

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ryan Graham,

Complainant

against

Docket #FIC 2018-0754

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

Respondents

October 23, 2019

The above-captioned matter was heard as a contested case on March 25, 2019, 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 email dated December 14, 2018, the complainant requested that the Department of Administrative Services (“DAS”) provide him with copies of the following records:

All available materials available under §5-225, G.S., regarding job postings, bulletins, or exam numbers, including the following:

- a. 180306-7603EU-001 – Information Technology Analyst I (35 hours) – submitted¹ on 3/7/2018;

¹ It is found that “submitted” refers to the date on which the complainant submitted an application for each of the various positions.

- b. 180524-3271FE-001 – Telecommunications Engineer 1 (40 hours) – submitted on 5/29/2018;
- c. 180525-7602FD-001 – Information Technology Technician (40 hours) – submitted on 5/29/2018;
- d. 180606-8135FP-001 – Evidence Control Officer (40 hours) – submitted on 6/9/2018;
- e. 180703-8838PS-001 – Training Officer – submitted on 7/4/2018;
- f. 180719-5344AR-001 – Law Enforcement Systems Analyst – submitted on 7/19/2018; and
- g. 180809-8952CL-001 – Unit Supervisor – submitted on 8/14/2018.

3. It is found that, prior to the request for records set forth in paragraph 2, above, the complainant submitted a very similar request on November 5, 2018 to Department of Emergency Services and Public Protection (“DESPP”). It is found that, in addition to the records set forth in paragraph 2, above, the complainant requested that DESPP provide him with copies of the following:

- a. A Call for Service Report (“CSR”), No. 1800413320;
- b. 1604500CMAT – Telecommunications Engineer 1 – submitted on 5/31/2016;
- c. 8619 – Emergency Management Program Specialist – submitted on 4/3/2017;
- d. 8656 – Emergency Management Program Specialist – submitted on 4/3/2018;
- e. 8618 – Emergency Management Area Coordinator – submitted on 4/3/2017; and
- f. 8632 – Emergency Management Program Specialist – submitted on 4/27/2017.

4. It is found that, on December 5, 2018, DESPP provided the complainant with a CD containing 164 pages of unredacted records concerning the positions that the complainant had applied for prior to 2018 (the “first disclosure”). It is further found that DESPP informed the complainant that detailed records concerning the positions that the complainant applied for during 2018 would need to be obtained from DAS.

5. It is found that, by email dated December 14, 2018, DAS acknowledged the complainant's request and informed him that the request was being processed.

6. It is found that, by a separate email dated December 14, 2018, DAS informed the complainant that, to the extent he was seeking detailed records, such as scoring matrixes, and records concerning who had been chosen for a particular job and why such person had been chosen, those records would have to be obtained by the hiring agency, which in this instance was DESPP.

7. It is found that, by a third email dated December 14, 2018, the complainant forwarded DAS's email referenced in paragraph 6, above, to DESPP.

8. By letter dated and filed December 31, 2018, the complainant appealed to the Commission, alleging that both DAS and DESPP had violated the FOI Act by failing to provide him with all of the responsive records.

9. 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.

10. 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.

11. 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.”

12. 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.

13. It is found that, under cover letter dated January 22, 2019, DESPP provided the complainant with an additional 40 pages of records (the “second disclosure”). It is

found that some of these records contained redactions.

14. It is found that, on March 15, 2019, DESPP provided the complainant with records comprising the CSR (the “third disclosure”), referenced in paragraph 3.a, above. It is found that some of these records contained redactions.

15. At the contested case hearing, the complainant challenged redactions in the second and third disclosures and contended that there should be more records responsive to his request.

16. The DAS respondents appeared through counsel and presented the affidavit of Nicholas Hermes, the Director of Statewide Human Resources.

17. Based on the affidavit of Director Hermes, it is found that the DAS respondents do not maintain any records responsive to the request.

18. Accordingly, it is concluded that the DAS respondents did not violate the FOI Act, as alleged in the complaint.

19. Attorney Colin Milne appeared and testified at the contested case hearing on behalf of the DESPP respondents.

20. It is found that, when DESPP initially received the request, the agency categorized it as a request for a single criminal investigative report. It is found that this categorization overlooked the bulk of the request, which was for DESPP’s Human Resources (“HR”) records. It is further found that this categorization caused the agency’s response to be delayed.

