

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Len Besthoff and NBC Connecticut,

Complainants

against

Docket #FIC 2019-0070

Rollin Cook, Commissioner, State of
Connecticut, Department of Correction;
State of Connecticut, Department of
Correction; Commissioner, State of
Connecticut, Department of Mental
Health and Addiction Services; and
State of Connecticut, Department of
Mental Health and Addiction Services,

Respondents

December 11, 2019

The above-captioned matter was heard as a contested case on July 2, 2019, at which time the complainants 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 email dated December 3, 2018, the complainants sent the following request to the Department of Mental Health and Addiction Services ("DMHAS"):

NBC Connecticut requests the opportunity to **view** and/or photograph and/or videotape, and/or photocopy any and all records related to: any and all personnel files kept by DMHAS of former employee Renata Kozak. (Emphasis in original).

3. It is found that, by email dated December 4, 2018, the DMHAS acknowledged the request. It is further found that DMHAS informed the complainants that Ms. Kozak was no longer employed by DMHAS and that the complainants would have to inquire with Ms. Kozak's new employing agency (meaning the DOC) to obtain access to her personnel file.

4. It is found that, by email dated December 4, 2018, the complainants sent the following request to the Department of Correction ("DOC"):

NBC Connecticut requests the opportunity to view and/or photograph and/or videotape, and/or photocopy any and all records related to: any and all personnel files kept by DMHAS of former employee Renata Kozak.
(Emphasis in original).

5. It is found that, by email dated December 5, 2018, the DOC acknowledged the request, and inquired whether the complainants desired copies of or access to the requested records. It is found that the complainants responded that they first desired access to the records and then, after their review, the option to obtain certain copies.

6. It is found that, between December 19, 2018 and January 18, 2019, the complainants inquired with the DOC several times concerning the status of their request.

7. By letter dated and filed January 31, 2019, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their requests for the records.

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 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 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 . . . (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 that:

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.

11. 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.

12. With regard to the DMHAS respondents, §1-206(b)(1), G.S., provides, in relevant part, as follows:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. (Emphasis supplied).

13. It is found that the complainants' last communication with any of the DMHAS respondents occurred on December 4, 2018. It is further found that, in the December 4th communication, DMHAS informed the complainants it did not maintain any of the requested records. Accordingly, any complaint challenging DMHAS's assertion would have had to have been filed with the Commission by January 3, 2019. Because the complaint in this case was filed on January 31, 2019, it is concluded that the Commission lacks jurisdiction to adjudicate the complaint against the DMHAS respondents.

14. Accordingly, the complainant is dismissed against the DMHAS respondents.

15. It is found that the requested records, which originated with DMHAS, were forwarded to the DOC when Ms. Kozak left the employment of DMHAS and began her

employment with the DOC.

16. Patricia Silva, the DOC's Human Resources Manager, and Correctional Counselor Supervisor Anthony Campanelli, the DOC's Freedom of Information Administrator appeared and testified at the contested case hearing. Ms. Kozak, the subject of the requested records, appeared at the contested case hearing and took the oath, but provided very limited testimony.

17. It is found that, after the DOC reviewed the personnel file at issue, it notified Ms. Kozak by letter dated January 30, 2019 that the file had been requested.

18. It is found that, Ms. Kozak, after reviewing her personnel file, provided the DOC with a written objection to the release of her entire personnel file.

19. It is found that, on or about June 7, 2019, Ms. Kozak informed the DOC that she was withdrawing her objection to the release of some of the records in her personnel file. It is found that, on June 10, 2019, the DOC disclosed such records to the complainants.

20. On July 10, 2019, the respondents submitted the remainder of the records described in paragraph 2, above, to the Commission for an in camera inspection (hereinafter the "in camera records"). The in camera records shall be identified as IC-2019-0070-01 through IC-2019-0070-139.

21. At the contested case hearing, the respondents testified that Ms. Kozak was previously an employee of DMHAS and was currently an employee of the DOC. However, the DOC did not present a case in opposition to disclosure. It is found that their sole reason for not disclosing Ms. Kozak's personnel records is Ms. Kozak's objection to disclosure.

