



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Mark Dumas and the  
Connecticut State Police Union,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-663

Donald DeFronzo, Commissioner, State of  
Connecticut, Department of Administrative  
Services; and State of Connecticut, Department  
of Administrative Services,  
Respondent(s)

August 4, 2014

### 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 27, 2014**. 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 15, 2014**. 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 15, 2014**. 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 15, 2014**, 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

Wendy Paradis  
Acting Clerk of the Commission

Notice to: Mark Dumas  
Jeffrey R. Beckham, Esq.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Mark Dumas and  
The Connecticut State Police Union,

Complainants

against

Docket #FIC 2013-663

Donald DeFronzo, Commissioner,  
State of Connecticut, Department  
of Administrative Services; and  
State of Connecticut, Department  
of Administrative Services,

Respondents

July 23, 2014

The above-captioned matter was heard as a contested case on June 26, 2014, 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, by letter dated September 25, 2013, the complainants requested copies of the following records:
  - (a) Any records regarding the fractional scores for Exam Number 101130 (State Police Sergeant, promulgated on March 8, 2011) for Dane J. Hassan, Gennero Delgais, Kenneth Dillon, Frank M. Mugavin, Thomas D. Kiely, Brian G. Beshara, Gregory W. Smith, Brian D. Kilcomons, Kelley A. Grant, Jason Uliano, Peter R. Valentin, Mark L. Farotti, Dominic J. Goguen, and Kevin J. Cook (i.e., individuals reported as with a rounded score of 80);
  - (b) Any papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, for the individuals

identified in Request No. 1.

3. It is found that, by letter dated October 1, 2013, the respondents acknowledged the complainants' request, but denied the request on the grounds that the requested records were exempt from public disclosure pursuant to §5-225, G.S., and §1-210(b)(6), G.S.

4. By letter dated and filed October 24, 2013, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for a copy of the records described in paragraph 2, above. The complainants also requested that, to the extent that the records are being claimed privileged or exempt from disclosure, the Commission conduct an in camera inspection. The complainants also requested that the Commission impose the maximum civil penalty against the respondent Commissioner for failing to respond to the request promptly. However, the complainants withdrew their request for the imposition of civil penalties during the contested case hearing.

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.

7. Section 1-212(a), G.S., provides in relevant part that:

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer

or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.

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

9. It is found that the examination referred to in paragraph 2.a, above, is the sergeant's examination given in 2011. It is further found that all of the candidates identified in said paragraph received a passing score on the examination. It is further found that the examination in question included various component parts including multiple choice questions, essay questions, and an oral examination. It is further found that each component part of the examination was graded and some of the grades may include a "fractional" score (or, to be more precise, a decimal score).

10. The respondents raise §5-225, G.S., as an exemption to disclosure. The respondents contend that, based on the current language of §5-225, G.S., only those candidates who received a failing score can review their own examination materials and related scores. It is the respondents' position that, because all of the individuals who took the 2011 sergeant's examination received a passing grade, none of the candidates are eligible to review their examinations, or any of the records described in paragraph 2, above.<sup>1</sup>

11. Section 5-225, G.S., entitled "Notice of final earned ratings on examinations. Right of inspection. Appeals," states as follows:

All persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Not later than thirty days after the issuance of the final earned rating, a person who has not achieved a passing rating may inspect his or her papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, subject to such regulations as may be issued by the Commissioner of Administrative Services. Not later than ten days after inspecting his or her papers, a person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his or her final earned rating, as based on the original examination paper or responses. The commissioner shall render a final decision on the person's appeal within thirty days thereafter and correct candidate lists as appropriate. (Emphasis provided).

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<sup>1</sup> The respondents also raised §1-210(b)(6), G.S., as an exemption to disclosure. However, because the Commission finds that §5-225, G.S., is dispositive of the issues raised in this case, it does not address the respondents claims pursuant to §1-210(b)(6).

12. It is found that the language of the statute referred to in paragraph 12, above, came into effect on July 1, 2013. See Pub. Act. 13-247 (2013).

13. It is found that the prior version of §5-225, G.S., provided a broader right of inspection, as well as larger timeframes for individuals to review their examination materials and to file appeals, as necessary:

All persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Within thirty days of receipt of the final earned rating, a person may inspect his papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, subject to such regulations as may be issued by the Commissioner of Administrative Services. Within thirty days of inspecting his papers, a person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his final earned rating, as based on the original examination paper or responses. The commissioner shall render a final decision on the person's appeal within thirty days thereafter and correct candidate lists as appropriate. (Emphasis provided).

14. The complainants contend that, because Public Act 13-247 amended §5-225, G.S., to allow only those individuals who fail an examination the right to review their examination materials, the Commission should find that the examination records of those individuals who pass a state examination are now open to public inspection. The complainants contend that such an interpretation is supported by §5-200(f), G.S., which provides as follows:

The commissioner shall prescribe reasonable conditions and procedures under which the records of the Department of Administrative Services shall be open to public inspection during usual business hours, except as provided in section 5-225. He shall take all due precautions to prevent the securing in advance by any unauthorized person of any material to be used in any examination under this chapter, unless such material is available for all applicants. Statements of the former employers of applicants shall be considered confidential and shall not be open to inspection by any person. (Emphasis provided).

15. In addition, the complainants made a motion at the contested case hearing to have the Commission conduct an in camera inspection of the record that was withheld as to one of the candidate's referred to in paragraph 2.a, above. The hearing officer granted the

complainants' motion. At the conclusion of the contested case hearing, the respondents submitted the record to the Commission in camera.<sup>2</sup>

16. In Personnel Director, Department of Income Maintenance v. FOIC, 214 Conn. 312 (1990) (“Personnel Director”), the Supreme Court found that “the disclosure and inspection referred to under §5-225 applies only to the candidate who has taken the examination.” Id. at 320. Based on this finding, the Supreme Court held that §5-225 provided an exception to disclosure to persons other than the test-taker:

In conclusion, [§1-210(a)] provides that all records kept on file by public agencies shall be public records ‘[e]xcept as provided by any federal law or state statute.’ We hold that §5-225. . . provide[s] such an exception for the requested personnel files, which contained the promotional examination records of candidates for program supervisor other than the candidate’s own records.

Id. at 321.

17. The respondents maintain that, even though Personnel Director was decided based on the former version of §5-225, G.S., it is nevertheless applicable to the facts of this case. The respondents further maintain that the result of applying the reasoning of Personnel Director to the current version of §5-225, G.S., is a statute that allows a right of inspection for “papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination” for only those persons who have failed an examination. See § 5-225, G.S.

18. The Commission notes that Public Act 13-247 (2013) was enacted as a part of the act implementing the provisions of the state budget for fiscal year 2014. The Commission also notes that the legislative record is devoid of any reasoning specific to the 2013 amendments to §5-225, G.S., other than a bill summary. Nonetheless, the bill summary accords with the respondents’ position, in that it states that the purpose of the amendment is to limit access to examination material to those individuals who fail a state examination.

Prior law allowed any applicant who took an examination to inspect the papers, markings, background profiles, and other items used to determine their final earned rating. The act limits such inspection to people who did not achieve a passing rating. It also reduces the time in which someone can (1) perform the inspection, from 30 days after receiving the results to 30 days after the results are issued and (2)

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<sup>2</sup> It is found that the records withheld as to the other 13 candidates referred to in paragraph 2.a, above, are similar in nature to that of the record submitted for in camera inspection.

appeal their exam results, from 30 to 10 days after inspecting the records.

See Summary of Pub. Act. No. 13-247, §§ 353-354 & 357-358 (2013) (emphasis provided).

19. It is therefore found that the current version of §5-225, G.S., seeks to narrow, not broaden, access to examination materials.

20. Based on the reasoning of Personnel Director and on §5-225, G.S., it is concluded that the requested records fall within an exception to disclosure.

21. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainants with copies of the requested records.

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

1. The complaint is dismissed.



Commissioner Christopher P. Hankins  
as Hearing Officer