

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Cynthia Olivero,

Complainant

against

Docket #FIC 2019-0676

Mayor, City of New London; and  
City of New London,

Respondents

July 22, 2020

The above-captioned matter was heard as a contested case on January 27, 2020, at which time the complainant and the respondents appeared 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 November 7, 2019, the complainant requested all documents related to the city's recent recruitment process for a "collections technician," including:
  - (a) all applications and resumes submitted for the position;
  - (b) the offer of employment letter to the selected candidate;
  - (c) testing documents and scores for the candidates for the position;
  - (d) interview notes and scores for the candidates for the position;
  - (e) emails and notes drafted regarding candidates for the position; and
  - (f) the application and resume submitted by Mr. Joshua Montague for the "collections technician" position.
3. It is found that the respondents did not respond to the request.
4. By email dated November 13, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act by denying her request.<sup>1</sup>

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<sup>1</sup> The complainant also alleged the respondents violated the FOI Act by failing to provide records pursuant to several earlier requests. However, at the hearing in this matter, the complainant withdrew the complaint as it pertains to such earlier requests.

5. 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 section 1-218, 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 that:

[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 inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 1-212.

7. 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.”

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

9. At the hearing in this matter, the respondents claimed that the requested records are exempt from disclosure pursuant to §1-210(b)(6), G.S.

10. The hearing officer ordered the respondents to submit the records claimed to be exempt from disclosure to the Commission for in camera inspection, and such records were submitted on March 2, 2020. The in camera records consist generally of applications of successful and unsuccessful applicants, correspondence regarding the scheduling of testing and interviews, test questions, panelists scoring sheets and “bubble sheets”. The in camera records shall be identified herein as IC 2019-0676-001 through IC 2019-0676-290.

11. On the index to the in camera, the respondents claimed that the in camera records are exempt from disclosure pursuant to §§1-210(b)(2) and 1-210(b)(6), G.S.

12. By letter dated March 6, 2020, the respondents provided to the complainant certain requested records they previously had withheld.<sup>2</sup> Such records, some of which were included in

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<sup>2</sup> The March 6<sup>th</sup> letter with the attached records has been marked as Respondents Exhibit A (after-filed).

the in camera records (i.e., IC 2019-0676-001 through 006), consist of a copy of the job posting for the collections technician position, and the resumes and job applications for two individuals who were hired by the city for the collections technician position. It is found that an individual's social security number was redacted in IC 2019-0676-001.

13. The Commission has long held that social security numbers need not be disclosed. It is concluded that the respondents violated the FOI Act by initially withholding the records described in paragraph 12, above, with the exception of the redacted social security number.

14. With regard to the claim that all of the in camera records are exempt from disclosure pursuant to §1-210(b)(6), G.S., that provision states that disclosure is not required of “[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations.”

15. In Washington v. Freedom of Information Commission, superior court, judicial district of New Britain, CV 980492644-S, 1999 WL 711509 (Aug. 31, 1999, Hartmere, J.), the court ruled that the oral board panel's scoring sheets, written answers of the candidates, and taped oral interviews conducted with the candidates constituted test questions, scoring keys and other examination data exempt from disclosure pursuant to §1-210(b)(6), G.S.

16. After careful inspection of the in camera records, it is found that only the following are exempt from disclosure pursuant to §1-210(b)(6), G.S.: IC 2019-0676-008 through 018, IC 2019-0676-020, IC 2019-0676-021, IC 2019-0676-024, IC 2019-0676-025, IC 2019-0676-258 through 263, IC 2019-0676-266 through 269, IC 2019-0676-272 through 274, IC 2019-0676-289, and IC 2019-0676-290.

17. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the records identified in paragraph 16, above, from the complainant.

18. The respondents claimed that the remainder of the in camera records are exempt from disclosure pursuant to §1-210(b)(2), G.S., which provides that “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.”

19. 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 records in question are personnel, medical or similar files. Second, the claimant must demonstrate that disclosure of the files would constitute an invasion of personal privacy. To demonstrate that disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: that the information at issue does not pertain to a legitimate matter of public concern, and that disclosure of the information would be highly offensive to a reasonable person.

20. It is found that the remainder of the in camera records are “personnel...and similar files.”

21. The respondents did not raise §1-210(b)(2), G.S., during the hearing on this matter, and it is found that they offered no evidence in support of such exemption.

22. Moreover, recognizing that the right to privacy is personal in nature and can be asserted only by the person claiming to have been injured, this Commission has concluded that any existing privacy rights belong to the applicants, and not to the public agencies that maintain the records. See Kevin Litten and the Waterbury Republican-American v. Chief, Police Department, City of Torrington, Docket #FIC 2012-711 (June 26, 2013); Ken Byron and the Hartford Courant v. First Selectman, Town of Westbrook, Docket #FIC 2002-580 (September 10, 2013); Jonathan Kellogg, Trip Jennings and the Waterbury Republican-American v. Chief, Police Department, Borough of Naugatuck, Docket #FIC 2001-489 (September 25, 2002); Thedress Campbell v. City Treasurer, City of Hartford, Docket #FIC 2000-022 (August 9, 2000); Walter J. Casey v. Chairman, Board of Education, Town of Darien, Docket #FIC 1997-068 (October 22, 1997).

23. It is therefore concluded that the respondents in this case lack standing to assert the privacy rights of the applicants.

24. Based on all of the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), by withholding the remainder of the in camera 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. Forthwith, the respondents shall provide an unredacted copy of the in camera records, except for those records identified in paragraph 16, above, to the complainant, free of charge.
2. In complying with paragraph 1 of the Order, above, the respondents may redact social security numbers contained in the in camera records.
3. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 22, 2020.



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:

**CYNTHIA OLIVERO**, 23 Blumenthal Drive, Uncasville, CT 06382

**MAYOR, CITY OF NEW LONDON; AND CITY OF NEW LONDON**, c/o Attorney Brian K. Estep, Conway, Londregan, Sheehan & Monaco, P.C., 38 Huntington Street, P.O. Box 1351, New London, CT. 06320-1351



Cynthia A. Cannata  
Acting Clerk of the Commission