FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by FINAL DECISION

Alexander Wood, Doreen Guarino, Tim Leininger and the Manchester Journal Inquirer,

Complainants

against Docket #FIC 2017-0169

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

Respondents February 14, 2018

The above-captioned matter was heard as a contested case on June 21, 2017, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Sgt. Douglas Montas, the subject of the records at issue in this case, filed a motion requesting to be named an intervenor in this matter. Such motion was granted.

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

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. It is found that, by letter dated February 13, 2017, the complainants requested that the respondents provide them with access to the following records: "all records related to Sgt. Douglas Montas being placed on suspension in October 2016." The complainants clarified that the request was meant to include "any complaints filed against Montas, any internal affairs investigative reports regarding his conduct, and any letters placed in his personnel file stemming from his suspension."

3. It is found that, by letter dated February 24, 2017, the respondents acknowledged the request, but informed the complainants that Sgt. Montas had objected to the disclosure of the requested records.

4. By email dated and filed March 23, 2017, the complainants appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide them with access to 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.

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 records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

9. It is found that the requested records resulted from the Enfield Police Department's (the "department") internal affairs investigation into a citizen's complaint concerning Sgt. Montas' off-duty conduct. In connection with the investigation, it is found that Sgt. Montas was placed on paid administrative leave on October 5, 2016 and returned to work on December 8, 2016. It is found that the allegations giving rise to the department's internal affairs investigation were not substantiated. It is further found that the State of Maine conducted a criminal investigation into the same conduct. It is found that the State of Maine's criminal investigation did not result in an arrest.

10. The intervenor contended that portions of the requested internal affairs records are exempt from disclosure pursuant to §§1-210(b)(3)(B), G.S., (the identity of minor witnesses); 1-210(b)(3)(G), G.S., (name and address of a victim of a sexual assault); 1-210(b)(3)(H), G.S, (uncorroborated criminal allegations); and 1-210(b)(2), G.S., (invasion of personal privacy). In addition, at the contested case hearing, the respondents contended that portions of the requested records are exempt because they contain uncorroborated criminal allegations within the meaning of §1-216, G.S.

11. At the conclusion of the contested case hearing, the intervenor moved to have the Commission conduct an in camera inspection of the requested records. The motion was granted.

12. On June 25, 2017, the intervenor lodged in camera records with the Commission, along with a corresponding index containing his claims of exemptions. On December 21, 2017, the respondents lodged an additional copy of in camera records with the Commission to ensure that the records filed by the intervenor were in fact the records in the custody of the respondents. The in camera records are fairly described as one internal affairs investigation report comprised of 115 pages. It is found that pages 1 through 10, 13 through 15, 18 and 19, 21 and 102 have been disclosed to the complainants. The remaining in camera records, which are claimed exempt from disclosure, shall be referred to as follows: IC-2017-0169-11; IC-2017-0169-12; IC-2017-0169-16; IC-2017-0169-17; IC-2017-0169-20; IC-2017-0169-22 through IC-2017-0169-101; and IC-2017-0169-103 through IC-2017-0169-115.[1]

13. Section 1-210(b)(3), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require the disclosure of:

> Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of. . . (B) the identify of minor witnesses, . . . (G) the name and address of the victim of a sexual assault under [specified sections of the general statutes], or (H) uncorroborated allegations subject to destruction pursuant to section 1-216.

14. Section 1-216, G.S., which section is read in conjunction with §1-210(b)(3)(H), G.S., provides as follows:

> Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

15. The intervenor contended that, because the allegations that prompted the internal affairs investigation were criminal in nature, the records arising out of the investigation

[1] The Commission notes that the intervenor's in camera submission only contained 114 pages of in camera records. However, the last page of the respondents' in camera submission contained page 115. The hearing officer has penciled in "IC-2017-0169-115" on the last page of the respondents' in camera submission.

should be considered records "compiled in connection with the detection or investigation of crime." However, case law, the evidence elicited at the contested case hearing, as well as the respondents' own policies with regard to internal affairs investigations, belie such a contention.

16. The Commission has long held that an internal affairs report is not a record compiled in connection with the detection or investigation of crime, but rather is a non-criminal internal investigation of alleged violations of administrative regulations. See, e.g. Chappell v. Chief, Police Dep't, Town of West Hartford, et al., Docket #FIC 2016-0687 (July 20, 2017) (holding that an internal affairs investigation report was not exempt pursuant to §1-210(b)(3)(H), G.S., as "such records were compiled in connection with an internal affairs investigation," which, "is, by its nature, a civil investigation, not a criminal investigation").

17. Deputy Chief Gary Collins appeared at the contested case hearing and testified on behalf of the respondents. It is found that Deputy Chief Collins conceded that the internal affairs investigation into Sgt. Montas' off-duty conduct was a civil investigation.

18. It is further found that the department's "General Orders, Chapter 52: Internal Affairs," ("Chapter 52") reveal the purpose of the department's Internal Affairs policy, as follows:

> It is the policy of the Enfield Police Department that an Internal Investigation system be in effect. This procedure ensures objectivity, fairness, and justice by an impartial investigation and review, whereby maintaining the integrity of the Police Department. See Chapter 52 at 2.

19. It is found that the General Orders further state:

> a. If the complaint is suspected of being criminal in nature, the supervisor will, prior to interviewing the subject employee, advise the employee that the matter is criminal in nature and is being investigated as such.
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> b. If the complaint is not criminal in nature, the investigator will advise the employee of his/her rights under the Garrity Decision utilizing the Garrity Warning Form (IA-4). See Chapter 52 at 7.

20. It is found that, in connection with the internal affairs investigation in question—that is, IA16-003, Sgt. Montas was given his Garrity Warning.

21. After a careful review of the in camera records, it is found that such records are records of a law enforcement agency, not otherwise available to the public. However, it is found that such records were not "compiled in connection with the detection or investigation of crime," within the meaning of §1-210(b)(3), G.S. It is therefore concluded that the requested records are not exempt from disclosure pursuant to §1-210(b)(3), G.S. It is further

concluded that such records are not exempt from disclosure pursuant to §1-216, G.S.

22. Next, the intervenor contended that certain portions of the internal affairs investigation records, as indicated on the in camera index, are exempt pursuant to §1-210(b)(2), G.S, because disclosure of such records would constitute an invasion of Sgt. Montas' personal privacy.

23. Section 1-210(b)(2), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

24. 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 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.

25. Section 1-214, G.S., provide in relevant part that:

> (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.
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> (c) A public agency which has provided notice under subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative. . . . 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.

26. It is found that the respondents timely notified Sgt. Montas of the request for access in this case, and that Sgt. Montas timely objected, within the meaning of §1-214, G.S.

27. It is further found that the records at issue constitute a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

28. The intervenor contended that portions of the requested records are personal in nature, related to a personal relationship and unrelated to Sgt. Montas' performance of his public duties. The Commission agrees.

29. After a careful review of the in camera records, is found that the internal affairs investigation concerned conduct reported by an individual with whom Sgt. Montas had a previous intimate relationship. It is found that the conduct is not connected to Sgt. Montas' performance of public duties or to his public employment. It is further found that the conduct described in the in camera records is extremely intimate. It is found that some of the intimate conduct described in the internal affairs investigation report is the subject of the civilian complaint. It is found that this conduct has been found to be unsubstantiated by two law enforcement authorities. Furthermore, it is found that, when read slowly, carefully and chronologically, it is clear that the conduct described in the camera records has everything to do with a difficult end of a personal relationship, rather than with any personal misconduct. It is therefore found that the public has no legitimate interest in the conduct revealed and described in these records. See Dept. of Pub. Safety v. FOIC, 242 Conn. 79, 90 (1997) (in which the Connecticut Supreme Court rejected the argument that "every aspect of a trooper's personal life is always a matter of legitimate public concern as long as it is contained in a report that is the product of an investigatory process"). It is further found that the disclosure of these records would be highly offensive to a reasonable person.

30. It is found that those portions of the internal affairs investigation records, as indicated on the in camera index, are exempt from disclosure pursuant to the provisions of §1-210(b)(2), G.S.[2]

31. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by denying the complainants access to such portions of the records.

32. In addition, it is found that the name of the individual who filed the complaint that prompted the internal affairs investigation may be redacted wherever it appears in in camera records. See Rocque v. FOIC, 255 Conn. 651, 664 (2001) (the name of a sexual harassment complainant "is not of legitimate public concern" and, by implication, its disclosure would be highly offensive to a reasonable person).

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[2] The Commission notes that, on the index that accompanied the in camera records, in addition to the claim of exemption pursuant to §1-210(b)(2), G.S., the intervenor claimed that certain records were also exempt pursuant to §1-210(b)(21), G.S., and §54-240n, G.S. Because the Commission has determined that such records are exempt pursuant to §1-210(b)(2), G.S., it need not consider the additional claims of exemption.

33. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they refused to provide the complainants with access to the portions of the records that contain the name of the individual who prompted the internal affairs investigation.

34. It is found, however, that other than the portions of the in camera records identified in paragraph 30 and 32, above, the remainder of the in camera records contain the information that is not exempt from public disclosure. Accordingly, it is found that the respondents violated the disclosure provision of §§1-210(a) and 1-212(a), G.S., when they refused to provide the complainants with access to the remainder of the in camera records.

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 to the complainants a copy of the requested records, except for those portions of the in camera records referenced in paragraphs 30 and 32 of the findings, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 14, 2018.

Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**ALEXANDER WOOD, DOREEN GUARINO, TIM LEININGER, AND THE MANCHESTER JOURNAL INQUIRER**, 306 Progress Drive, PO Box 510, Manchester, CT 06045

**CHIEF, POLICE DEPARTMENT, TOWN OF ENFIELD, POLICE DEPARTMENT, TOWN OF ENFIELD; AND TOWN OF ENFIELD**, c/o Attorney Maria S. Elsden and Attorney Christopher W. Bromson, Town of Enfield, 820 Enfield Street, Enfield, CT 06082;

INTERVENOR: Attorney Stephen F. McEleney, McEleney & McGrail, LLC, 20 Church Street, Suite 1730, Hartford, CT 06103

Cynthia A. Cannata
Acting Clerk of the Commission

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