

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Emily Brindley, Alexander Wood, and  
Journal Inquirer,

Complainants

against

Docket #FIC 2018-0697

President, 8<sup>th</sup> Utilities District; and  
8<sup>th</sup> Utilities District,

Respondents

March 27, 2019

The above-captioned matter was heard as a contested case on February 26, 2019, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

By email, dated March 6, 2019, the complainants made additional allegations against the respondents, and requested that such allegations be included as part of their complaint in this matter. Such request is hereby denied. The complainants also requested that the Commission order the respondents to participate in mandatory training regarding the requirements of the Freedom of Information (“FOI”) Act. Such request is addressed below.

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 letters dated November 8, 2018 and November 14, 2018, the complainants made separate requests for records of disciplinary action taken against district employees and volunteers during a specified period of time, including any complaints, concerns and grievances.
3. It is found that, by email dated November 13, 2018, the respondents confirmed the existence of a disciplinary matter responsive to the November 8<sup>th</sup> request, but denied the request on the ground that the matter was pending.
4. With regard to the November 14<sup>th</sup> request, the respondents informed the complainants, via email dated November 26, 2018, that they were working on gathering responsive records and that they would contact the complainants when such records were

available. It is found that, by email dated December 3, 2018, the complainants reiterated their request for the records.

5. By email dated December 7, 2018, the complainants, having not received any disciplinary records responsive to either of the two requests, described in paragraph 2, above, appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide such records.

6. Section 1-200(5), G.S., provides:

“[p]ublic 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.

7. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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.

8. 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.”

9. It is concluded that the records requested by the complainants are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the hearing in this matter, counsel for the respondents provided the complainants with copies of some responsive records. However, the respondents withheld other responsive records on the ground that disclosure thereof would constitute an invasion of the subject employee’s or volunteer’s personal privacy. The respondents submitted copies of the withheld records for in camera inspection. The pages of such records are numbered E001 through E008, and E018 through E084, and shall be so identified herein.

11. Section 1-210(b)(2), G.S., provides that disclosure is not required of “[p]ersonnel 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 or medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy, by establishing both of two elements: first, that the information sought does not pertain to a legitimate matter of public concern; and second, that disclosure of such information would be highly offensive to a reasonable person.

13. In Perkins the court noted that “disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern.” Perkins at 174. In addition the court stated “that when 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....The public has a right to know not only who their public employees are, but also when their public employees are and are not performing their duties.” Id. at 177.

14. Section 1-214, G.S., provides, in relevant part, that:

(b)(1) 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 (A) each employee concerned...and (B) the collective bargaining representative, if any, of each employee concerned.

(2) 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 not legally constitute an invasion of privacy, the agency shall first disclose the requested records to the person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(3) Nothing in this section 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 subdivision (1) of 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....

15. It is found that the president of the respondent district reviewed the requested disciplinary records and concluded that disclosure of four of the responsive "personnel files" would constitute an invasion of the personal privacy of five employees/volunteers. According to the president, information contained in certain of the withheld personnel files relates to "a relationship of a sensitive matter" and that disclosure of another file would reveal an individual's "disability," which disability is not obvious to a casual observer. The president further testified that the conduct resulting in the disciplinary action occurred both on duty and off duty.

16. It is found that the president notified five employees/volunteers of the request for their personnel files and that all five signed written objections to disclosure of such records.

17. At the hearing in this matter, the subject of the records identified as E001 through E004, moved to intervene in this case. Absent objection from any party, such motion was granted. The intervenor testified that he believed the records pertaining to his conduct should not be disclosed because they related to a "personal" matter and because he "did some stupid things" that he didn't want disclosed.

18. After careful in camera inspection of pages E001 through E004, which consist of a letter of resignation, complaint notification, complaint and response, it is found that such records are personnel files, within the meaning of §1-210(b)(2), G.S. Moreover, it is found that E001 through E004 pertain to a legitimate matter of public concern, and further, that disclosure of such records would not be highly offensive to a reasonable person.

19. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding E001 through E004 from the complainants.

20. After careful in camera inspection of pages E005 through E008, and E018 through E084, which consist of complaints, communications pertaining to complaints, a report of

investigation, and notices of disciplinary action, it is found that such records are personnel files within the meaning of §1-210(b)(2), G.S. It is further found that E005 through E008, and E018 through E084, pertain to legitimate matters of public concern and that disclosure of such records would not be highly offensive to a reasonable person.

21. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding E005 through E008, and E018 through E084, from the complainants.

22. Based on the testimony and evidence in this case and the inspection of the in camera records, it is found that the respondents' belief that disclosure of the in camera records would constitute an invasion of the employees'/volunteers' personal privacy was not reasonable. It is therefore found that the respondents violated §1-214(b), G.S. The Commission notes that, although disclosure of some of the information contained in camera records might be embarrassing to the individuals involved and to the district itself, whether or not disclosure of certain information is embarrassing is not the legal standard set forth in Perkins.

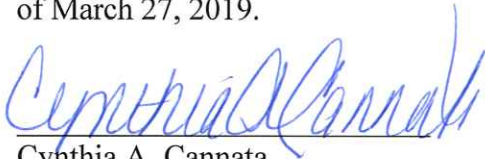
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall provide to the complainants an unredacted copy of E001 through E008, and E018 through E084, free of charge.

2. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-212(a), and 1-214, G.S.

3. The respondents, in particular the district's president, shall participate in training on the FOI Act's requirements pertaining to access to public records. The respondents shall contact the FOI Commission's public education officer within two weeks of the date of the final decision in this matter to schedule such training. The respondents' counsel is encouraged to attend.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 27, 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:

**EMILY BRINDLEY, ALEX WOOD AND JOURNAL INQUIRER**, 306 Progress Drive, Manchester, CT 06045

**PRESIDENT, 8TH UTILITIES DISTRICT; AND 8TH UTILITIES DISTRICT**, c/o Attorney John D. LaBelle, Jr., LaBelle, LaBelle & Naab, P.C., 243 Main Street, Suite 2, Manchester, CT 06042

**INTERVENOR:** Wesley Smith, 115 UConn Avenue, Glastonbury, CT 06033



Cynthia A. Cannata  
Acting Clerk of the Commission