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# FREEDOM OF INFORMATION



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John Smith,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-564

Town Administrator, Town of Putnam; and  
Town of Putnam,  
Respondent(s)

July 19, 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, August 14, 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 August 2, 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 August 2, 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 August 2, 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: John Smith  
William H. St. Onge, Esq.

2013-07-19/FIC# 2012-564/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

John Smith,

Complainant

against

Docket #FIC 2012-564

Town Administrator, Town of Putnam;  
Mayor, Town of Putnam; and  
Town of Putnam,

Respondents

June 28, 2013

The above-captioned matter was heard as a contested case on April 15, 2013 and May 13, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. On May 7, 2013, the complainant filed a motion requesting that the Commission amend the case caption to include the Mayor for the Town of Putnam as a respondent. Over the respondents' objection, the complainant's motion was granted and the case caption was amended to include the mayor.

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 August 30, 2012, the complainant requested that the respondents provide him with copies of the following records:

All voice mail and text messages from Mayor Peter Place's cell phone supplied by the town, from January 10, 2012, until the present.

3. It is found that, by letter dated September 5, 2012, the respondents acknowledged the complainant's request and informed him that responsive records would be compiled and provided to him. It is further found that the respondents informed the complainant that the mayor had instructed the town administrator to contact the town's wireless cell phone provider to determine the most efficient manner to retrieve the requested information.

4. It is found that, under cover of letter dated September 24, 2012, the respondents provided the complainant with a four-page transcript of the requested text messages, and informed the complainant that they did not maintain any responsive voice mail messages. It is further found that the respondents informed the complainant that personal communications between the mayor and his family were reviewed but not transcribed.

5. By email dated and filed October 12, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for records.

6. 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.

7. 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.

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." It is concluded that the requested records are public records (except as noted in paragraph 24, below), must be disclosed in accordance with §§1-210(a) and 1-212(a), unless they are exempt from disclosure.

9. The complainant contends that the respondents improperly redacted the transcript of the text messages, and failed to disclose all of the text messages responsive to his request.

10. It is found that the respondents redacted two words from the transcript of the text messages provided to the complainant. It is further found that the respondents did not provide the complainant with text messages that were sent and received between the mayor

and his family. With regard to the redactions, the respondents contend that the redacted information is exempt from disclosure pursuant to §1-210(b)(2), G.S.

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 object 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 the records at issue constitute a "similar" file within the meaning of §1-210(b)(2), G.S.

15. It is found that there is no evidence in the record that would tend to show that the respondents followed the procedures set forth in §1-214(a), G.S. Moreover, it is found that no individual objected to the disclosure of the requested records, within the meaning of §1-214(c), G.S. See ¶ 25, below.

16. It is found that the cellular phone in question is a town-owned telephone, which was issued to the mayor for his use in connection with conducting town business.

17. It is found that the text messages in question were discovered when the mayor handed his cellular telephone to his executive secretary so that she could see a picture contained on the telephone. It is found that, as she attempted to forward herself a copy of the picture, the mayor's executive secretary discovered that there were text messages on the telephone concerning her and the complainant. It is found that, within one of the text messages, the mayor refers to the conduct of his executive administrator in a derogatory fashion and implies that she was engaged in an intimate relationship with the complainant. It is further found that the complainant currently serves as a selectman within the respondent town.

18. It is found that, upon receiving the complainant's request for records, the town administrator contacted the town's wireless cell phone provider to determine the best way to obtain a copy of the text messages and the voice mail messages on the mayor's telephone for the time period indicated in the request. It is found that, according to the information provided by wireless cell phone provider, the town manager determined that the most expedient manner of providing the requested records to the complainant was to review and transcribe the messages himself. It is found that the town manager transcribed the text messages which he believed were responsive to the complainant's request, but did not transcribe text messages which he believed were not responsive to the complainant's request. It is further found that there were no voice mail messages on the mayor's cell phone during the time frame indicated in the request.

19. It is found that the text messages which were not produced to the complainant were those exchanged between the mayor and members of the mayor's family, specifically

the mayor's wife and brother. It is further found that, after transcribing the text messages which they believed were responsive to the complainant's request, and upon advice of labor counsel, the respondents deleted the text messages between the mayor and his family members.

20. At the hearing, the complainant requested that the hearing officer conduct an in camera review of the records that were produced to him in redacted form and of the records that were withheld. The respondents did not object to producing the redacted transcript to the Commission for an in camera review. However, the respondents did not believe that they could submit to the Commission the records which were not provided to the complainant because such records were deleted and, thus, no longer existed. The hearing officer granted the complainant's request, and ordered the respondents to produce both the redacted records and the withheld records to the Commission for an in camera inspection. To the extent that certain records no longer existed and/or could not be retrieved, the respondents were ordered to submit a post-hearing affidavit setting forth their efforts to obtain copies of the records and the facts concerning their inability to do so.

21. On May 13, 2013, the respondents submitted the redacted transcript of the text messages to the Commission for an in camera review. It is found that this record consists of one page containing two redactions.

22. On June 4, 2013, the respondents produced the affidavit of Town Manager Douglas Cutler (the "June 4<sup>th</sup> Affidavit"). In the June 4<sup>th</sup> Affidavit, the town manager makes the following averments: that he contacted Verizon Wireless to inquire about retrieving the text messages; that Verizon Wireless told him that text messages were only retrievable for a ten-day period and that after such time text messages were erased from Verizon Wireless' system; that, in addition, he contacted the respondent town's information technology consultant; and that the consultant stated that he could not retrieve the erased text messages from the memory card in the mayor's cellular telephone.

23. Accordingly, it is found that the respondents are unable to submit the deleted text messages to the Commission for an in camera review.

24. While the complainant contends that the respondents intentionally disposed of the text messages so as to avoid the Commission's process, it is found that, based on the testimony, these text messages were personal communications between the mayor and his family members and, as such, were not "public records. . . relating to the conduct of the public's business," within the meaning of §1-200(5), G.S. While it is concluded that the respondents did not violate the FOI Act by refusing to produce these records to the complainant, a preferable practice going forward would be to retain any such records until such time as the Commission has rendered a final decision.

25. With regard to the two redactions in the transcript, after a careful in camera inspection, it is found that the respondents redacted the names from the records so as not to cause unwarranted embarrassment to individuals who were referenced in the records in a derogatory, sexual manner. The two individuals referred to in the text messages, however,

appeared at the hearing and testified that they did not object to unredacted disclosure of the text messages.

26. The Commission concludes that, because the respondents do not have standing to assert the rights of their employees or selectmen within the meaning of §1-214(b), G.S., and because the privacy rights embodied in §1-210(b)(2), G.S., belong to the subject individuals and not to the respondents, the respondents do not have standing to assert the privacy rights of the individuals mentioned in the text messages. See, e.g. Ken Byron and the Hartford Courant v. First Selectman, Town of Westbrook, Docket #FIC 2002-580 (Sept. 10, 2003).

27. It is concluded that the disclosure of the redactions in the transcript would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. It is further concluded that the redacted information is not exempt from mandatory disclosure.

28. Finally, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to disclose the transcripts without redactions.

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 complainant with an unredacted copy of the transcript described in paragraph 4 of the findings, above, free of charge.

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

3. Henceforth, when the respondents reasonably believe that the disclosure of a public record would legally constitute an invasion of personal privacy, the respondents shall strictly comply with the procedures set forth in §1-214, G.S., for determining whether the individual whose personal privacy is at issue objects to disclosure.



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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. Campion

v. Director, Department of Human Resources, Town of Fairfield (Aug. 28, 2002); Docket #FIC 2001-425 Joseph Mincewicz, Commissioner, State of Connecticut, Department of Public Safety, Division of State Police; and State of Connecticut, Department of Public Safety, Division of State Police (Aug. 28, 2002); Docket #FIC 2001-421 Jean M. Morningstar and University Health Professionals Local 3837, AFT-CFEPE, AFL-CIO v. Executive Vice President for Health Affairs, State of Connecticut, University of Connecticut Health Center; and State of Connecticut, University of Connecticut Health Center; and Justin Radolf, M.D., Director, Center for Microbial Pathogenesis, School of Medicine, University of Connecticut Health Center (Aug. 28, 2002); Docket #FIC 2002-093 Sean P. Turpin v. Director, Department of Human Resources, Town of Greenwich and Steve Demetri (July 24, 2002); Docket #FIC 2002-034; MariAn Gail Brown, Michael P. Mayko and Connecticut Post Michael Lupkas, Comptroller, City of Bridgeport; Christopher Duby, Chief of Staff, City of Bridgeport; Mark Anastasi, City Attorney, City of Bridgeport; and Gregory Conte, Deputy Chief of Staff, City of Bridgeport (June 26, 2002); Docket #FIC 2001-364; Karen Guzman and The Hartford Courant v. City of New Britain Docket (June 26, 2002); Docket #FIC 2001-180 James H. Smith and The Record Journal Publishing Company v. Commissioner, State of Connecticut, Department of Public Safety, Division of State Police; and State of Connecticut, Department of Public Safety, Division of State Police (Feb. 13, 2002); Docket #FIC 2001-129; Kimberly W. Moy and The Hartford Courant v. Police Commission, Town of Southington (Feb. 13, 2002); Docket #FIC 2001-251 Fred Radford v. Chief, Police Department, Town of Trumbull (Jan. 23, 2002); Docket #FIC 2000-624; Eric Gustavson v. Board of Education, Brookfield Public Schools (June 13, 2001); Docket #FIC 2000-557; Wendy John v. Richard Blumenthal, Attorney General, State of Connecticut, Office of the Attorney General; Wil Gundling, William McCullough, Phillip Schulz, Margaret Chapple, Assistant Attorneys General, State of Connecticut, Office of the Attorney General; and State of Connecticut, Office of the Attorney General (June 13, 2001); Docket #FIC 2000-268; Michael Costanza and The Day v. Director of Utilities, Utilities Department, City of Groton; and Mayor, City of Groton (April 25, 2001); Docket #FIC 2000-198; William J. Stone v. Personnel Administrator, State of Connecticut, Department of Transportation, Bureau of Finance and Administration; and State of Connecticut, Department of Transportation (April 20, 2001); Docket #FIC 2000-537; James Leonard, Jr. v. Chief, Police Department, City of New Britain (March 28, 2001); Docket #FIC 2000-348; Bradshaw Smith v. Office of the Vice Chancellor for Information Services, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut (February 28, 2001); Docket #FIC 2000-474; Robert H. Boone and Journal Inquirer v. Chief, Police Department, Town of Windsor Locks (Jan. 24, 2001); Docket #FIC 2000-265; Lisa Goldberg and The Hartford Courant v. Superintendent of Schools, Vernon Public Schools (Jan. 24, 2001); Docket #FIC 2000-569; Mary Hyde v. Chief, Police Department, Town of Seymour (Dec. 13, 2000); Docket #FIC 2000-049; Nicholas B. Wynnicks v. Board of Directors, Ansonia Public Library, Town of Ansonia (Dec. 13, 2000); Docket #FIC 2000-136; Thomas E. Lee v. Board of Education, Trumbull Public Schools; and Superintendent of Schools, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC 2000-135; Thomas E. Lee v. Board of Education, Trumbull Public Schools; and Superintendent of Schools, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC2000-086; Mitchell D. Poudrier v. Superintendent of Schools, Killingly Public Schools (Sept. 13, 2000); Docket #FIC 2000-173; Robert H. Boone and

the Journal Inquirer v. Anthony Milano, District Manager, Metropolitan District Commission; and Metropolitan District Commission (Aug. 23, 2000); Docket #FIC 2000-094; James D. Goodwin v. Communications Specialist, State of Connecticut, Department of Social Services, Public and Government Relations Unit (Aug. 9, 2000); Docket #FIC 2000-022; Thedress Campbell v. City Treasurer, City of Hartford (Aug. 9, 2000); Docket #FIC 2000-137; Robert H. Boone and Journal Inquirer v. Metropolitan District Commission (July 12, 2000); Docket #FIC 1999-560; Leo F. Smith v. Robert H. Skinner, First Selectman, Town of Suffield; and Selectmen's Office, Town of Suffield (July 12, 2000); Docket #FIC 1999-556; Delores Annicelli v. Director, New Haven Housing Authority, City of New Haven; and New Haven Housing Authority, City of New Haven (July 12, 2000); Docket #FIC 1999-548; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 1999-547; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 1999-525; Leo F. Smith v. John P. Lange, Human Resources Director, Town of Suffield; and Department of Human Resources, Town of Suffield (July 12, 2000); Docket #FIC 2000-118; Elizabeth Ganga and Connecticut Post v. Police Department, Town of Stratford (June 28, 2000); Docket #FIC 2000-095; Ron Robillard and the Chronicle v. Chairman, Board of Education, Eastford Public Schools; and Board of Education, Eastford Public Schools (June 28, 2000); Docket #FIC 2000-093; Megan J. Bard and The Norwich Bulletin v. Chairman, Board of Education, Eastford Public Schools; and Board of Education, Eastford Public Schools (June 28, 2000); Docket #FIC 1999-575; Bruce Kaz v. Robert Skinner, First Selectman, Town of Suffield; and Ted Flanders, Building Inspector, Town of Suffield (June 28, 2000); Docket #FIC 1999-519; Robert J. Fortier v. Personnel Director, Town of East Hartford; and Mayor, Town of East Hartford (June 14, 2000); Docket #FIC 1999-550; James and Susanne Milewski v. Deputy Chief, Police Department, Town of Clinton; and Police Department, Town of Clinton (May 24, 2000); Docket #FIC 2000-005; Fred B. Feins v. President and Chief Executive Officer, Granby Ambulance Association, Inc., Town of Granby (May 10, 2000); Docket #FIC 1999-606; Robert L. Corrado and IBEW Local 90 v. Town Attorney, Town of Hamden; and Electrical Contractors, Inc. (May 10, 2000); Docket #FIC 1999-533; Donald J. Lanouette, Jr. v. Chief, Police Department, Town of Madison; and Police Department, Town of Madison (April 26, 2000); Docket #FIC 1999-502; Christopher Hoffman and New Haven Register v. Director of Personnel, State of Connecticut, Southern Connecticut State University; and Personnel Office, State of Connecticut, Southern Connecticut State University (April 26, 2000); Docket #FIC 1999-440; Anne Hamilton and The Hartford Courant James Martino, Chief, Police Department, Town of Avon; Peter A. Agnesi, Lieutenant, Police Department, Town of Avon; and Police Department, Town of Avon (March 8, 2000); Docket #FIC 1999-333; Lynn Fredricksen and New Haven Register v. Chief, Police Department, Town of Madison; and Police Department, Town of Madison (March 8, 2000); Docket #FIC 1999-289; Thomas Moran v. Director, Human Resources, Town of Simsbury; and Department of Human Resources, Town of Simsbury (Feb. 9, 2000); Docket #FIC 1999-328; Victor Zigmund v. Director, State of Connecticut, Department of Mental Health and Addiction Services, Human Resources Operations, Connecticut Valley Hospital, Whiting Forensic Division (Jan. 26, 2000); Docket #FIC 1999-100; Janice D'Arcy and The Hartford Courant v. Chief, Police Department, Town of

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251; John Ward v. Beverly L. Durante, Personnel Administrator, Housatonic Area Regional Transit; and Housatonic Area Regional Transit (Jan. 27, 1999); Docket #FIC 1998-163; Lawrence A. Butts v. Director, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (Dec. 9, 1998); Docket #FIC 1998-162; Lawrence A. Butts Chairperson, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (Dec. 9, 1998); Docket #FIC 1998-232; Scott Clark, Amy Kertesz, Michael Gates and the Ridgefield Police Union v. First Selectman, Town of Ridgefield; and Town of Ridgefield (Nov. 18, 1998); Docket #FIC 1998-193; Daniel P. Jones and The Hartford Courant v. Commissioner, State of Connecticut, Department of Environmental Protection; and State of Connecticut, Department of Environmental Protection (Nov. 18, 1998); Docket #FIC 1998-121; Ernie Cantwell and International Association of Firefighters, Local No. 1073 v. Director, Personnel Department, City of Middletown and Personnel Department, City of Middletown (Oct. 14, 1998); Docket #FIC 1998-120; Ernie Cantwell and International Association of Firefighters, Local No. 1073 v. Director, Personnel Department, City of Middletown (Oct. 14, 1998); Docket #FIC 1998-094; Janice D'Arcy and The Hartford Courant v. Chief, Meriden Police Department, City of Meriden and Meriden Police Department (Oct. 14, 1998); Docket #FIC 1997-422; Joseph A. Johnson, Jr. and Greenwich Time v. Chief, Greenwich Police Department, Town of Greenwich; and Greenwich Police Department, Town of Greenwich (Sept. 9, 1998); Docket #FIC 1998-023; Deborah Maynard v. Superintendent, Voluntown School District; and Principal, Voluntown Elementary School, Voluntown School District (Aug. 12, 1998); Docket #FIC 1997-298; Allan Drury and The New Haven Register v. Chief, East Haven Police Department, Town of East Haven; and Town of East Haven (June 10, 1998); Jonathan Lucas and Greenwich Times v. Director, Department of Human Resources, Town of Greenwich; and Town of Greenwich (May 27, 1998); John C. Rettman v. Meriden Police Department, Internal Affairs Division; and Paul Rowen (May 13, 1998); Docket #FIC 1997-318; Dennis Carnot v. Chief, Meriden Police Department, City of Meriden; Internal Affairs Division, Meriden Police Department, City of Meriden; Meriden Police Department, City of Meriden; and Paul Rowen (May 13, 1998); Docket #FIC 1997-175; Matthew Brown, Ken Byron and The Hartford Courant v. Superintendent of Schools, Plymouth Public Schools; and Board of Education, Town of Plymouth (February 18, 1998); Docket #FIC 1997-123; John Christoffersen and The Advocate v. Superintendent of Schools, Stamford Public Schools and Director of Personnel, Stamford Public Schools (Feb. 11, 1998); Docket #FIC 1997-088; John B. Harkins v. Acting Town Manager, Town of Tolland (Jan. 28, 1998); Docket #FIC 1997-085; Joe Johnson and Greenwich Time v. Chief of Police, Greenwich Police Department (Jan. 28, 1998); Docket #FIC 1997-142; Laura Amon v. Program Manager, Affirmative Action Division, State of Connecticut, Department of Transportation (Dec. 3, 1997); Docket #FIC 1996-572; Ken Byron and The Hartford Courant v. Chief of Police, Town of Wethersfield (Nov. 12, 1997); Docket #FIC 1997-238; Kimberley A. Thomsen and the Republican-American v. Acting Superintendent, Waterbury Police Department (Oct. 29, 1997); Docket #FIC 1997-089; Steven Edelman v. Commissioner, State of Connecticut, Department of Mental Retardation; and State of Connecticut, Department of Mental Retardation (Oct. 22, 1997);

