, 233 Conn. 41. In State of Connecticut, Department of Public Safety v. Freedom of Information Commission et al., Superior Court, Judicial District of New Britain, Docket No. HHB-CV-08-4018164-S (March 3, 2009, *Schuman, J.),* the court ruled that medical information contained in a police report investigating a suicide is not a "medical file" within the meaning of §1-210(b)(2), G.S.

> While these pages do contain some medical and prescription information about a third party, the obvious function of that information is not to contribute to making a medical decision regarding the third party, but rather to explain the decedent's source of a means to commit suicide. Stated differently, it is apparent from reading the entire six pages that the third party, rather than providing information to a health care professional to assist in medical treatment, rendered the medical information to the police in order to assist in their investigation. The department can establish only that the file contains medical 'information' but not that the file is a 'medical file' under the prevailing definition. Accordingly, the commission reasonably concluded that the six pages do not constitute a medical file and therefore are not exempt from disclosure under the act.

20. Based on the testimony provided by the respondents' witness, it is found that the respondent Police Department responded to a call for service at the residence of a police officer involving a psychological issue and emergency medical services.

21. Respondents' witness further testified, and it is found that while responding to a call for service involving a psychological issue and emergency medical services, a determination may be made that an emergency psychological examination is required based on the responding officers' assessment of the situation. It is further found that once a determination is made that an emergency examination is required, a written emergency examination request must be completed by the responding officers indicating that such an examination is required in accordance with §17a-503(a), G.S.[2]

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[2]Section 17a-503(a) provides that: "Any police officer who has reasonable cause to believe that a person has psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled, and in need of immediate care and treatment, may take such person into custody and take or cause such person to be taken to a general hospital for emergency examination under this section. The officer shall execute a written request for emergency examination detailing the circumstances under which the person was taken into custody, and such request shall be left with the facility. The person shall be examined within twenty-four hours and shall not be held for more than seventy-two hours unless committed under section 17a-502." (Emphasis added)

22. Based on a careful review of IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03, it is found that nothing contained in those records, which records do not include a written emergency examination request pursuant to §17a-503(a), G.S., serves the purpose of "furnishing of information for making medical decisions regarding that individual." Connecticut Alcohol & Drug Abuse Commission v. Freedom of Information Commission, 233 Conn. 40-41. See Lisa A. Coleman v. Chief, Police Department, Town of New Milford, Docket #FIC 2004-289 (June 22, 2005)(medical information contained in police report of motor vehicle accident did not constitute a medical file within the meaning of §1-210(b)(2), G.S.).

23. It is further found that, while IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03, contain limited information related to the mental and physical state of the police officer, there was no evidence produced at the hearing in this matter to show that such information was provided to a health care professional to assist in the medical diagnosis or treatment of that individual. Unlike a written emergency examination request, as described in paragraph 21, above, it is found that the information contained in IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03 was provided to complete the respondent Police Department's "Case/Incident Reports," which are internal records that summarize the actions of the respondent Police Department and were generated for reporting purposes and not for diagnosis and/or treatment purposes.

24. Consequently, it is concluded that IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03 are neither medical files nor similar to medical files.

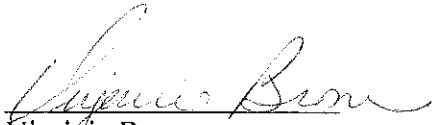
25. As the respondents have failed to prove that IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03 are personnel or medical or similar files within the meaning of §1-210(b)(2), G.S., it is therefore unnecessary for the Commission to determine whether disclosure of those records would constitute an invasion of personal privacy under the second prong of the Perkins test.

26. It is concluded that the respondents violated the disclosure and promptness requirements of §§1-210(a) and 1-212(a), G.S., by refusing to provide a copy of IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03 as requested by the complainant.

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

1. Forthwith, the respondents shall provide the complainant with a copy of IC-2015-545-01, IC-2015-545-02 and IC-2015-545-03.

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



Virginia Brown
as Hearing Officer

FIC2015-545/HOR/VB/04052016