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FREEDOM OF INFORMATION



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Justin Hanna
Complainant(s)
against

Chief, Police Department, Town of Old Saybrook;
Police Department, Town of Old Saybrook; and
Town of Old Saybrook

Respondent(s)

Notice of Meeting

Docket #FIC 2021-0586

June 29, 2022

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 remotely, at the Freedom of Information Commission, 165 Capitol Avenue, Suite 1100, Hartford, CT., at **2:00 p.m. on Wednesday, July 13, 2022**.

At the meeting 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 July 11, 2022**. 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**.

NOTICE: Due to public health concerns surrounding the COVID-19 pandemic, the Commission meeting of July 13, 2022, will be held solely through the use of electronic equipment (remotely). Further guidance is included regarding the dial-in procedure to follow in the event that you wish to attend, or to present oral argument at, the July 13, 2022, meeting.

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 July 11, 2022**. **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 July 11, 2022**, 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



Linda Fasciano
Acting Clerk of the Commission

Notice to: Justin Hanna
Attorney Patrick J. McHale

FIC# 2021-0586/ITRA/CZH/PSP/TAH/JMM/6/29/22

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Justin Hanna,

Complainant

against

Docket #FIC 2021-0586

Chief, Police Department, Town of Old
Saybrook; Police Department, Town of Old
Saybrook; and Town of Old Saybrook,

Respondents

June 29, 2022

The above-captioned matter was heard as a contested case on May 27, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act No. 22-3.

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 email dated June 18, 2021, the complainant, a former employee of the respondent police department, requested from the respondents a copy of his "complete personnel file", including a copy of his "exit interview".
3. It is found that, by email dated June 22, 2021, the respondents acknowledged the complainant's request.
4. It is found that, by email dated July 8, 2021, and again on July 19, 2021, the complainant renewed his request for his complete personnel file, including his "exit interview".
5. It is found that, by email dated July 23, 2021, the respondents denied the request for a copy of his exit interview, claiming that such record was exempt from disclosure.

6. By letter of complaint, dated July 30, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for a copy of the exit interview.¹

7. Section 1-200(5), G.S., provides:

“[p]ublic 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 1-218, whether such data or information be handwritten, videotaped, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept 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 ... (3) receive a copy of such records in accordance with section 1-212.

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

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

11. At the hearing in this matter, the respondents claimed that the exit interview is exempt from disclosure pursuant to §1-210(b)(2), G.S. According to the respondents, disclosure of the exit interview would constitute an invasion of Police Chief Michael Spera’s (hereafter, “Chief Spera” or “chief”) personal privacy. The complainant challenged the respondents’ claim.

12. Upon order of the hearing officer, the respondents submitted the records responsive to the request, described in paragraph 4, above, for in camera inspection, along with an in camera index. Such in camera records shall be identified as IC-2021-0586-1 through IC-2021-0586-11.

13. On the in camera index, the respondents contended that the entirety of the in camera records is exempt from disclosure pursuant to §1-210(b)(2), G.S.

¹ At the hearing in this matter, the complainant also mentioned that the respondents did not provide the requested records promptly. However, the complainant did not pursue this claim further, so it is therefore deemed waived and will not be further discussed herein.

14. Section 1-210(b)(2), G.S., provides that disclosure is not required of “[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.”

15. 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.

16. With regard to the first prong of the Perkins test, whether a file is “‘similar in nature’ to personnel or medical files” requires “a functional review of the documents at issue.” Connecticut Alcohol & Drug Abuse Commission v. Freedom of Information Commission, 233 Conn. 28, 40-41 (1995). The court noted that “a ‘personnel’ file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. If a document or file contains material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is ‘similar’ to a personnel file. 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 such traditional personnel actions, should be considered ‘similar’ to a personnel file for the purposes of § [1-210](b)(2). Id. at 41.

17. It is found that the complainant was asked to complete a written exit interview as part of the process of ending his employment with the respondent police department. It is found that the exit interview was then reviewed by another employee of the respondent police department and discussed with the complainant, in accordance with internal policy.

18. At the hearing in this matter, the respondents testified, and it is found, that exit interviews are used by the respondent police department to learn from the departing employee’s experiences, improve the department’s work environment going forward, and to evaluate supervisors and the department as a whole. Exit interviews are reviewed by Chief Spera, who is responsible for evaluating the performance of supervisors and other employees and by the Board of Police Commissioners, which is responsible for evaluating Chief Spera’s performance. It is further found that the Police Commission reviews such exit interviews confidentially, while in executive session.

19. The complainant acknowledged that his exit interview contained negative comments and opinions regarding Chief Spera and relayed negative experiences the complainant claimed to have had with the chief during his employment with the respondent police department.

20. Based upon the testimony described in paragraphs 18 and 19, above, and upon careful in camera inspection, it is found that a principle purpose of the exit interview is evaluation of superiors and employees, including the chief, and that therefore, it is a “personnel” or “similar” file within the meaning of §1-210(b)(2), G.S.

21. In accordance with Perkins, the second determination is whether disclosure of the requested 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 would be highly offensive to a reasonable person.

22. At the hearing in this matter, and in their post-hearing brief, the respondents argued that the requested records do not pertain to matters of legitimate public concern because the complainant used the exit interview to express negative opinions regarding Chief Spera and make defamatory statements about Chief Spera, in an effort to discredit the chief. The respondents further argued in their post-hearing brief that the complainant's statements concerned "the terms and conditions of his employment and [were] private in nature."

23. The Connecticut Supreme Court has long held "that when a person accepts public employment, he or she becomes a servant of and accountable to the public." Perkins, 228 Conn. at 177. In Perkins the court noted that "disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern." Id. at 174. In addition the court stated "that when a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person's reasonable expectation of privacy is diminished....The public has a right to know not only who their public employees are, but also when their public employees are and are not performing their duties." Id. at 177.

24. Based on the testimony at the hearing, it is found that the exit interview in part contains the complainant's personal impressions of Chief Spera, related to the chief's official duties and responsibilities as Chief of the Old Saybrook Police Department, and that such record therefore pertains to a legitimate matter of public concern.

25. Moreover, it is found that disclosure of the exit interview would not be highly offensive to a reasonable person.

26. With regard to the respondents' claims that disclosure of the exit interview would be defamatory and otherwise harmful to the reputation of Chief Spera, the Commission notes that although some of the information contained in the in camera records may be harmful to the chief's reputation and that of the respondent police department itself, whether or not disclosure of certain information is harmful to reputation is not the legal standard set forth in Perkins.

27. Consequently, it is found that disclosure of the requested records would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. Accordingly, it is concluded that such records are not exempt from disclosure, and that the respondents violated §§1-210(a) and 1-212(a), G.S., by not providing 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. Forthwith, the respondents shall provide a copy of the requested records to the complainant, free of charge.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

C. Zack Hyde
C. Zack Hyde
as Hearing Officer

FIC2021-0586/hor/CZH/06/29/2022



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Justin Hanna

Complainant(s)

Against

Docket # 2021-0586

Chief, Police Department, Town of Old Saybrook; Police Department, Town of Old Saybrook; and Town of Old Saybrook

Respondent(s)

June 30, 2022

NOTICE OF DIAL IN INFORMATION

Due to public health concerns surrounding the Covid 19 pandemic, the Commission Meeting of July 13, 2022, will be conducted remotely at 2:00 p.m.

Should you wish to attend the meeting remotely, please dial in at 1:50 p.m.

+1 860-840-2075

Conference ID: 865 928 505#