

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Mario Boone and WTNH News 8,

Complainants

against

Docket #FIC 2018-0396

Mayor, Town of Rocky Hill; and
Town of Rocky Hill,

Respondents

July 10, 2019

The above-captioned matter was heard as a contested case on October 3, 2018, at which time the complainants and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The subject of the requested record, Lieutenant Robert Catania, was given notice of the hearing, but did not ask to intervene, or appear to provide testimony or argument.

The respondents submitted for in camera inspection the internal investigation report that is the subject of this complaint.

At the hearing, the respondents were directed to submit two after-filed exhibits, which, without objection, have been entered into evidence as Respondents' Exhibits 1 and 2.

A proposed decision was considered at the Commission's May 22, 2019 meeting, at which time no action was taken. The hearing officer then reopened the hearing for the purpose of taking evidence concerning the respondents' claim that disclosure of the records in question violates a federal court order. The matter was then heard on June 17, 2019, at which time the respondents presented exhibits and argument on the complaint, but the complainant did not appear.

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. By letter of complaint filed July 20, 2018, the complainants appealed to the Commission, alleging that the respondents denied their request to review a certain police internal investigation report. The complainants alleged that the "investigation was closed when the officer retired, but was left in a draft state to prevent its release."

3. It is found that, sometime before July 20, 2018, the complainants asked to review the files “pertain[ing] to a now retired police officer who was the subject of an internal investigation.”

4. It is found that the respondents denied the request “to review a copy of Attorney Daigle’s report involving an enumerated [sic] employee” by email dated July 20, 2018, asserting that the report was exempt from disclosure.

5. It is found that, following the hearing, the complainants made an October 5, 2018 request to the respondents for:

... any/all scope of service letter(s) between the Rocky Hill Police Department and Attorney Daigle regarding an internal investigation of Lieutenant Catania; and any/all invoices, receipts, or other documents listing the full amount paid to attorney Daigle to conduct the internal investigations of Lieutenant Catania.

6. It is found that the respondents provided the complainant with redacted copies of the scope of services agreement and of attorney Daigle’s itemized services bill. The complainant in turn then provided these documents to the Commission after the hearing.

7. On its own motion, the Commission has entered into evidence as complainants’ Exhibits B and C the two records described in paragraph 6, above.

8. 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.

9. 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, (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.

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

11. It is found that the requested internal investigation report is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a)(1), G.S.

12. Among other exemptions to disclosure, the respondents contend that a federal court order prohibits the disclosure of the requested internal investigation.

13. It is found that the internal investigation was produced in ongoing federal district court litigation, *Italo Anthony Miceli vs. Town of Rocky Hill et al.*, CIV. NO. 3:27cv00029 (VAB).

14. The Commission takes administrative notice of the United States District Court District of Connecticut Standing Protective Order, paragraph 4, which provides that material designated as confidential “shall not be used or disclosed for any purpose other than the litigation of this action” and may be disclosed pursuant to the Standing Order only for purposes of litigating the civil case that are not germane to this complaint.

15. It is found that the internal investigation requested by the complainant was specifically designated as confidential in the district court proceeding by the defendant who is the subject of the investigation, Lt. Catania.

16. The Commission has not previously specifically addressed the question of whether a designation of material as confidential in a federal court proceeding is a defense to disclosure under the FOI Act.

17. The Commission has frequently concluded that a public agency may not simply contract away the public’s right to know under the FOI Act by including a provision that prohibits any party to the agreement from disclosing its terms. See, e.g., Docket No. FIC 94-063, *Carol L. Panke v. Bloomfield Town Manager*. See also *Lieberman v. State Bd. Of Labor Relations*, 216 Conn. 253 (1990).

18. However, under analogous circumstances, the Commission has declined to order disclosure of records that a federal court has specifically ordered to be held confidential by all parties. See Docket No. FIC 1990-361, *The Hartford Courant et al. v. City of Hartford et al.* (Commission declines to order production of documents covered by a confidentiality provision in a court-approved settlement agreement). Compare Docket No. FIC 2001-530, *Waterbury Republican-American et al. v. City of Waterbury et al.* (Commission orders production of document where confidentiality agreement was not court-approved, or entered as an explicit order in federal court, or incorporated into any other federal court order); Docket No. FIC 2004-071, *Manchester Journal Inquirer et al. v. City of Hartford et al.* (Commission orders disclosure where respondents failed to prove that a federal court had entered an explicit order mandating confidentiality of the requested record).

19. Additionally, the Second Circuit of the U.S. Court of Appeals has concluded that a confidentiality order that was part of a court-approved settlement “provides a valid defense to disclosure of the documents in a state FOIC proceeding.” *City of Hartford v. Chase*, 942 F.2d 130 (1991).

20. It is therefore concluded that the Second Circuit's holding in *City of Hartford*, above, together with the court order described in paragraphs 14 and 15, above, constitute federal law that "otherwise provides" for the confidentiality of the requested internal investigation, within the meaning of §1-210(a), G.S.

21. It is therefore concluded that the internal investigation is exempt from disclosure, and that the respondents did not violate the FOI Act as alleged.

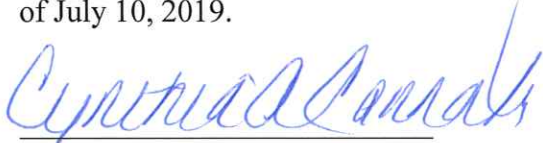
22. The Commission notes that its conclusion is limited to the facts and circumstances of this case, and shall not be construed to mean that rules of discovery limit the public's right to know under the FOI Act. See *Chief of Police v. FOIC*, 252 Conn. 377 (2000) (holding that a request for an internal investigation report was to be determined by reference to the provisions of the FOI Act, irrespective of whether the record is or would be disclosable under the rules of discovery). The determining factor in the instant complaint is not that a discovery rule prevents production of the requested investigation report (indeed, the report was in fact produced in discovery), but rather that an explicit federal court order mandates the confidentiality of the requested record that was produced in discovery.

23. Having concluded that the internal investigation report is exempt from disclosure pursuant to the federal court order, there is no need to address the respondents' alternative arguments that the investigation report is exempt pursuant to §§1-210(b)(1), (2), (4) or (10), G.S.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 10, 2019.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

MARIO BOONE AND WTNH NEWS 8, 8 Elm Street, New Haven, CT 06510

MAYOR, TOWN OF ROCKY HILL; AND TOWN OF ROCKY HILL, c/o
Attorney Michael J. Rose, Rose Kallor, LLP, 750 Main Street, Suite 1108-3, Hartford,
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Cynthia A. Cannata
Acting Clerk of the Commission