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FREEDOM OF INFORMATION



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Eric Cotton and the Record Journal,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-145

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

September 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, October 23, 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 October 11, 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 October 11, 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 October 11, 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: Eric Cotton
John H. Gorman, Esq.

9/27/13/FIC# 2013-145/Trans/wrbp/MS/LFS/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Eric Cotton and the Record Journal,

Complainants

against

Docket #FIC 2013-145

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

Respondents

September 25, 2013

The above-captioned matter was heard as a contested case on August 20, 2013, at which time the complainants and the respondents 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 on February 6, 2013, the complainants requested a copy of "the Internal Affairs report and any other records related to the temporary demotion of Robii Abouchacra from the rank of sergeant to the rank of officer." It is found that the complainants suggested that the respondents redact any information whose disclosure would constitute an invasion of personal privacy and disclose the remainder.
3. It is found that on February 13, 2013, the respondents informed the complainants that they believed that disclosure of the entire report and other records would constitute an invasion of personal privacy. However, it is found that the respondents enclosed in their letter to the complainants a copy of a letter to Sergeant Abouchacra concerning the scheduling of a Loudermill hearing. It is found that the respondents refused to provide any other records pending notification of certain employees and their collective bargaining representatives, pursuant to §1-214, G.S.
4. By letter filed March 11, 2013, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with copies of all of the records they requested.
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, ... 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:

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 ... (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. Section 1-210(b)(2), G. S., provides: "Nothing in the Freedom of Information Act shall be construed to require disclosure of ... [p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

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

(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.

11. It is found that on February 13, 2013, the respondents notified all the relevant employees, pursuant to the requirements of §1-214, G.S. It is found that of the six notices sent, the respondents received two objections; one from the sergeant who is the subject of the internal affairs report and the other from an officer whose interview by investigators was summarized in the report.

12. It is found that the officer, but not the sergeant, appeared at the contested case hearing in this matter and testified that he believed disclosure of the records would constitute an invasion of his personal privacy.

13. In Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993) (“Perkins”), the Supreme Court set forth the test for an invasion of personal privacy, necessary to establish the exemption at §1-210(b)(2), G.S. The claimant must first establish that the records 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, and instances of advice given by the Commission and staff members, which have relied upon the Perkins test, since its release in 1993.

14. Following the hearing in this matter, the respondents submitted the requested records for in camera inspection, which records shall be referenced as IC-2013-145-1 through IC-2013-145-18.

15. Upon careful review of the in camera records, it is found that such records are personnel files or similar files, within the meaning of §1-210(b)(2), G.S.

16. It is found that, with the exception noted in paragraph 18, below, the information contained in the records pertains to legitimate matters of public concern; i.e., as described in the

publicly disclosed notice of Loudermill hearing, the police sergeant's alleged retaliation toward another officer with behavior that constituted "conduct unbecoming an employee," "compromise [of] the public trust," and violation of the law enforcement code and canon of ethics.

17. It is also found that, with the exception noted in paragraph 18, below, disclosure of the information in the records would not be highly offensive to a reasonable person.

18. With respect to IC-2013-145-6, lines 23-27, it is found that such information concerns the officer who testified at the hearing in this matter. It is found that the records describe a lie circulated by the subject of the report about the officer, who testified that the lie consisted of false medical information. It is found that such information does not pertain to a legitimate matter of public concern and disclosure would be highly offensive to a reasonable person. It is found that §1-210(b)(2), G.S., exempts such information from mandatory disclosure.

19. It is found that disclosure of the remainder of the records requested by the complainants would not constitute an invasion of personal privacy.

20. It is concluded that §1-210(b)(2), G.S., does not exempt such records from mandatory disclosure.

21. It is further concluded that, although the respondents properly complied with the requirements of §1-214, G.S., they violated §§1-210(a) and 1-212(a), G.S., by refusing to disclose redacted records to the complainants.

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

1. Forthwith, the respondents shall provide to the complainants all the records they requested, except for those referenced in paragraph 18 of the findings of fact.
2. Henceforth, the respondents shall comply with the FOI Act.


Commissioner Matthew Streeter
as Hearing Officer