

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John DeMello, Sr.

Complainant

against

Docket #FIC 2019-0210

Commissioner, State of Connecticut,
Department of Revenue Services; and State
of Connecticut, Department of Revenue
Services

Respondents,

July 24, 2019

The above-captioned matter was heard as a contested case on June 11, 2019, at which time the complainant and the 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. By letter of complaint filed April 8, 2019, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his requests for certain public records.
3. It is found that, by letter to the respondents dated March 12, 2019, the complainant made the following request:

I am requesting the opportunity to inspect/obtain copies of public records, email, conversations, written letters, notes, memos, investigation reports but not limited to, [sic] that relate to any complaints/investigations or any documented cases pertaining to the American Legion, Kiltonic Post #72 or the Officers and House Committee, 64-66 Main St., Southington, CT 06489.

4. It is found that, in a letter dated March 18, 2019, the respondents replied to the complainant's request. The respondents denied the request pursuant to §§1-210(b)(10) and §§12-15(h)(2), G.S.

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. Section 1-210(b)(10), G.S., states that nothing in the Freedom of Information Act shall be construed to require the disclosure of:

Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes, including any such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes.

9. Section 12-15(a), G.S., states: (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.

10. Section 12-15(b), G.S., sets forth the exceptions with regard to the general prohibition of disclosure or inspection of any [tax] return or return information including, local, state, or federal agencies which require such tax return information for the performance of their duties. Additionally, taxpayers or their authorized representative may receive such taxpayer's own tax returns or return information upon written request pursuant to §12-15(b)(5), G.S.

11. Section 12-15(h)(2), G.S., states:

“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. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards or the disclosure of the identity of a confidential informant, whether or not a civil or criminal tax investigation has been undertaken or completed.

12. It is found that the records requested are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

13. It is further found that the records requested and described in paragraph 3 above, constitute “return information” as defined by §12-15(h)(2), G.S., and are therefore exempt from release unless the complainant is an authorized recipient of such records.

14. The complainant conceded the character of the documents in question and stipulated that he is not an officer of American Legion, Kiltonic Post #72, nor had he been specifically authorized in any other capacity to view the requested records.

15. At the hearing in this matter, the complainant testified that the intent of his request was not to inspect any tax records or return information, but instead he was seeking an acknowledgment from the respondents that they received a complaint previously filed against the Legion post by the complainant.

16. It is found that any such record that documents any complaint against any taxpayer would constitute "return information" as defined by §12-15(h)(2), G.S, and therefore exempt from disclosure.

17. Based upon the facts and circumstances of this case, it is concluded that the requested records are exempt from disclosure pursuant to §§1-210(b)(10) and 12-15, G.S. Therefore, it is found that the respondents did not violate the disclosure provisions of §§1-210(a) and 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. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 24, 2019.



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:

JOHN DE MELLO, SR., 56 Hobart Street, Southington, CT 06489

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF REVENUE SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF REVENUE SERVICES, c/o Attorney Louis Bucari, 450 Columbus Boulevard, Suite 1, Hartford, CT 06103 and Attorney Erica C. McKenzie, 450 Columbus Boulevard, Suite 1, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission