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# FREEDOM OF INFORMATION



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Kevin Litten and the  
Waterbury Republican-American,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-711

Chief, Police Department, City of Torrington;  
and Police Department, City of Torrington,  
Respondent(s)

June 27, 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, July 24, 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 July 12, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE July 12, 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 July 12, 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: Thomas G. Parisot, Esq.  
Raymond J. Rigat, Esq.

6/27/13/FIC# 2012-711/Trans/wrbp/MS/KKR/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Kevin Litten and the Waterbury  
Republican-American,

Complainants

against

Docket #FIC 2012-711

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

Respondents

June 26, 2013

The above-captioned matter was heard as a contested case on May 28, 2013, at which time the complainants and the respondents appeared 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 November 2, 2012, the complainants requested a copy of an internal affairs investigation report pertaining to Sgt. John Recchini, arising out of "a returned check at a local check cashing store" (the "report"), which investigation resulted in disciplinary action.
3. It is found that, on December 11, 2012, the respondents denied the request, described in paragraph 2, above, stating that disclosure of the report would constitute an invasion of Sgt. Recchini's privacy.
4. By letter of complaint, dated December 21, 2012 and filed December 26, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records described in paragraph 2, above.
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 . . . (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. It is found that the record described in paragraph 2, above, is a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. At the hearing in this matter, the respondents claimed the report is exempt from disclosure pursuant to §§1-210(b)(2) and 1-210(b)(3)(G), G.S.

10. With regard to the respondents’ §1-210(b)(2), G.S., claim of exemption, that section provides, in relevant part, that disclosure is not required of “personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.”

11. Section 1-214(b), G.S., provides, in relevant part:

“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 . . . 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. [Emphasis added].

12. Section 1-214(c), G.S. provides, in relevant part:

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 ... within seven business days from the receipt by the employee ... 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 ... 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. [Emphasis added].

13. It is found that the report is a “personnel, medical or similar file.”

14. The chief testified at the hearing in this matter that he withheld the report because he believed, based upon statements made by Sgt. Recchini during the investigation, that Sgt. Recchini did not want certain information gathered during the investigation to be made public.

15. It is found that, the respondents did not, upon receipt of the request, described in paragraph 2, above, “immediately” notify Sgt. Recchini, in accordance with §1-214(b), G.S. Rather, it is found that, approximately six (6) months after receipt of such request, the respondents notified Sgt Recchini, by letter dated May 7, 2013, and further provided him with a copy of the Notice of Hearing and Order to Show Cause in this matter.

16. It is found that Sgt. Recchini did not file a written objection to the disclosure of the report, nor did he appear at the hearing to intervene for the purpose of offering evidence as to why the disclosure of the report would legally constitute an invasion of his privacy.

17. It is concluded that the respondents do not have standing to assert the privacy rights of their employee, and further, that any existing privacy rights belong to the employee, and not to the respondents. Ken Byron and the Hartford Courant v. First Selectman, Town of Westbrook, Docket #FIC 2002-580 (September 10, 2003); Jonathan Kellogg, Trip Jennings and Waterbury Republican-American v. Chief, Police Department, Borough of Naugatuck and Rick Smolicz, Docket #FIC 2001-489 (September 25, 2002);

Thedress Campbell v. City Treasurer, City of Hartford, Docket #FIC 2000-022 (August 9, 2000); Walter J. Casey v. Chairman, Board of Education, Town of Darien, Docket #FIC 1997-068 (October 22, 1997) (right to assert invasion of privacy belongs to employee whose privacy is at issue, and respondents who failed to give required notice to employee do not have standing to assert exemption).

18. Accordingly, the Commission shall not further consider the respondents' §1-210(b)(2), G.S., claim of exemption.

19. With regard to the respondents' claim under §1-210(b)(3)(G), G.S., that provision states, in relevant part, that disclosure is not required of:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of... (G) uncorroborated allegations subject to destruction pursuant to section 1-216; [Emphasis added].

20. At the hearing in this matter, the respondents claimed that, because the incident that lead to the internal affairs investigation also was the subject of a criminal investigation that did not result in a conviction, the allegations contained in both the criminal incident report and in the related internal affairs report, are uncorroborated allegations that are not subject to disclosure, pursuant to §1-210(b)(3)(G), G.S.

21. The respondents submitted the report, described in paragraph 2, above, for in camera inspection.<sup>1</sup>

22. The Commission has long held that an internal affairs report is not a record compiled in connection with the detection or investigation of crime, but rather is a non-criminal internal investigation of alleged violations of administrative regulations. See Tracey Thomas and the Hartford Courant v. Legal Affairs Unit, State of Connecticut, Department of Public Safety, Docket #FIC 1996-153 (November 30, 1996); Junta for Progressive Action, et. al., v. John A. Danaher III, Commissioner, State of Connecticut, Department of Public Safety, Docket #FIC 2007-416 (November 8, 2007); Kevin Brookman v. Daryl Roberts, Chief, Police Department, City of Hartford, Docket #FIC 2011-224 (January 25, 2012).

23. To the extent there is information contained in the report that also is contained in the police incident report, it is found that such information does not constitute "uncorroborated allegations" within the meaning of §1-210(b)(3)(G), G.S.

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<sup>1</sup> The respondents also submitted for in camera inspection a copy of the police incident report, which record was not requested by the complainant and therefore is not at issue in this matter. The Commission declines to review the police incident report in camera or to adjudicate issues not before it.

24. "Corroborate" means "to strengthen, to add weight or credibility to a thing by additional and confirming facts or evidence." Rachel Gottlieb and the Hartford Courant v. State of Connecticut, Department of Public Safety, Division of State Police, Docket #FIC 1994-291, citing Blacks Law Dictionary, Sixth Edition (1990). Moreover, it is found that allegations may be corroborated without rising to the level of probable cause that a crime has been committed. Gregory Bishop v. Support Services Department, Police Department, City of Middletwon, et al., Docket #FIC 2011-372 (April 11, 2012).

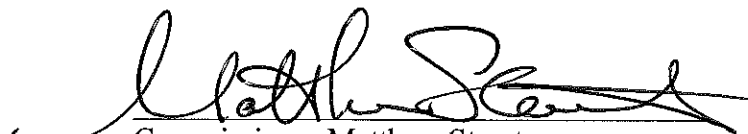
25. In Gottlieb, the Commission found that "the reports contain similar accounts relayed to the respondent by different interviewees concerning the allegations under investigation." After careful review of the in camera records, it is found that, in the present case, the allegations at issue are not uncorroborated.

26. Accordingly, it is found that the report, described in paragraph 2, above, is not exempt from disclosure pursuant to §1-210(b)(3)(G), G.S.

27. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a), and 1-212(a), G.S., by failing to provide a copy of the report, described in paragraph 2, above, to the complainants, and that they also violated §§1-214(b) and (c), G.S., in this matter.

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 the complainant with a copy of the record, described in paragraph 2, above, free of charge. The respondents may redact the home address, social security number, and bank account numbers that may be contained in such record.

  
Commissioner Matthew Streeter  
as Hearing Officer