

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Nancy Alisberg (Miguel
Cordero)

FINAL DECISION

Docket #FIC84-20

Complainants

July 11, 1984

against

Acting Director of Personnel of
the City and Town of Hartford,

Respondent

The above captioned matter was heard as a contested case on April 3, 1984, at which time the complainants and the respondent appeared and presented testimony, exhibits and argument on the complaint.

1. The respondent is a public agency within the meaning of §1-18a(a), G.S..

2. At some time prior to January 6, 1984 the complainant Cordero was an unsuccessful applicant for employment with the Hartford police department.

3. On January 6, 1984 the complainant Alisberg made a request of the respondent for copies of the personnel file of the complainant Cordero, including the background investigation, the report of the polygraph examination and the Chief's memorandum.

4. By letter dated January 20, 1984 the respondent director denied the request on the ground that the complainant Cordero was neither a current nor a former employee of the police department.

5. By letter dated January 25, 1984 the complainant Alisberg renewed her request for the records described above, asking that copying fees be waived pursuant to §1-15, G.S. based upon Mr. Cordero's indigency.

6. By letter dated February 6, 1984 the complainant director again denied the complainants' request.

7. By letter of complaint filed with the Commission on February 10, 1984 the complainants appealed the denial of their request. The complainants asked that the Commission order disclosure of the records in question and that the fees for copies thereof be waived pursuant to §1-15, G.S. due to indigency.

8. It is found that application for employment with the Hartford police department involves written examinations and medical examinations, oral interviews and a background investigation.

9. As part of the background investigation of potential police officers, applicants submit to a polygraph test and to fingerprinting, and are investigated by field investigators. The investigation procedures include interviews with former employers, physicians and teachers, and the compilation of medical, military history and police record information, as well as an FBI check.

10. The police chief prepares investigation reports on candidates recommended for disqualification. Such reports are either accepted and approved by the respondent in which case the candidate is disqualified, or the reports are sent back for further information.

11. The respondent has adopted a policy of disclosing the reasons for disqualification of an applicant, but not the sources of the information which led to the disqualification.

12. The respondent claims that information regarding the polygraph test is exempted from disclosure by §1-19(b)(6), G.S. and further, that the complainant Cordero executed a waiver prior to submitting to the polygraph test which relieves the respondent of responsibility for releasing information relating thereto, including the results.

13. It is found that results of a polygraph test are not "test questions, scoring keys or other examination data used to administer" a licensing examination, examination for employment or academic examination.

14. It is therefore found that the results of the complainant Cordero's polygraph test are not exempted from disclosure by §1-19(b)(6), G.S.

15. Prior to submitting to the polygraph test the complainant Cordero executed a waiver discharging the polygraph administrator from "any and all liability, suits, actions. . . [or] demands. . . resulting directly or indirectly, or remotely from being interviewed/examined."

16 The execution of such a waiver, however, does not preclude the complainant Cordero from exercising his rights under the Freedom of Information Act with respect to the results of the polygraph test.

17. The respondent further claims that the records in question do not constitute a personnel file within the meaning of §31-128a(3), G.S., that the complainant Cordero is not an "employee" as defined in §31-128a(1), G.S. and that letters of reference or recommendations from third parties, including former employers, are excluded from the definition of "personnel file" contained in §31-128a(3), G.S. The respondent claims that disclosure of the records in question to the complainant Cordero, therefore, would be against state law.

18. The respondent also claims that §1-19b(a)(2), G.S. does not require the release of the records in question to the complainants because the complainant Cordero was not hired by the city and therefore the records of the investigation do not constitute a "personnel file."

19. It is found that Chapter 563a of the General Statutes, of which §31-128a is a part, is concerned with employment records of private entities, not with those of public agencies.

20. The definition of "employer" contained in §31-128a(2), G.S. does not include the concept of a "public agency" as that term is defined in §1-18a(a), G.S.

21. It is concluded that the limits on disclosure by employers contained in §31-128a to 31-128h refer only to information in the personnel records and medical files of private entities.

22. It is found that the process of investigating job applicants is the final step in the Hartford police department's hiring process. The respondent makes his hiring decisions based upon the results of the hiring process, including background investigations.

23. It is found that in spite of the complainant Cordero's lack of success in applying for a position with the Hartford police department, the records compiled by the police department in connection with the complainant's application constitute a personnel file within the meaning of §1-19b(a)(2), G.S.

24. The respondent also claims that a superior public interest in honest evaluations prevents disclosure of third parties' statements regarding candidates. The respondent claims that disclosure of such records would hinder the police department's ability to obtain background data on candidates, and that the need for such background information outweighs the complainants' rights to disclosure.

25. The respondent also claims that disclosure of third parties' statements would violate such third parties' right to privacy; that such persons had an expectation that their statements would remain confidential, and that disclosure would expose such persons to costly and vexatious litigation.

26. It is found, however, that the claimed interest in confidentiality does not outweigh the public interest in protecting job applicants against false or erroneous statements.

27. It is also found that promises or expectations of confidentiality, without more, do not exempt written statements from disclosure.

28. It is also found that the respondent failed to prove that anything contained in third parties' statements about candidates would, if disclosed, constitute an invasion of such third parties' privacy.

29. It is therefore concluded that statements taken from third parties as a part of the investigation of the complainant Cordero are not exempted from disclosure.

30. The respondent claims that disclosure is unnecessary due to existing safeguards against false or erroneous statements, such as the requirement of corroborating data and the policy of basing a rejection on patterns of misconduct, rather than on single incidents, as well as grievance procedures available to unsuccessful candidates.

31. The existence of safeguards against inaccurate data does not justify non-disclosure of the records in question to the complainants.

32. The respondent further claims that the investigation records are exempted from disclosure by §1-19(b)(1), G.S. as "pre-decisional" documents, the public interest in withholding which clearly outweighs the public interest in disclosure.

33. It is found that the investigation records in question are in the nature of intra-agency memoranda, letters, advisory opinions, recommendations or reports comprising part of the process by which governmental decisions and policies are formulated.

34. It is further found that the claimed interest in withholding investigation records does not outweigh the public interest in protecting job applicants against false or erroneous statements.

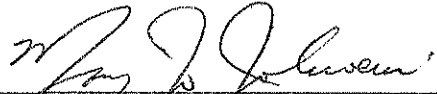
35. It is concluded that the records in question are not exempted from disclosure by §1-19(b)(1), G.S.

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

1. The respondent shall forthwith provide the complainants with access to inspect or copy the records compiled in connection with the complainant Cordero's application for employment with the Hartford police department.

2. No proof of the complainant Cordero's indigency having been offered at hearing, the Commission declines to order the respondent to provide the records in question without cost, as requested by the complainants. However, the Commission suggests that the respondent itself make a determination with respect to the complainant's claim of indigency.

Approved by order of the Freedom of Information Commission at its regular meeting of July 11, 1984.



Mary Jo Joliebeur
Clerk of the Commission