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Don Stacom and the Hartford Courant,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-319

Joseph Skelly, Corporation Counsel, Office of
the Corporation Counsel, City of New Britain;
and City of New Britain,
Respondent(s)

January 23, 2013

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 27, 2013**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE February 15, 2013**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE February 15, 2013**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE February 15, 2013**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Don Stacom
Joseph E. Skelly, Jr., Esq.

1/23/2013/FIC# 2012-319/Trans/wrbp/VDH/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Don Stacom and
The Hartford Courant,

Complainants

against

Docket #FIC 2012-319

Joseph Skelly, Corporation Counsel,
Office of the Corporation Counsel, City
of New Britain; and City of New Britain,

Respondents

January 17, 2013

The above-captioned matter was heard as a contested case on November 2, 2012, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Regrettably, the Commission became aware that, due to technical difficulties concerning a system upgrade, the November 2, 2012 hearing was not recorded. By order of the hearing officer, the November 2, 2012 hearing was reopened, and a new contested case hearing was scheduled for January 8, 2013, at which time the parties 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 email dated June 7, 2012, the complainants made a request for access to two internal affairs investigation reports (IA reports)—one concerning Sgt. Baden, the other concerning Sgt. Rodriguez.¹ It is further found that in their correspondence the complainants stated that access to “minimally redacted” records would be acceptable.

¹ It is found that the complainants’ June 7, 2012 request for access to records was actually a renewed request, as the complainants had originally requested access to these internal affairs investigation reports on May 7, 2012. It is further found that the complainants’ May 7, 2012 request was denied by the respondents on May 10, 2012.

3. It is found that, by email dated June 8, 2012, the respondents acknowledged the complainants' request. It is further found that, in their acknowledgement, the respondents informed the complainants that their position with regard to the request for the IA report, concerning Sgt. Rodriguez had not changed, that this report concerned an off-duty incident, that objections to disclosure had been filed, and that, accordingly, the complainants' request for access to this record was denied. However, with respect to the IA report concerning Sgt. Baden, it is found that the respondents provided the complainants with copies of the relevant records. It is therefore found that the only records at issue in this case are those comprising the IA report with regard to Sgt. Rodriguez.

4. By letter dated and filed June 15, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for access to the IA report pertaining to Sgt. Rodriguez described in paragraph 2, above. In addition, the complainants requested an opportunity to be heard with respect to the imposition of civil penalties.

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. (Emphasis supplied).

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 respondents maintain the records described in paragraph 2, above, and it is therefore concluded that such records are "public records" and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from

disclosure.

9. It is found that, sometime between the filing of the complaint on June 15, 2012 and July 26, 2012, the respondents disclosed the IA report at issue to the complainants with the names of all officers referenced in the report, except for Sgt. Rodriguez, redacted.

10. At the hearing on this matter, the respondents contended that the redactions in the IA report constitute a personnel or similar file within the meaning of §1-210(b)(2), G.S., and that disclosure of the names of the officers mentioned in the report would be highly offensive to a reasonable person.

11. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall require disclosure of “. . . personnel 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, 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. The Commission takes administrative notice of the multitude of court rulings, Commission final decisions (Endnote 1), and instances of advice given by the Commission and staff members (Endnote 2), which have relied upon the Perkins test, since its release in 1993.

13. 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.

(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. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. 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.

14. It is found that, other than Sgt. Rodriguez, twenty-two other officers were mentioned by name in the IA report. It is found that the respondents timely notified three individuals, one of whom was Sgt. Rodriguez, of the request for access in this case, and that all three individuals timely filed an objection to the disclosure of the records, within the meaning of §1-214, G.S.

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

16. The Commission notes that in Rocque v. Freedom of Information Commission, 255 Conn. 651, 667 774 A.2d 957 (2001) the Supreme court held that "the identity of a sexual harassment complainant . . . including identifying information, . . . [is] not of legitimate public concern, and [such] disclosure would be highly offensive to a reasonable person." Consequently, such information is exempt from public disclosure under §1-210(b)(2), G.S.

17. Following the November 2, 2012 hearing, the respondents submitted the records at issue to Commission for an in camera inspection.

18. It is found that the respondents waived any claim that the subject matter of the IA report is confidential, other than the names, when they disclosed the report with only the names redacted to the complainants and submitted the same into evidence at the contested case hearing.

19. Upon careful review of the in camera records, it is found that such records concern an off duty gathering of New Britain police officers in the evening at a bar in Berlin, Connecticut. It is found that the officers met together to celebrate the transfer of a

fellow officer. It is further found that Sgt. Rodriguez and another officer present at the gathering had recently ended a long term dating relationship. It is found that, when Sgt. Rodriguez entered the establishment and noticed that his previous girlfriend was present at the gathering, he began to make hostile comments about her, using profanity and accusing her of being involved in a sexual relationship with another officer who was not present at the gathering. It is further found that Sgt. Rodriguez's comments and continued rants upset the officer. It is found that many of the officers left the bar and met up later that night at a private home, where they remained until early the next morning. It found that both Officer Rodriguez and his former girlfriend arrived separately at this second gathering. It is further found that Officer Rodriguez continued to act out in a hostile and belligerent manner, including continuing to accuse his former girlfriend of being involved in sexual relationships with other officers, taking pictures of her and sending the pictures along with derogatory text messages to the officer who had not attended either of the gatherings. It is found that this officer is married and was, at all times, home with his family. It is found that Sgt. Rodriguez was eventually asked to leave the private house, which he did.

20. It is found that the IA investigation determined that Sgt. Rodriguez's behavior constituted conduct unbecoming an officer; was inconsistent with the department's code of ethics; and violated the City of New Britain's sexual harassment policy. It is further found that the IA investigation noted and recommended the following: "This unbecoming conduct and sexual harassment behavior is egregious enough to warrant a higher level of discipline. . . . These actions may have been a misdemeanor offense, but the detective does not wish to make a complaint. For the above reasons, I recommend a higher level of discipline above a Written Warning."

21. Based on the in camera inspection, it is found that, despite the fact that Sgt. Rodriguez filed an objection to disclosure, his name was not redacted in the version of the IA report disclosed to the complainants. Therefore, the issue of disclosing Sgt. Rodriguez's name is moot.

22. It is further found that, because Sgt. Rodriguez's behavior constituted, *inter alia*, sexual harassment, it is consistent with Roque to sustain the objection to disclosure of name of the officer who was Sgt. Rodriguez's previous girlfriend, and the objection to disclosure of the name of the married officer not present at the events described in paragraph 19, above. It is found that there is no legitimate public interest in the disclosure of the name of the first officer (combined with the derogatory made about her, which have been disclosed in the records). It is further found that there is no legitimate public interest in the name of the officer who was not present, but was perceived and continually accused by Sgt. Rodriguez of being involved with his former girlfriend. It is further found that the disclosure of both of these names would be highly offensive to a reasonable person.

23. It is found that the other twenty officers whose names appear in the IA report because they were present at the events, and/or who witnessed the events, did not file objections to the disclosure of the report. It is further found that, other than contending that these officers were off-duty, the respondents offered no evidence that would tend to

show that the disclosure of these officers' names in the report would constitute an invasion of their personal privacy. Moreover, the public has a clear and legitimate interest in the integrity of police departments and in the disclosure of records that evidence how thoroughly (or inefficiently) such departments investigate their officers' conduct. See DPS v. FOIC, 242 Conn. 79, 88, 698 A.2d 803 (1997) ("because of the public interest in the fairness of police investigations, there is a general presumption in favor of disclosure, even for investigative reports that exonerate police officers from the charges that have been brought against them"). It is found that during the investigative process all sworn police officers present at the events were interviewed and many of them gave statements about what occurred to the acting captain conducting the investigation. Given the public interest in internal affairs investigations, the general presumption in favor of their disclosure, and the fact that being called upon to be a witness to events leading to an officer's discipline is arguably a facet of on-duty conduct, it is found that the balance of the names in the report should be disclosed.

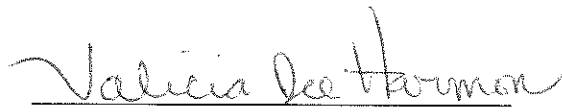
24. It is found that, with the exception of the names of the two officers described in paragraph 22, above, the requested IA report pertains to a legitimate matter of public concern and that the disclosure of such report would not be highly offensive to a reasonable person.

25. It is concluded, therefore, that with the exception of the two officers that objected to disclosure of their names, disclosure of the requested records would not constitute an invasion of privacy within the meaning of §1-210(b)(2), G.S. It is further concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by denying the complainants' request for access to the requested records, except for the names of the two officers who filed objections pursuant to §1-214(c), G.S.

26. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondents.

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 a copy of the records at issue, free of charge. In complying with this order, the respondents may redact from the in camera records the names of the two officers described in paragraph 22 of the findings, above.


Valicia Dee Harmon
as Hearing Officer

1. ENDNOTES

Court Cases

Payne v. City of Danbury, 267 Conn. 669 (2004); Director, Retirement & Benefits Services Div. v. FOIC, 256 Conn. 764 (2001); Rocque v. FOIC, 255 Conn. 651 (2001); Dept. of Public Safety v FOIC, 242 Conn. 79 (1997); Conn. Alcohol & Drug Abuse Commission v. FOIC, 233 Conn. 28 (1995); Kurecza v. FOIC, 228 Conn. 271 (1994); First Selectman v. FOIC, 60 Conn. App. 64 (2000); Dept. of Children & Families v. FOIC, 48 Conn. App. 467 (1998); Almeida v. FOIC, 39 Conn. App. 154 (1995); Town of Enfield v. Freedom of Information Commission, Super Ct JD NB CV 06 4012219 S (Cohn, J. 2007); Chairman, Board of Ethics, Town of Greenwich and Board of Ethics, Town of Greenwich v. Freedom of Information Commission and Michael Aurelia, Super Ct JD NB CV 05 400 7004 S (Owens, J. 2006); Dept. of Transportation v. FOIC, Super Ct JD NB CV 01-0508810 (Schuman, J. 2001); City Treasurer, City of Hartford v. FOIC, Super Ct JD NB CV 99 0496222 (Cohn, J. 2000); Rocque, Commissioner of Environmental Protection v. FOIC, Super Ct JD NB CV 98 0492734 (Hartmere, J. 1999); Director, Retirement & Benefits Services Div. v. FOIC, Super Ct JD NB CV 98 0492692 (Hartmere, J. 1999); First Selectman, Town of Ridgefield v. FOIC, Super Ct JD NB CV 99-0493041 (McWeeny, J. 1999); Chairman, Bd. of Education Town of Darien v. FOIC, Super Ct JD Htfd NB CV 97 0575674 (McWeeny, J. 1998); Waters, Commissioner of State of Conn. Dept. of Administrative Services v. FOIC, Super Ct JD Htfd/NB CV 96 0565853 (McWeeny, J. 1997); Armstrong, Commissioner of State of Conn. Dept. Of Correction v. FOIC, Super Ct JD Htfd/NB CV 96 0563608 (McWeeny, J. 1997); Dept. of Children & Families v. FOIC, Super Ct JD Htfd NB CV 96 0562546 (McWeeny, J. 1997); State of Conn. Office of Protection and Advocacy for Persons with Disabilities v. FOIC, Super Ct JD Htfd/NB CV 95 0554467 (McWeeny, J. 1997); Youngquist v. FOIC, Super Ct JD Htfd/NB, CV 95 0554601 (McWeeny, J. 1996 and 1997); Cracco v. FOIC, Super Ct JD Htfd/NB, CV 94 0705371 (Dunnell, J. 1995); Cracco v. FOIC, Super Ct JD Htfd NB, CV 93 0705370, (Dunnell, J. 1995); Cracco v. FOIC, Super Ct JD Htfd NB, CV 94 0705369, (Dunnell, J. 1995); Simonds v. FOIC, Super Ct JD Htfd/NB, CV 93 070 41 39 (Maloney, J. 1994); Gallagher v. FOIC, Super Ct JD Htfd/NB, CV 93 0531514 (Maloney, J. 1994).

FOIC Decisions

Docket #FIC 2007-580; Town of Putnam and Putnam Board of Education v. Commissioner, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety (May 28, 2008); Docket #FIC 2007-447; Daniel Mathena v. Chief, Police Department, Town of Simsbury (April 23, 2008); Docket #FIC 2007-560; Kenneth D. Goldberg v. Executive Director, Greater Hartford Transit District; and Greater Hartford Transit District (April 9, 2008); Docket #FIC 2007-513; Elizabeth Benton and the New Haven Register v. Chairman, Board of Commissioners, Housing Authority, Town of Derby (April 9, 2008); Docket #FIC 2007-317; James Baker v. Warden, State of Connecticut, Department of Correction, Osborn Correctional Institution (April 9, 2008); Docket #FIC 2007-221; Jon Lender and The

Hartford Courant v. Executive Director, State of Connecticut, Office of State Ethics; General Counsel, State of Connecticut Office of State Ethics; Citizen's Ethics Advisory Board, State of Connecticut, Office of State Ethics; and State of Connecticut, Office of State Ethics (March 26, 2008); Docket #FIC 2007-469; Lawrence C. Sherman v. Board of Education, West Hartford Public Schools (March 12, 2008); Docket #FIC 2007-315; Dawne Westbrook v. Commissioner, State of Connecticut, Department of Correction (January 23, 2008); Docket #FIC 2007-298; Josh Kovner and the Hartford Courant v. Chief, Police Department, City of Middletown (November 14, 2007); Docket #FIC 2007-416; Junta for Progressive Action, Inc.; Unidad Latina en Accion; and The Jerome N. Frank Legal Services Organization v. John A. Danaher III, Commissioner, State of Connecticut, Department of Public Safety (November 8, 2007); Docket #FIC 2006-502; David P. Taylor v. Commissioner, State of Connecticut, Department of Correction (September 12, 2007); Docket #FIC 2007-123; Jessica Crowley and Isabella O'Malley v. Commissioner, State of Connecticut, Department of Public Health (August 8, 2007); Docket #FIC 2006-467; Charlie Santiago Zapata v. Commissioner, State of Connecticut, Department of Correction (August 8, 2007); Docket #FIC 2006-374; Burton Weinstein v. Commissioner, State of Connecticut, Department of Public Safety (July 11, 2007); Docket # 2006-343; Stephanie Reitz and the Associated Press v. Commissioner, State of Connecticut, Department of Correction (June 27, 2007); Docket #FIC 2006-098; Louis J. Russo v. Director, State of Connecticut, University of Connecticut Health Center, Office of Health Affairs Policy Planning; and Dr. Jacob Zamstein (February 28, 2007); Docket #FIC 2006-258; John Orr v. First Selectman, Town of Essex (January 24, 2007); Docket #FIC 2006-242; Ismael Hernandez III v. Director of Labor Relations, Labor Relations Office, City of Bridgeport (January 24, 2007); Docket #FIC 2006-292; Mary Ellen Fillo and The Hartford Courant v. Chief, Volunteer Fire Department, Town of Newington (January 10, 2007); Docket #FIC 2006-121; John Bolton v. Personnel Director, Civil Service Commission, City of Bridgeport; and Civil Service Commission, City of Bridgeport (December 13, 2006); Docket #FIC 2005-571; Alexander Wood and the Manchester Journal Inquirer v. Director, Human Resources Department, Town of Windsor (October 25, 2006); Docket #FIC 2005-535; Alexander Wood and The Manchester Journal-Inquirer v. Director of Human Resources, Town of Windsor (October 25, 2006); Docket #FIC 2005-511; Don Stacom and the Hartford Courant v. John Divenere, Chief, Police Department, City of Bristol (October 11, 2006); Docket #FIC 2005-508; Connecticut State Conference of NAACP Branches v. Chief, Police Department, City of Bristol (October 11, 2006); Docket #FIC 2005-478; Doreen Guarino and the Manchester Journal-Inquirer v. Chief, Police Department, Town of Enfield (September 13, 2006); Docket #FIC 2005-473; Alexander Wood, Heather Nann Collins, and the Manchester; Journal-Inquirer v. Executive Director, State of Connecticut, Board of Education; and Services for the Blind (September 13, 2006); Docket #FIC 2005-448; Susan Raff and WFSB TV v. Mayor, City of Middletown (September 13, 2006); Docket #FIC 2005-615; James E. Simpson v. Chief, Police Department, Town of Seymour (August 23, 2006); Docket #FIC 2005-436; Suzanne Risley and the Waterbury Republican-American v. Chief, Police Department, City of Torrington (August 23, 2006); Docket #FIC 2005-242; Michelle Tuccitto and The New Haven Register v. Chief, Police Department, City of New Haven (May 10, 2006); Docket #FIC 2005-096; Richard Fontana, Jr. v. Board of Fire Commissioners, West Shore Fire District (February 8, 2006); Docket #FIC 2005-058; Glenn C. Morron and William Hertler,

Jr. v. J. Edward Brymer, Chief, Police Department, City of Middletown; Phillip Pessina, Deputy Chief, Police Department, City of Middletown; and Lyn Baldoni, Deputy Chief, Police Department, City of Middletown (January 25, 2006); Docket #FIC 2005-081; Megan Bard and the New London Day v. Superintendent of Schools, Canterbury Public Schools; and Board of Education, Canterbury Public Schools (October 26, 2005); Docket #FIC 2004-289; Lisa A. Coleman v. Chief, Police Department, Town of New Milford (June 22, 2005); Docket #FIC 2004-408; Michael Aurelia v. Chairman, Board of Ethics, Town of Greenwich; and Board of Ethics, Town of Greenwich (May 11, 2005); Docket #FIC 2004-197; Maria McKeon v. Town Manager, Town of Hebron (March 23, 2005); Docket #FIC 2004-159; Jason L. McCoy v. Town Manager, Town of Rocky Hill (March 23, 2005); Docket #FIC 2004-119; Dawne Westbrook v. Chief, Police Department, Town of Rocky Hill; and Robert Catania (February 9, 2005); Docket #FIC 2004-092; Dan Levine v. Public Information Officer, Police Department, City of Hartford (February 9, 2005); Docket #FIC 2004-005; Ralph W. Williams Jr. and The Manchester Journal Inquirer v. State Connecticut, Office of the Governor (Oct. 13, 2004); Docket #FIC 2003-456; Thomas O'Brien v. Chief, Police Department, Town of Waterford (Oct. 13, 2004); Docket #FIC 2003-454; Michael C. Bingham and Business New Haven v. Commissioner, State of Connecticut, Department of Banking (Sept. 22, 2004); Docket #FIC 2003-382; Michael J. McMullen v. Town Administrator, Town of Vernon (Sep. 22, 2004); Docket #FIC 2004-100; Jerry Romaniello and the Greenwich Firefighters Association v. First Selectman, Town of Greenwich (Sept. 8, 2004); Docket #FIC 2003-348; Alexander Wood and the Journal Inquirer, v. Town Manager, Town of South Windsor (Sep. 8, 2004); Docket #FIC 2003-386; Mathew L. Brown and the Willimantic Chronicle, v. President and Chief Executive Officer, Windham Mills Development Corp. (Aug. 11, 2004); Docket #FIC 2003-285; Frank C. Violissi, Jr. v. First Selectman, Town of Chester (May 26, 2004); Docket #FIC 2003-074; Heather M. Henderson v. State of Connecticut, Department of Public Safety, Legal Affairs Department (Dec. 10, 2003); Docket #FIC 2003-020; Hugh Curran v. Mayor, City of Waterbury (Sept. 10, 2003); Docket #FIC 2002-580; Ken Byron and The Hartford Courant v. First Selectman, Town of Westbrook (Sept. 10, 2003); Docket #FIC 2003-038 Chris Dehnel and The Journal Inquirer v. First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2002-531 Chris Dehnel and Journal Inquirer First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2003-055; Robert Mack v. Director, State of Connecticut, Department of Correction, Labor Relations (July 23, 2003); Docket #FIC 2002-345; Josh Kovner, Chris Keating, and The Hartford Courant v. Chief, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-338; Amy L. Zitka and The Middletown Press v. Chief, Police Department, City of Middletown; and Professional Standards Unit Supervisor, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-465; Fred Radford v. Chairman, Police Commission, Town of Trumbull; and Chief, Police Department, Town of Trumbull (July 9, 2003); Docket #FIC 2002-118; Kimberly W. Moy and the Hartford Courant v. Superintendent of Schools, Southington Public Schools (Feb. 26, 2003); Docket #FIC 2002-020; Maurice Timothy Reidy and The Hartford Courant v. Chief, Police Department, Town of Newington and Brendan Fitzgerald (Oct. 23, 2002); Docket #FIC 2001-489 Jonathan Kellogg, Trip Jennings and Waterbury Republican-American Chief, Police Department, Borough of Naugatuck and Rick Smolicz (Sept. 25, 2002); Docket #FIC 2002-173; Carrie J. Champion v. Director, Department of Human Resources, Town of Fairfield (Aug. 28, 2002); Docket

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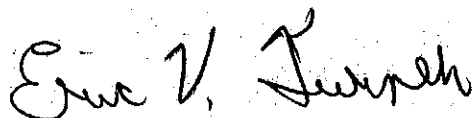
2. ENDNOTES

AFFIDAVIT OF ERIC V. TURNER

Eric V. Turner, having been duly sworn, does hereby depose as follows:

1. I am over the age of eighteen (18) years and understand the obligation of an affirmation.
2. I am a member of the Connecticut Bar and am currently employed as Director of Public Education for the Connecticut Freedom of Information Commission, having first been employed by said commission in 1996.

3. I am providing this affidavit in light of the Supreme Court decision in *Director, Retirement & Benefits Services Division v. Freedom of Information Commission*, 256 Conn. 764 (2001), in which the court apparently invites a reconsideration of *Perkins v. Freedom of Information Commission*, 228 Conn. 158 (1993). See, *Director*, supra at 782, fn 13, 785 (Zarella, J. concurring).
4. As part of my responsibilities as Director of Public Education for said commission, I have developed, organized and scheduled speaking engagements, seminars and programs explaining the duties and rights established under the Connecticut Freedom of Information Act.
5. Since I assumed my current position in 1996, there have been approximately 290 such speaking engagements, seminars and programs in Connecticut and I have personally lectured in approximately 80 such speaking engagements, seminars and programs.
6. As part of the presentation I have prepared for such speaking engagements, seminars and programs, the subject of the Connecticut General Statutes Section 1-210(b)(2) exemption for personnel, medical and similar files the disclosure of which would constitute an invasion of personal privacy is stressed because of the great interest in that exemption and the confusion generated by a series of inconsistent and contradictory court decisions prior to *Perkins*, supra. See, e.g., *Chairman v. Freedom of Information Commission*, 217 Conn. 193 (1991) (establishing “reasonable expectation of privacy” test; query whether subjectively or objectively applied) and *Board of Education v. Freedom of Information Commission*, 210 Conn. 590 (1989) (confirming a “balancing” test), which was overruled by the *Chairman* case.
7. Since the Supreme Court ruling in *Perkins*, supra, all Freedom of Information Commission staff members who conduct such speaking engagements, seminars and programs discuss in detail the rulings in that case and its progeny.
8. As part of my responsibilities as Director of Public Education, I also answer telephone and other inquiries from public officials and the public. Since my employment with said commission, I have answered thousands of such inquiries, including hundreds of inquiries concerning the Connecticut General Statutes Section 1-210(b)(2) exemption. In responding to such inquiries I discuss in detail the *Perkins* case and its progeny.
9. Based on the foregoing experiences, it is my opinion that the *Perkins* decision, and its progeny, have had a beneficial effect on public officials and the public itself because they can rely on a now long-standing and clear test with respect to the Connecticut General Statutes Section 1-210(b)(2) exemption, which helps them determine whether that exemption is applicable to the practical problems they encounter with respect to personnel, medical and similar information. Indeed, the many court and Freedom of Information Commission decisions applying the *Perkins* test have given public officials and the public a now consistent body of law concerning that statutory exemption.



Eric V. Turner

COUNTY OF HARTFORD

ss: Hartford

STATE OF CONNECTICUT

Subscribed and attested to before me this 9th day of January, 2002.



Mitchell W. Pearlman
Commissioner of the Superior Court