



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Donald Meehan,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-365

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

February 27, 2015

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, March 25, 2015**. 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 March 13, 2015**. 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 March 13, 2015**. **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 March 13, 2015**, 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: Donald Meehan
Jeffrey R. Beckham, Esq.

2015-02-27/FIC# 2014-365/Trans/wrbp/CAL/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Donald Meehan,

Complainant

against

Docket #FIC 2014-365

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

Respondents

February 13, 2015

The above-captioned matter was heard as a contested case on January 5, 2015, at which time the complainant 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)(A), G.S.
2. It is found that by letter dated May 8, 2014, the complainant made a request to the respondents for "all information regarding a reward offered in the case regarding the murder of Zoltan Kiss on September 28, 2001", including "all information regarding the amount of the reward, whether or not the reward was paid out, and, if the reward was paid out in any capacity, who received any or all of the money" and also "any information regarding who may have been considered for receiving this reward, and any information regarding why it was not paid out to any individuals who were considered" (the "requested records" or sometimes "the records").
3. It is found that by letter dated June 6, 2014, the respondents forwarded to the complainant a letter dated June 5, 2014 from Commissioner Donald DeFronzo which "directed" his own staff "to withhold" the requested records from the complainant because "disclosure of the information concerning the informants may put those individuals at risk of injury" pursuant to §1-210(b)(19), G.S. Commissioner DeFronzo's June 5, 2014 letter further explained that his legal staff had consulted with the State's Attorney for the Fairfield Judicial District who was the prosecuting authority for the three defendants in the criminal cases related to the relevant murder. Prior to apprehension, one

of these defendants “shot an individual” who might “implicate the defendant in the murder.” Moreover, the defendants may have been involved in a criminal gang, and both family and criminal gang members who are still at large “may have reason to harm anyone involved in the conviction of the defendants.” Finally, Commissioner DeFronzo’s June 5, 2014 letter noted that “a Superior Court judge issued an order sealing a number of records in this case.”

4. By letter dated and filed with the Freedom of Information Commission (the “Commission”) on June 10, 2014, the complainant appealed to the Commission, alleging that the denial of his May 8, 2014 records request violated the Freedom of Information Act.

5. Section 1-210(a), G.S., states 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 (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.

6. Section 1-210(b), G.S., states in relevant part:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

.....

(19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; (emphasis added)

7. Section 1-210(d), G.S., states in relevant part:

Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of

subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. (emphasis added)

8. Section 54-82t, G.S., states in relevant part:

(j) Any record of the Division of Criminal Justice or other governmental agency that, in the reasonable judgment of the Chief State's Attorney or a state's attorney, would disclose or would reasonably result in the disclosure of the identity or location of any person receiving or considered for the receipt of protective services under this section or of law enforcement techniques not otherwise known to the general public that are used in protecting witnesses, shall be confidential and not subject to disclosure under the Freedom of Information Act, as defined in section 1-200. (emphasis added)

9. It is found that Zoltan Kiss was murdered in Bridgeport on September 28, 2001, and that the governor of Connecticut approved a reward for information concerning the murder on April 10, 2002. Three individuals were subsequently convicted on charges related to the murder (Miguel Zapata, Orema Taft, and Luisa Bermudez). Many details concerning the circumstances of the murder and the related trade in illegal drugs are set forth in State of Connecticut v. Zapata, 119 Conn. App. 660, 662-669 (2010).

10. It is found that, C. Robert Satti, Jr., who testified at the Commission's hearing, was the prosecuting attorney in all three criminal cases. Based upon his testimony, it is found that Miguel Zapata fired a gunshot at one potential witness after the murder but before he was apprehended in Tennessee. Moreover, at his trial, Mr. Zapata threatened a different person on the witness stand, stating that she was "a dead bitch." State of Connecticut v. Zapata, supra at 667.

11. It is also found that, by order dated May 7, 2008 in the criminal cases against Miguel Zapata, Orema Taft, and Luisa Bermudez, Judge Hauser of the Superior Court sealed the State's Petition for Determination of Award, the transcript of the hearing on the petition as well as the court's order concerning the petition.

12. It is further found, based on the testimony of attorney Satti, that one or more witnesses were placed, and remain as of the Commission hearing date, in a witness protection program. However, there was no testimony concerning whether the person or persons in the witness protection program were the same individual or individuals who may have received a reward pursuant to gubernatorial authorization and judicial approval.

13. It is further found that the three defendants have family, and perhaps gang, members who are still at large and may have reason to harm anyone involved in the conviction of the defendants.

14. At the Commission hearing, the complainant stated that he would accept requested records with redactions and suggested the desirability of partial disclosures. The respondents continued to claim that the records were exempt from mandatory disclosure pursuant to §1-210(b)(19), G.S. (see paragraph 3 above), and also cited §54-82t, G.S. The respondents countered the complainant's argument for redacted records, stating that any partial disclosure would elevate the risk to the witnesses who testified at trial. They argued that it might be surmised that a reward was given to someone who testified.

15. It is finally found that partial disclosures might escalate interest in the subject of rewards that may have been given in the relevant criminal cases and it is not reasonable to risk potential harm to persons that may result from partial disclosures of the requested records.

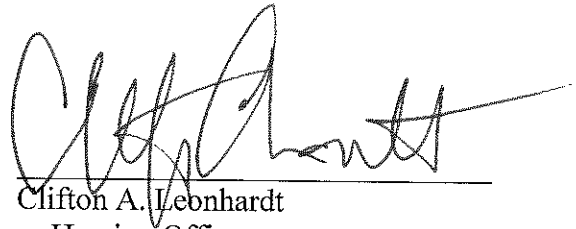
16. It is concluded that the respondent Commissioner did have reasonable grounds to believe that disclosure of the requested records "may result in a safety risk, including the risk of harm to any person", pursuant to §1-210(b)(19), G.S. These reasonable grounds were established by "a sufficiently detailed record [that] reflect[ed] the reasons why ... [the] exemption applies to the materials requested." Director, Department of Information Technology v. Freedom of Information Commission, 274 Conn. 179, 191-192 (2005). The respondents satisfied their burden of proof with "more than conclusory language, generalized allegations or mere arguments of counsel." Id. at 191. See also People for the Ethical Treatment of Animals, Inc v. Freedom of Information Commission, pp. 16, 21-22, HHB CV 146023464 S, Superior Court, Judicial District of New Britain (December 18, 2014).

17. While there is a strong logical possibility that any person receiving any reward from the state would also be in the witness protection program, because no specific finding of fact is possible in this regard (see paragraph 12 above), no conclusion of law can be established concerning §54-82t(j), G.S., and the requested records.

18. It is finally concluded that, because the exemption at §1-210(b)(19), G.S., is applicable, the respondents did not violate §1-210(a), G.S., as alleged in the complaint.

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

1. The complaint is hereby dismissed.

A handwritten signature in black ink, appearing to read 'Clifton A. Lebnhardt', written over a horizontal line.

Clifton A. Lebnhardt
as Hearing Officer