



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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E. Gregory Cerritelli,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-438

Chief, Police Department, Town of Ansonia; Police
Department, Town of Ansonia; and Town of Ansonia,
Respondent(s)

April 20, 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, May 27, 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 May 15, 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 May 15, 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 **fifteen (15) copies** be filed **ON OR BEFORE May 15, 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: E. Gregory Cerritelli
Christopher J. Sugar, Esq.
John Miller

2015-04-20/FIC# 2014-438/Trans/wrbp/VDH/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

E. Gregory Cerritelli,

Complainant

against

Docket #FIC 2014-438

Chief, Police Department, Town
of Ansonia; Police Department,
Town of Ansonia; and
Town of Ansonia,

Respondents

April 15, 2015

The above-captioned matter was heard as a contested case on February 6, 2015, at which time the complainant 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 June 30, 2014, the complainant requested that the respondents provide him with a copy of the following records:

. . . Officer Joseph Jackson's *complete personnel file*. This request is meant to encompass Officer Jackson's training records, employment application, all review training, and any and all information not otherwise exempted by Connecticut law. Also, I specifically am requesting a complete copy of any memoranda or reports relating to any Internal Affairs investigations, whether founded or unfounded, counseling memos, written reprimands, or records of any discipline of whatever type. Additionally, if any records have been destroyed, I am requesting copies of the letters to the State librarian authorizing the destruction of those documents as well as the Town's retention schedule for the destruction of any relevant documents. If there is a separate Internal Affairs file not specifically maintained in Officer Jackson's

personnel file, this request is meant to encompass any records that touch upon or concern Officer Jackson as they may exist in any file maintained by the Ansonia Police Department. (Emphasis in original)

3. It is found that, by letter dated July 8, 2014, the respondents acknowledged the request, and stated that they would review the responsive records for exempt information and, thereafter would provide the complainant with copies of any non-exempt, responsive records. It is further found that the respondents informed the complainant that they anticipated that they would need an additional thirty days to accomplish such review.

4. By letter dated July 8, 2014 and filed July 10, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the requested 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, (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 “[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 requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the contested case hearing, the complainant clarified that he was not seeking copies of personal information contained in the Officer Jackson's personnel file, such as insurance information, benefit selections, or information about Officer Jackson's family (if such information is contained in the requested records). He further clarified that he was not seeking copies of records that are exempt from public disclosure under the law.

10. It is found that Officer Jackson is currently employed as a police officer by the Ansonia Police Department. It is further found that the complainant in this case is counsel to a criminal defendant who has been charged with, inter alia, a felony assault on Officer Jackson. It is found that the incident giving rise to this charge (and others) occurred on February 1, 2015. It is further found that, in connection with the alleged assault, Officer Jackson discharged his firearm at least two times, shooting the complainant's client twice.

11. At the contested case hearing, Officer Jackson's union representative appeared and contended that Officer Jackson's personnel file was entirely exempt from disclosure pursuant to §1-210(b)(2), G.S. The respondents contended that Officer Jackson's personnel file was entirely exempt pursuant to §1-215(b), G.S. In addition, on the index to the in camera records, the respondents also claimed that Officer Jackson's personnel file was entirely exempt pursuant to §1-210(b)(3), G.S. The Commission will address each of these claims in turn.

12. 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"

13. 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.

14. Sections 1-214(b) and (c), G.S., state in relevant parts:

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.

....

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....

15. It is found that the requested records constitute a “personnel” file within the meaning of §1-210(b)(2), G.S. See Connecticut Alcohol and Drug Abuse Commission v. FOIC, 233 Conn. 28 (1995) (“CADAC”).

16. It is found that the respondents timely notified Officer Jackson of the request at issue in this matter, and that Officer Jackson, through his union representative, timely filed an objection to the disclosure of the in camera records, within the meaning of §1-214, G.S.

17. It is further found that Officer Jackson and his union representative were timely notified of the contested case hearing. It is found that, while Officer Jackson’s union representative appeared for the hearing, Officer Jackson did not appear. It is further found that no evidence was provided as to whether Officer Jackson had reviewed his personnel file prior to the objection that was filed. Finally, it is found that Officer Jackson’s union representative had not reviewed the personnel file prior to the contested case hearing.

18. After the contested case hearing, the respondents submitted the record described in paragraph 2, above, to the Commission for an in camera inspection (hereinafter the “in camera records”). The in camera records consist of two hundred and twenty-seven pages, and such records shall be identified as IC-2014-438-01 through IC-2014-438-227.

19. Based on a careful in camera review, it is found that the following records contain the various medical tests that Officer Jackson was required to undergo and medical information that he was required to provide to the respondents prior to being hired by them as a police officer: IC-2014-438-22 (from the heading “Medical History” to the bottom of the page); IC-2014-438-23 (entire page); IC-2014-438-24 (from the top of the page up to the heading “General”); IC-2014-438-33 (entire page); and IC-2014-438-34 (entire page). In addition, it is found that the following records contain personal information about Officer Jackson’s family members: IC-2014-438-18: lines 4 through 7¹. Finally, it is found that the following records contain the residential addresses of

¹ For the benefit of all of the parties, the Commission clarifies that, while the in camera records contained page numbers from 1 through 227, they did not contain line numbers. Where the Commission finds that

family friends or acquaintances of Officer Jackson, some of whom are or were his neighbors: IC-2014-438-22: line 9 (the information written on the first line); line 11 (the information written on the first line); and line 13 (the information written on the first line); IC-2014-438-39: line 4; and IC-2014-438-40: line 4.

20. It is found that all of the information contained in the records identified in paragraph 19, above, is unrelated to and does not reflect how or when Officer Jackson performed his job as a police officer. It is further found that the subject matters in such records are not matters of legitimate public concern and that the disclosure of these records would be highly offensive to a reasonable person. It is therefore concluded that such records are exempt from mandatory disclosure pursuant to §1-210(b)(2), G.S., and that the respondents did not violate the FOI Act by withholding such records from the complainant.

21. In addition, because Officer Jackson is a police officer, §1-217, G.S., must be considered in this case. Section 1-217, G.S., entitled “Nondisclosure of residential addresses of certain individuals,” provides, in relevant part, as follows:

(a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency: . . . (2) A sworn member of a municipal police department

22. It is found that Officer Jackson has had different residential addresses during his tenure as a police officer in the Town of Ansonia. Accordingly, it is found that the in camera records contain multiple residential addresses for him. It is found that all forms of Officer Jackson’s residential address are exempt from public disclosure and may be redacted from the in camera records, wherever located. It is concluded that the respondents did not violate the FOI Act by withholding Officer Jackson’s residential addresses from the complainant.²

23. In addition, it is found that, after careful review of the in camera records, certain records contained in Officer Jackson’s personnel file do not pertain to Officer Jackson at all; rather the records detail information about other Ansonia Police Department employees. It is therefore found that the following records are not responsive to the request in this case, and need not be disclosed: IC-2014-438-175; IC-2014-438-192; IC-2014-438-193; IC-2014-438-197; IC-2014-438-198; and IC-2014-438-

certain information contained in an in camera records may be redacted or that only certain lines may be disclosed, line numbers have been added to the record at issue.

² The Commission notes that Officer Jackson’s social security number and personal driver’s license numbers are contained throughout these records. In some instances, these numbers have already been redacted in the in camera records. The Commission has consistently declined to order the disclosure of social security numbers and drivers’ license numbers. Accordingly, prior to disclosure, the respondents shall review the in camera records and redact Officer Jackson’s social security number and personal driver’s license number, wherever such numbers are located.

199.

24. It is likewise found that the following records contain only minimal information about Officer Jackson, and that the majority of the information in these records concerns other Ansonia Police Department employees. It is found that the following portions of the records, which do not concern Officer Jackson, are not responsive to the request, and need not be disclosed: IC-2014-438-47: line 9, and Lines 11 through 13; IC-2014-438-105: Line 17, Lines 19 through 21, and Line 22 (the first two words); IC-2014-438-106: Line 18 and Line 19; IC-2014-438-113: Line 2 (word 11), Lines 12 through 20, and Line 23 (word 2); IC-2014-438-174: all lines, with the exception of Lines 1-6, Line 14, and Officer Jackson's name, may be redacted; IC-2014-438-187: all lines, with the exception of Lines 1 through 8, and Line 11, may be redacted; IC-2014-438-190: all lines, with the exemption of Lines 1 through 8, and Line 11, may be redacted; IC-2014-438-191: all lines, with the exception of Lines 1 through 8, and Line 11, may be redacted; IC-2014-438-194: all lines, with the exception of Lines 1 through 8, and Line 11, may be redacted; and IC-2014-438-196: all lines, with the exception of Lines 1 through 8, and Line 11, may be redacted.

25. It is found that the remainder of the in camera records do pertain to legitimate matters of public concern in that they reveal how and when a public employee performed his work during his tenure with a police department, and the degree to which the police department could rely on such employee. It is further found that such records reveal Officer Jackson's credentials at the time he was hired. It is therefore found that disclosure of these in camera records would not be highly offensive to a reasonable person.

26. The respondents next contend that the requested records are exempt in their entirety based on 1-215, G.S. In support of this argument, the respondents raise the following two cases: Comm'r of Pub. Safety v. FOIC, et al., 312 Conn. 515 (2014) ("Public Safety") and Michael A. Carpinello v. Ansonia Police Depart., Docket #FIC 93-24 (July 28, 1993) ("Carpinello").

27. Section 1-215, G.S., entitled "Record of an arrest as public record. Exception," provides, in relevant part, as follows:

- a. Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of

section 1-210. . . .

- b. For the purposes of this section, “record of the arrest” means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person.

28. In Public Safety, the Supreme Court held that §1-215 provides “the exclusive disclosure obligation under the [FOI] Act for law enforcement agencies, with respect to documents relating to a pending criminal prosecution.” Id. at 525.

29. From this holding, the respondents contend that the requested records—Officer’s Jackson’s personnel file—should not have to be disclosed during the pendency of the complainant’s client’s criminal prosecution. Implicit in the respondent’s contention is the assumption that the requested personnel file contains documents relating to the pending criminal prosecution. However, the court in Public Safety was dealing with the narrow issue of the disclosure of records resulting from a criminal arrest during the pendency of the related criminal prosecution:

We concluded that the explicit reference to arrests reports in § [1-215] removes such documents from the coverage of § [1-210] (b)(3), and provides both the disclosure obligations for such reports and the appropriate limitations on that disclosure. As a result, our interpretation does not render § [1-210] (b)(3) superfluous because, absent some other statutory provision shielding law enforcement documents from disclosure, that provision continues to regulate the disclosure of law enforcement documents *other than arrests reports during the pendency of a criminal case*.

Public Safety, 312 at 531. (Emphasis in original).

30. In addition, while the Commission can agree that the records in the requested personnel file are records in the possession of a law enforcement agency, it is found that records are not the “record of an arrest,” within the meaning of §1-215, G.S. In this regard, it is further found that, based on the testimony of the respondents’ witness, the requested records were not created during or as part of any criminal arrest or prosecution; rather, it is found that the requested records were created in connection with hiring and continued employment of an Ansonia police officer. As found at paragraph 15, above, the requested records are personnel records, within the meaning of §1-210(b)(2), G.S. See Connecticut Alcohol and Drug Abuse Comm’n v. FOIC, et al., 233 Conn. 28, 41 (1995) (holding that “a personnel file has as one of its principal purposes the furnishing

of information for making personnel decisions regarding the individual involved. . . . Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed, or subject to other traditional personnel actions, should be considered ‘similar’ to a personnel file for the purposes of,” §1-210(b)(2), G.S.).³

31. Accordingly, it is concluded that the requested records are not exempt from disclosure pursuant to §1-215, G.S.

32. Finally, on the index that accompanied the in camera records, the respondents claimed that the requested records are exempt in their entirety pursuant to §1-210(b)(3), G.S.

33. Section 1-210(b)(3) provides, in relevant part, that nothing in the FOI Act shall be construed to require the disclosure 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 (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile . . . (G) the name and address of the victim of a sexual assault . . . , or (H) uncorroborated allegations subject to destruction pursuant to section 1-216[.]

34. The respondents never identified which subsection of §1-210(b)(3), G.S., they were raising in this case. In fact, §1-210(b)(3), G.S., was not raised at all during the contested case hearing as an exemption to disclosure. Moreover, based on the respondents’ witness’s testimony, it is found that the in camera records were not “compiled in connection with the detection or investigation crime,” within the meaning of §1-210(b)(3), G.S. Accordingly, it is concluded that the requested records are not exempt from disclosure pursuant to §1-210(b)(3), G.S.

³ The respondents reliance on Carpinello does nothing to bolster their position that Officer Jackson’s personnel file is a “record of arrest,” for purposes of §1-215, G.S., as the requested record in that case was the police report that issued in connection with a ticket the complainant therein had received for violating a town ordinance, which matter was pending at a superior court at the time the request was made.

35. It is further concluded that the in camera records, other than those records or portions thereof identified in paragraphs 19, 23, and 24, above, and those portions generally described in paragraph 22, above, are subject to mandatory disclosure.

36. It is therefore concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to provide such records to the complainant.

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 a copy of the in camera records. In complying with this order, the respondents are not required to disclose the records or portions thereof identified in paragraphs 19, 23, and 24, of the findings, above, and those portions generally described in paragraph 22 of the findings, above.

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



Valicia Dee Harmon
as Hearing Officer