21. It is found that, on or around December 5, 2018, when Attorney Milne realized that the complainant was requesting more than one criminal investigative report, he instructed DESPP’s HR department to gather the records. It is found that DESPP’s HR department provided Attorney Milne with the records comprising the first disclosure, and he scanned the records to a CD and provided the CD to the complainant. See ¶ 5, above. At this point, it is found that DESPP mistakenly believed that the remaining records were in the possession of DAS, and so informed the complainant.

22. It is found that, upon receiving a copy of DAS’ December 14th letter, Attorney Milne had DESPP’s HR department conduct another search for responsive records. It is found that this search unearthed an additional 40 pages of records that pertained to positions that the complainant had applied for in 2018. It is found that Attorney Milne provided these records to the complainant as a second disclosure.

23. It is found that 52 days following the second disclosure, DESPP’s reports and records division provided the complainant with the CSR.

24. It is found that the DESPP respondents have disclosed all of the responsive records in their possession to the complainant, albeit with redactions.

25. At the conclusion of the contested case hearing, the hearing officer ordered the respondents to submit the records at issue for an in camera inspection.

26. On April 4, 2019, the respondents submitted the in camera records to the Commission. The in camera records are comprised of two packages of records. The first package contains 40 pages of HR records, of which 34 pages contain redactions, and the second package contains a 28-page CSR, of which one page contains two redactions and three pages are completely redacted. The in camera records shall be referred to as IC-2018-0754-HR-1 through IC-2018-0754-HR-40 and IC-2018-0754-CSR-1 through IC-2018-0754-CSR-28.

27. With regard to IC-2018-0754-HR-2 through IC-2018-0754-HR-11; IC-2018-0754-HR-15 and IC-2018-0754-HR-16; IC-2018-0754-HR-18 through IC-2018-0754-HR-34; and IC-2018-0754-HR-36 through IC-2018-0754-HR-40, the respondents contend that the information redacted from these pages is exempt pursuant to §1-210(b)(6), G.S.

28. Section 1-210(b)(6), G.S., provides that nothing in the FOI Act shall require disclosure of “[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination.”

29. In Washington v. FOIC, 25 Conn. L. Rptr. 334 (1999), the Superior Court concluded that oral board panelists’ scoring sheets were “the equivalent of a scoring key” which is specifically exempted from disclosure under §1-210(b)(6), G.S. The Commission has interpreted Washington to mean that certain oral examination data are exempt from disclosure pursuant to §1-210(b)(6), G.S. See Lanier v. Director, Legal Services, State of Connecticut, Judicial Branch, Docket #FIC 2016-0623 (July 26, 2017) (interviewer’s recommendations and evaluation form in its entirety constitutes examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Malley v. Dep’t of Envl. Prot., Docket #FIC 2009-123 (Feb. 24, 2010) (DEP interviewer’s report and recommendations for hiring or promotion constitutes examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Casey v. Dep’t of Corr., 2003-377 (Apr. 14, 2004) (forms containing questions asked by the interview panel, candidates’ responses, ratings given by the interview panel members and any comments made by such members constituted test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Murray v. Hartford Pers. Dir., Docket #FIC 2001-006 (Apr. 11, 2001) (scoring sheets of each oral board panelist for each candidate constitute examination data within the meaning of §1-210(b)(6), G.S.); Randal Edgar et al. v. Waterbury Superintendent of Sch., Docket #FIC 2000-051 (Mar. 28, 2001) (scores assigned by interviewers to each candidate for the position of superintendent of schools constitute examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.).

30. After a careful in camera inspection, it is found that the redacted portions of the in camera records referenced in paragraph 27, above, are interview questions, scoring sheets, and interviewers’ reports and recommendations concerning hiring or

promotion.

31. It is concluded that the redacted portions of the requested records are permissibly exempt from disclosure pursuant to §1-206(b)(6), G.S.

32. It is therefore concluded that the respondents did not violate the FOI Act when they redacted such information from the second disclosure prior to disclosing such records.

33. Next, with regard to IC-2018-0754-CSR-10 and IC-2018-0754-CSR-14, the respondents contend that both of these pages contain a social security number, which the respondents redacted before disclosing the CSR. Upon a careful in camera inspection, it is found that both IC-2018-0754-CSR-10 and IC-2018-0754-CSR-14 do contain a social security number, which is the only information redacted from the pages. The Commission has consistently declined to order disclosure of social security numbers. Accordingly, the DESPP respondents did not violate the FOI Act when they redacted the social security numbers from CSR prior to its disclosure.

34. Next, the respondents contend that the information redacted from IC-2018-0754-CSR-1 is exempt pursuant to §14-10, G.S., because it consists of two drivers' license numbers.

35. Section 14-10(c)(2), G.S., provides, in relevant part, as follows:

[b]efore disclosing personal information pertaining to an applicant or registrant from such motor vehicle records or allowing the inspection of any such record containing such personal information in the course of any transaction conducted at [the]. . . main office, the commissioner shall ascertain whether such disclosure is authorized under subsection (f) of this section, and require the person or entity making the request to (A) complete an application that shall be on a form prescribed by the commissioner, and (B) provide personal identification satisfactory to the commissioner. . . .

36. "Personal information," as that term is used in §14-10(c), G.S., is defined as ". . . information that identifies an individual and includes an individual's photograph or computerized image, Social Security number, operator's license number, name, address other than the zip code, telephone number, electronic mail address, or medical or disability information, but does not include information on motor vehicle accidents or violations, or information relative to the status of an operator's license, registration or insurance coverage." See §14-10(a)(3), G.S.

37. "Motor vehicle record," as such term is used in §14-10(c), G.S., is defined as "any record that pertains to an operator's license, instruction permit, identify card, registration, certificate of title or any other document issued by the Department of Motor Vehicles." See §14-10(a)(2), G.S.

38. Subsection 14-10(f), G.S., provides, in relevant, part:

The commissioner [of motor vehicles] may disclose personal information from a motor vehicle record to . . . (2) Any individual, organization or entity that signs and files with the commissioner, under penalty of false statement as provided in section 53a-157b, a statement on a form approved by the commissioner, together with such supporting documentation or information as the commissioner may require, that such information will be used for any of the following purposes: (A) In connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories. . . .

39. Section 14-10(g), G.S., provides that:

[a]ny person receiving personal information or highly restricted personal information from a motor vehicle record pursuant to subsection (f) of this section shall be entitled to use such information for any of the purposes set forth in said subsection for which such information may be disclosed by the commissioner. No such person may resell or redisclose the information for any purpose that is not set forth in subsection (f) of this section, or reasonably related to any such purpose.

40. Based upon a careful inspection of IC-2018-0754-CSR-1, it is found that the redacted portions of said record are two operators' license numbers, within the meaning of §14-10(c), G.S., and therefore such portions are "motor vehicle records."

41. Accordingly, it is concluded that the redacted portions of IC-2018-0754-CSR-1 are exempt from disclosure pursuant to §14-10, G.S., and that the respondents did not violate the FOI Act by withholding such portions of the records from the complainant.

42. Finally, with regard to IC-2018-0754-CSR-20 through IC-2018-0754-CSR-22, the respondents contend that these pages are entirely exempt pursuant to §1-210(b)(3)(C), G.S.

43. Section 1-210(b)(3)(C), G.S., provides that nothing in the FOI Act shall require 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 . . . (C)
signed witness statements. . . .

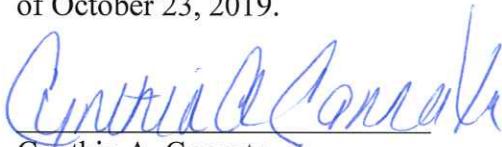
44. Based upon a careful inspection of IC-2018-0754-CSR-20 through IC-2018-0754-CSR-22, it is found that these three pages are records of a law enforcement agency not otherwise available to the public which were compiled in connection with the detection or investigation of crime. It is further found that disclosure of these three pages would not be in the public interest because it would result in the disclosure of "signed witness statements," within the meaning of §1-210(b)(3)(C), G.S.

45. Accordingly, it is concluded that IC-2018-0754-CSR-20 through IC-2018-0754-CSR-22 are exempt in their entirety from disclosure pursuant to §1-210(b)(3)(C), G.S., and that the respondents did not violate the FOI Act by withholding these records from the complainant.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 23, 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:

RYAN GRAHAM, P.O. Box 83, Rocky Hill, CT 06067

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES; STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES, c/o Attorney Jeffrey Beckham, Department of Administrative Services, 450 Columbus Boulevard, Hartford, CT 06103;
COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Assistant Attorney General Steven M. Barry, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission