

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Eugene Driscoll and
Valley Independent Sentinel,

FINAL DECISION

Complainants,

Docket # FIC 2018-0049

against

Chief, Police Department,
City of Derby; Police Department,
City of Derby; and City of Derby,

Respondents

October 10, 2018

The above-captioned matter was heard as a contested case on April 9, 2018, at which time the complainants 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, by letter dated January 26, 2018, the complainants requested “[a] copy of the internal affairs report about Officer Jordan Gochros” (“January 26th request”). It is found that the internal affairs investigation resulted from a domestic violence arrest.
3. It is found that, by letter dated January 26, 2018, the respondents acknowledged the complainants’ January 26th request, described in paragraph 2, above. The respondents informed the complainants that because the request could be construed as a request to inspect or copy records contained in an employee’s “personnel or medical files and similar files”, under §1-214(b), G.S., it was providing the concerned employee and his collective bargaining representative an opportunity to object to the disclosure of the requested records. The respondents also informed the complainants that they intended to disclose the requested records unless the employee concerned and/or the employee’s collective bargaining representative timely submitted a written objection to disclosure pursuant to §1-214(c), G.S.
4. It is found that, by letter dated February 2, 2018, the respondents advised the complainants that the concerned employee objected to the disclosure of the requested records, and therefore, due to such objection, and in accordance with §1-214(c), G.S., the requested records would not be disclosed.

5. By letter dated February 2, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide them with access to the records requested in their January 26th request, described in paragraph 2, above.

6. 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.

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

8. 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.”

9. It is found that the records requested by the complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. At the hearing in this matter, the respondents stated that they do not object to the disclosure of the requested records. A Derby Police Union Representative also testified, on behalf of the concerned employee, that he did not have an objection to the disclosure of such records, except for the disclosure of certain information concerning narcotics, personal financial debt, and the employee’s fiancé, which disclosure would constitute an invasion of personal privacy. The complainants did not object to the respondents withholding such limited information.

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

12. Section 1-214, G.S provides:

(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.

(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, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given.... 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. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206....

13. It is found that the requested records constitute "personnel" or "similar" files within the meaning of §1-210(b)(2), G.S.

14. The Supreme Court set forth the test for the §1-210(b)(2), G.S., exemption 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. Specifically, under the Perkins test, 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 disclosure of such information is highly offensive to a reasonable person.

15. Further, it is found that records relating to the employees of public agencies are presumptively legitimate matters of public concern. Perkins, above, at 174. "[W]hen a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person's reasonable expectation of privacy is diminished" Id. at 177.

16. It is found that the respondents failed to prove that they reasonably believed that disclosure of the requested records would legally constitute an invasion of personal privacy *before* notifying the concerned employee of the complainants' request as required under §1-214(b), G.S.

17. It is also found that the respondents failed to prove that the requested information does not pertain to legitimate matters of public concern, and that disclosure of such information is highly offensive to a reasonable person. Accordingly, it is found that the respondents failed to prove that the disclosure of the requested information would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

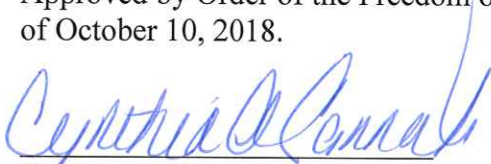
18. It is concluded, therefore, that the respondents violated §1-210(a), G.S., by failing to disclose the requested records.

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 the complainants with copies of the requested records, except for the limited information described in paragraph 10 of the findings, above, free of charge.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of October 10, 2018.



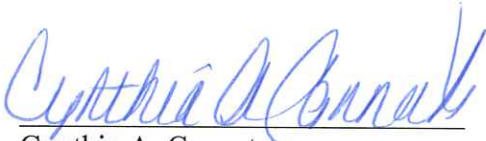
Cynthia A. Cannata
Acting Clerk of the Commission

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:

EUGENE DRISCOLL AND VALLEY INDEPENDENT SENTINEL, 246 Hawthorne Avenue, Derby, CT 06418

CHIEF, POLICE DEPARTMENT, CITY OF DERBY; POLICE DEPARTMENT, CITY OF DERBY; AND CITY OF DERBY, c/o Attorney Matthew A. Ciarleglio, Cohen and Wolf, P.C., 657 Orange Center Road, Orange, CT 06477



Cynthia A. Cannata
Acting Clerk of the Commission