

Since 1975



# 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

Elizabeth Regan and the Norwich Bulletin,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-422

Commissioner, State of Connecticut, Department of  
Emergency Services and Public Protection; and State of  
Connecticut, Department of Emergency Services and  
Public Protection,

Respondent(s)

January 29, 2016

### 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, February 24, 2016**. 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 February 11, 2016**. 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 February 11, 2016**. **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 February 11, 2016**, 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: Elizabeth Regan and the Norwich Bulletin  
Assistant Attorney General Stephen R. Sarnoski  
Attorney Robert J. Krzys

2016-01-29/FIC# 2015-422/Trans/wrbp/LFS//TCB

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Elizabeth Regan and the Norwich Bulletin,

Complainants

against

Docket #FIC 2015-422

Commissioner, State of Connecticut,  
Department of Emergency Services and  
Public Protection; and State of  
Connecticut, Department of Emergency  
Services and Public Protection,

Respondents

January 29, 2016

The above-captioned matter was heard as a contested case on November 2, 2015, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The hearing officer granted Michael Thomas's unopposed motion to intervene.

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 March 2, 2015, the complainants requested copies of "[a]ll complaints, internal affairs reports and disciplinary reports pertaining to Lieutenant Michael Thomas."
3. It is found that the complainants and respondents had several conversations about the complainants' request until June 25, 2015, when the respondents informed the complainants that Lt. Thomas objected to disclosure of the records.
4. By letter filed June 26, 2015, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies 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 (1) inspect such records promptly during regular office or business hours, ... 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: "Any 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 records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. The intervenor objects to disclosure of all of the records. The respondents claim that §1-210(b)(2), G.S., exempts some of the information in the records from mandatory disclosure.

10. 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."

11. 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 disclosure of such information is highly offensive to a reasonable person.

12. Following the hearing in this matter, the respondents submitted the requested records for in camera inspection, accompanied by an index. Such records are hereinafter referenced as: IC-2015-422-1 (2014 report) through IC-2015-422-65 (2014 report) and IC-2014-422-1 (2007 report) through IC-2015-422-259 (2007 report).

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

14. It is found, based on testimony at the hearing in this matter, that the records comprise two reports: an Internal Affairs investigation in 2007, and an Affirmative Action investigation in 2014.

15. It is found, based on testimony at the hearing in this matter and the Index's descriptions of information claimed to be exempt, that the investigations concerned inappropriate comments and conduct of a sexual nature and, in the 2014 case, alleged retaliation.

16. The intervenor objected to disclosure of all the records, contending that all but one of the allegations in both reports were unsubstantiated, he received no discipline for the one substantiated allegation, and that he fears that disclosure of the investigation could hinder his opportunity for advancement.

17. It is found, however, that even where an investigation results in exoneration, there may be a legitimate public interest in an alleged "abuse of power while engaged in the performance of ... official police duties." Dept. of Public Safety v. FOI Commission, 242 Conn. 79, 88 (1997) (nature of the charge, combined with fact that information contained in report was limited to "matters of professional conduct" persuaded court that presumption in favor of disclosure had not been overcome.)

18. It is found that the reports in this matter concern matters of professional conduct. It is found that they pertain to legitimate matters of public concern.

19. It is found, however, that there is no legitimate public interest in disclosure of a photograph of the intervenor and his wife to which the intervenor specifically objects. It is also found that disclosure would be highly offensive to a reasonable person. It is found, therefore, that disclosure of the photograph would constitute an invasion of personal privacy, within the meaning of §1-210(b)(2), G.S.

20. It is found that the respondents redacted personally identifying information about the complaining witnesses in the two investigations (including name, address, employee number, home address), as well as references to comments and conduct of a sexual nature.

21. The respondents were guided by Rocque v. FOI Commission, 255 Conn. 651 (2000), which considered whether disclosure of records of an investigation of alleged sexual harassment by a public employee against a co-worker would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. In Rocque, both the public employee and the complaining witness objected to disclosure of the records. The Court concluded "that the only portions of [the] two documents that are exempt are those portions identifying the complainant or containing sexually explicit information." Id., 668. Sexually explicit information "pertaining to the complainant's intimate relationships" was not a matter of legitimate public concern; id.; and disclosure of such information would be highly offensive to a reasonable person "because it pertains to the private life of the sexual harassment complainant and documents the complainant's private relationships." Id., 666.