22. Ms. Kozak contended at the hearing that the disclosure of the remaining records in her personnel file would constitute an invasion of her personal privacy. Ms. Kozak contended that IC-2019-0070-01 through IC-2019-0070-21 are completely exempt from disclosure pursuant to §1-210(b)(2), G.S., and that IC-2019-0070-22 through IC-2019-0070-139 are exempt in part pursuant to §1-210(b)(2), G.S. When questioned by the hearing officer as to why she believed the disclosure of such records would constitute an invasion of her personal property, Ms. Kozak requested permission to testify in camera. When the hearing officer explained that she could not take her testimony in private, Ms. Kozak declined to provide any testimony in support of her position.

23. 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"

24. 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.

25. 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....

26. It is found that the in camera records constitute a "personnel" file within the meaning of §1-210(b)(2), G.S.

27. It is found that the DOC respondents timely notified Ms. Kozak of the request at issue in this matter, and that Ms. Kozak timely filed an objection to the disclosure of the in camera records, within the meaning of §1-214, G.S.

28. Despite Ms. Kozak's general contention that the complainants should not be able to access the remainder of her personnel file from the DOC respondents because she feels that disclosure would constitute an invasion of personal privacy, the Supreme Court has clarified that "disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern." Perkins, 228 Conn. 158, 177 (1993) ("Finally, we note 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, especially in regard to the dates and times required to perform public duties. 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."). Moreover, a complainant's motive in making a request for public records is irrelevant to

the determination of whether such records are subject to disclosure. See Chief of Police, Hartford Police Dep't v. FOIC, 252 Conn. 377, 387 (2000); see also Lieberman, Attorney General v. State Bd. of Labor Relations, 216 Conn. 253, 579 A.2d 505 (1990) (wherein the Connecticut Supreme Court held that an agreement between a town and a union to destroy or maintain confidential certain disciplinary records in exchange for a public employee's agreement to resign was an illegal subject of collective bargaining).

29. Based on a careful in camera inspection, it is found that the following in camera records in their entirety are forms and various other documents provided or completed by Ms. Kozak during her employment with DMHAS that contain family and personal matters, including details related to medical issues: IC-2019-0070-06 through IC-2019-0070-21. It is found that the information contained in these in camera records is unrelated to and does not reflect how or when Ms. Kozak performed her job as a state employee.

30. In addition, it is found that the redactions made in IC-2019-0070-22 through IC-2019-0070-139 contain information that Ms. Kozak provided either to DMHAS or the DOC during her employment. It is found that such redacted information concerns family and personal matters, as well as insurance and other benefit elections, banking information, Ms. Kozak's social security number, a copy of her social security card and her residential address¹. It is found that such information is unrelated to and does not reflect how or when Ms. Kozak performed her job as a state employee.

31. It is found that the information contained in the records identified in paragraphs 30 and 31, above, are not matters of legitimate public concern and 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 DOC respondents did not violate the FOI Act by withholding such records from the complainants.

32. It is found that the remainder of the in camera records (which is, IC-2019-0070-01 through IC-2019-0070-05 in their entirety) do pertain to legitimate matters of public concern in that they reveal how and when a public employee performed her work during her tenure with a state agency. It is further found that such records reveal the degree to which a subsequent state agency could evaluate such employee's candidacy for employment. It is found that disclosure of these in camera records would not be highly

¹ Because it is found that Ms. Kozak was a classified service employee during her previous employment with DMHAS and continues to be such an employee in her current employment with DOC, her residential address is protected from disclosure. See 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: . . . (3) An employee of the Department of Correction . . . (11) An employee of the Department of Mental Health and Addiction Services who provides direct care to patients. . . ."

offensive to a reasonable person.

33. It is concluded that IC-2019-0070-01 through IC-2019-0070-05 are subject to mandatory disclosure.

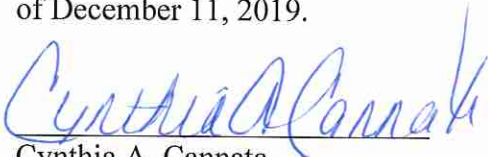
34. Based on the foregoing, it is concluded that the DOC respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they decline to provide IC-2019-0070-01 through IC-2019-0070-05 to the complainants.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. The DOC respondents shall forthwith provide the complainants with a copy of the requested records, as described in paragraph 33 of the findings, above, free of charge.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of December 11, 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:

LEN BESTHOFF AND NBC CONNECTICUT, 1422 New Britain Avenue, West Hartford, CT 06110

ROLLIN COOK, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Nancy Canney, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109; **COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**, c/o Assistant Attorney General Laura Thurston, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission