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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-812

Brenda Halpin, Director, Retirement Services Division,
State of Connecticut, Office of the State Comptroller; and
Retirement Services Division, State of Connecticut, Office
of the State Comptroller,
Respondent(s)

May 3, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 25, 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 May 13, 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 May 13, 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 May 13, 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: Nsonsa Kisala
Attorney Natalie Braswell

2016-05-03/FIC# 2015-812/Trans/wrbp/CAL/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Nsonsa Kisala,

Complainant

against

Docket #FIC 2015-812

Brenda Halpin, Director, Retirement Services Division,
State of Connecticut, Office of the State Comptroller; and
Retirement Services Division, State of Connecticut,
Office of the State Comptroller

Respondents

April 4, 2016

The above-captioned matter was heard as a contested case on March 3, 2016, at which time the complainant and the respondents appeared, 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)(A), G.S.
2. It is found that by letter dated November 7, 2015 and email dated November 23, 2015, the complainant requested copies of the application for disability retirement, and all documents related to such application, filed by William Cipollone (the "requested records"). Mr. Cipollone had worked with the complainant at the Department of Public Health.
3. It is found that by email dated November 10, 2015, the respondents acknowledged the complainant's request. By an additional email to the complainant dated November 19, 2015, respondents provided Mr. Cipollone's application for disability retirement with his date of birth, social security number, home address and telephone number redacted. Subsequently, by email dated November 23, 2015, the respondents denied the complainant's request for documents related to the application filed by William Cipollone, stating that disclosure of these records would constitute an invasion of privacy pursuant to §1-210(b)(2), G.S.
4. It is found that, by complaint dated and filed with the Commission on November 30, 2015, the complainant appealed to the Commission, alleging that the failure of the respondents to provide the requested records violated the Freedom of Information Act ("FOIA"). The complainant further alleged that he was entitled to "all

the documents that were submitted to the Medical Examining Board” because Mr. Cipollone’s “third hand smoke” was “a health hazard” that made the complainant “dizzy and sick”. Finally, the complainant requested the imposition of a civil penalty.

5. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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 person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

6. Section 1-210(b), G.S., states in relevant parts:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

...

(2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;

...

(10) Records, tax returns, reports and statements exempted by federal law or the general statutes....

7. Sections 1-214(b) and (c), G.S., state in relevant parts:

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 . . . 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.

...

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....

8. Section 12-15, G.S., provides in pertinent parts:

(a) No officer or employee, including any former officer or former employee, of the state or of any other person who has or had access to returns or return information in accordance with subdivision (12) of subsection (b) of this section shall disclose or inspect any return or return information, except as provided in this section.

...

(h) For purposes of this section:

...

(2) "Return information" means a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax underreportings, tax overreportings, or tax payments, whether the taxpayer's return was, is being, or will be examined or subjected to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense. "Return information" does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

9. It is found that, by letter dated January 20, 2016, the respondents informed Mr. William Cipollone of the complainant's request for records and the related complaint filed with the Commission, citing §1-214(b), G.S. Mr. Cipollone responded by calling counsel for the respondents, Natalie Braswell, on the telephone and transmitting to her by facsimile his written objection to release of the requested records. In the telephone conversation, Mr Cipollone stated that he would be unable to participate in a hearing before the Commission due to his terminal illness.

10. At the hearing, the respondents generally characterized the requested records that have not been disclosed as actual medical records including descriptions of medical treatment and medications, as well as Mr. Cipollone's own description of his medical condition. Counsel for the respondents stressed that the review of applications for disability retirement are based entirely on the written record. In contrast, the complainant emphasized his right to know the nature of Mr. Cipollone's illness that, the complainant alleged, had made him dizzy when he came in contact with Mr. Cipollone's breath. The complainant argued that Mr. Cipollone made everybody sick in the entire building where Mr. Cipollone worked.

11. Also at the hearing, counsel for the respondents stated that she would disclose additional records to the complainant, including the determination by the Medical Examining Board granting Mr. Cipollone a disability retirement pension. By email dated March 11, 2016, the respondents forwarded fifteen pages of records to the complainant including the Notice of Decision approving non-service connected disability of William Cipollone. On these additional records, Mr. Cipollone's medical diagnosis, date of birth and his home address were redacted. See Director, Retirement and Benefits Services Division, Office of the Comptroller v. FOIC, 256 Conn. 764 (2001). His age was stated to be forty-five, as of June 25, 2015.

12. On March 11, 2016, the respondents also submitted to the Commission for in camera inspection records that were provided to the Medical Examining Board. Such records are hereby identified as IC-2015-812-1 through IC-2015-812-47. On the index to the in camera records, the respondents claimed the exemption at §1-200(b)(2), G.S., for the medical and similar files (IC-2015-812-3 through IC-2015-812-47), and the exemption at §1-200(b)(10), G.S., for tax documents (IC-2015-812-1 and IC-2015-812-2).

13. In Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993), the Supreme Court set forth the test for an invasion of personal privacy, necessary to establish the exemption at §1-210(b)(2), G.S. The claimant must first establish that the records in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

14. Based on the in camera inspection, it is found that IC-2015-812-3 through IC-2015-812-47 are "medical", "personnel" or "similar" files within the meaning of §1-210(b)(2), G.S. Connecticut Alcohol and Drug Abuse Commission v. FOIC, 233 Conn. 28 (1995). Indeed, while the quality of the photocopies presented some review problems, every record appears to be signed by a medical doctor.

15. It is also found that IC-2015-812-3 through IC-2015-812-47 do not pertain to any legitimate matter of public concern. These records detail Mr. Cipollone's medical

condition as well as his treatment and medications. For this reason, it is further found that the disclosure of these records would be highly offensive to a reasonable person.

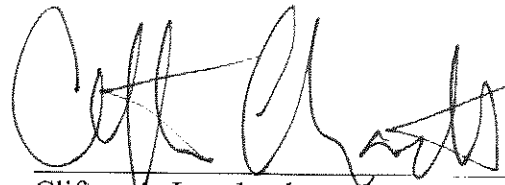
16. Based upon the findings at paragraphs 14 and 15, above, it is concluded that disclosure of IC-2015-812-3 through IC-2015-812-47 would constitute an invasion of personal privacy pursuant to §1-210(b)(2), G.S., and that such records are exempt from mandatory disclosure.

17. Based on the in camera inspection, it is found that IC-2015-812-1 and IC-2015-812-2 contain "return information", as that term is defined at §12-15(h)(2), G.S., and that such information is presented on an Internal Revenue Service form. It is therefore concluded that IC-2015-812-1 and IC-2015-812-2 are "records" or "statements" that are exempt from mandatory disclosure pursuant to §§12-15(a) and 1-200(b)(10), G.S.

18. It is concluded that, although the respondents generally handled a sensitive records request in a highly professional manner and there is no basis for a civil penalty herein, the respondents did not provide the records discussed at paragraph 11 promptly and thereby violated §1-212(a), G.S.

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

1. Henceforth, the respondents shall disclose all non-exempt records promptly.



Clifton A. Leonhardt
as Hearing Officer