22. The Court emphasized, however, that Perkins requires “an analysis of the facts of *each* case in which the personal privacy exemption is claimed.” (Emphasis added.) Id., 669.

23. Following the hearing in this matter, the complainants informed the Commission by email dated January 25, 2016, that they did not object to redaction of the name of the complaining witness in the 2014 report; i.e. IC-2015-422-1 (2014 report) through IC-2015-422-65 (2014 report). The Commission takes administrative notice of such email.

24. With respect to the other identifying information redacted by the respondents, the Commission has declined to order disclosure of employee identification numbers. See, e.g., Docket #FIC 2014-032, Kevin J. Daly, Jr. and the City of Waterbury v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (November 19, 2014).

25. It is found that the respondents did not provide evidence that either of the two complaining witnesses objected to disclosure of the records. It is found that the complaining witness in the 2014 report received notice of the records request and hearing in this matter. It is found that the complaining witness in the 2007 report is no longer employed by the State of Connecticut and the respondents did not notify such witness of the request for the 2007 report.

26. It is found that the respondents did not prove that the identifying information (except for the name of the complaining witness in the 2014 report and employee identification numbers) is not a matter of legitimate public concern and did not prove that disclosure of such information would be highly offensive to a reasonable person.

27. It is found that disclosure of such portions of the records that contain identifying information other than the name of the complaining witness in the 2014 report and employee identification numbers would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. It is concluded that such information, as indicated by the respondents’ redactions, is not exempt from disclosure.

28. Upon careful examination of the in camera records, it is found that, in contrast to Rocque, the comments or conduct of a sexual nature contained in the reports requested in this case are not “sexually explicit information.” It is found that, unlike in Rocque, the information does not pertain to the complainants’ intimate relationships or to the private life of the complainants. Id., 665.

29. It is found that the redacted comments and conduct of a sexual nature pertain to legitimate matters of public concern in that they concern matters of professional conduct and reveal the substance and degree of severity of alleged misconduct. It is also found that disclosure of such information would not be highly offensive to a reasonable person.

30. It is found that disclosure of the portions of the records that contain comments or describe conduct of a sexual nature would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. It is concluded that such information, as indicated by the respondents’ redactions, is not exempt from disclosure.

31. In addition, the respondents claim that §1-210(b)(3)(E), G.S., exempts information on pages IC-2015-422-138 (2007 report) and IC-2015-422-213 (2007 report).

32. Section 1-210(b)(3)(E), G.S., provides that nothing in the FOI Act requires 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 ... (E) investigatory techniques not otherwise known to the general public[.]

33. It is found that IC-2015-422-138 (2007 report) and IC-2015-422-213 (2007 report) are records of a law enforcement agency not otherwise available to the public. It is found that the redactions to such pages of the reports are of information that was compiled in connection with the detection or investigation of crime, and that disclosure of such information would reveal investigatory techniques not otherwise known to the general public, within the meaning of §1-210(b)(3)(E), G.S.

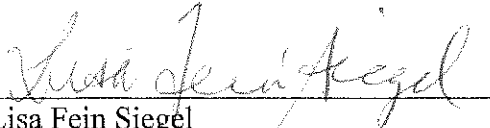
34. It is concluded that §1-210(b)(3)(E), G.S., exempts the information redacted on IC-2015-422-138 (2007 report) and IC-2015-422-213 (2007 report) from disclosure.

35. It is also found that IC-2015-422-65 (2014 report) is not responsive to the complainants' request and may be withheld from disclosure.

36. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by not promptly providing copies of the records that the complainants requested, except for redactions of the photograph of the intervenor's wife, the name of the complaining witness in the 2014 report, employee identification numbers, the investigatory techniques referenced in paragraph 33, above, and page IC-2015-422-65 (2014 report).

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, free of charge, copies of the requested records, redacted as described in the paragraph 35 of the findings of fact, above.
2. Henceforth, the respondents shall comply with §§1-210(a) and 1-212(a), G.S.

  
Lisa Fein Siegel  
as Hearing Officer