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Glastonbury; and Town of Glastonbury (Sept. 25, 1996); Docket #FIC 1995-343; John J. Woodcock, III v. Town Manager, Town of South Windsor (July 24, 1996); Docket #FIC 1995-324; John J. Woodcock, III and Kathryn A. Hale v. Dana Whitman, Jr., Acting Town Manager, Town of South Windsor (July 24, 1996); Docket #FIC 95-251; Lyn Bixby & The Hartford Courant v. Commissioner, State of Connecticut, Department of Correction (July 10, 1996); Docket #FIC 1995-252; Valerie Finholm and The Hartford Courant v. Commissioner, State of Connecticut, Department of Children and Families (May 22, 1996); Docket #FIC 1995-193; Terence P. Sexton v. Chief of Police, Hartford Police Department (May 8, 1996); Docket #FIC 1995-125; Chris Powell and Journal Inquirer v. Commissioner, State of Connecticut, Department of Social Services (March 13, 1996); Docket #FIC 1995-081; Bruce Bellm, Kendres Lally, Philip Cater, Peter Hughes, Carol Northrop, Brad Pellissier, Todd Higgins and Bruce Garrison v. State of Connecticut, Office of Protection and Advocacy for Persons with Disabilities, Sharon Story and Marlene Fein (March 13, 1996); Docket #FIC 1995-074; Jeffrey C. Cole and WFSB/TV 3 v. James Strillacci, Chief of Police, West Hartford Police Department (Jan. 24, 1996); Docket #FIC 1995-026; Curtis R. Wood v. Director of Affirmative Action, State of Connecticut, Department of Correction (Jan. 24, 1996); Docket #FIC 1995-132; Michael A. Ingrassia v. Warden, Walker Special Management Unit, State of Connecticut Department of Correction (Dec. 27, 1995); Docket #FIC 1995-048; Jane Holfelder v. Canton Police Department (June 14, 1995); Docket #FIC 1994-351; Edward A. Peruta v. O. Paul Shew, Rocky Hill Town Manager and Director of Public Safety; Donald Unwin, Mayor of Rocky Hill, William Pacelia, Deputy Mayor of Rocky Hill; and Curt Roggi, Rocky Hill Town Attorney (May 28, 1995); Docket #FIC 1994-160; John Springer and The Bristol Press v. Chief of Police, Bristol Police Department (April 5, 1995); Docket #FIC 1994-077; Kathryn Kranhold and The Hartford Courant v. Director, New Haven Health Department (Feb. 8, 1995); Docket #FIC 1994-099; Frank Faraci, Jr. v. Middletown Police Department, Mayor of Middletown, and Middletown City Attorney (Feb. 2, 1995); Docket #FIC 1994-011; Robert Grabar, Edward Frede and The News-Times v. Superintendent of Schools, Brookfield Public Schools and Brookfield Board of Education (Aug. 24, 1994); Docket #FIC 1993-279; Jay Lewin v. New Milford Director of Finance (March 23, 1994).

## 2. ENDNOTES

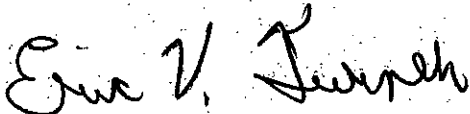
### AFFIDAVIT OF ERIC V. TURNER

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