

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Greg Smith and The Day,

Complainants

Docket # FIC 2021-0683

against

Mayor, City of New London;
And City of New London,

Respondents

November 16, 2022

The above-captioned matter was heard as a contested case on March 25, 2022, at which time the complainants and respondents appeared, stipulated to certain facts 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 22-3.

On April 8, 2022, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit, which has been marked, without objection, as Respondents' Exhibit 1: Affidavit of Attorney Jeffrey T. Londregan, dated April 8, 2022 (after-filed).

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 October 7, 2021, the complainants requested from the respondents copies of any complaints filed against the respondent City or its employees by a certain named individual. ("October 7th request").
3. It is found that, by email dated October 7, 2021, counsel for the respondents acknowledged the October 7th request.
4. It is found that, by email dated November 24, 2021, the respondents provided the complainants with redacted copies of a complaint filed against New London Police Chief Brian Wright, and an executive summary prepared by Attorney Michael Rose on behalf of the respondents. The respondents informed the complainants that such records were redacted to

remove details that, in the respondents' opinion, would violate and/or invade the personal privacy of individuals and/or city employees referenced therein.

5. By email received on December 8, 2021, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the request described in paragraph 2, above.

6. Section 1-200(5), G.S., defines "public records or files" as:

[a]ny 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, videotaped, printed, photostated, photographed or recorded by any other method.

7. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), 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."

9. It is found that the records described in paragraphs 2 and 4, above, are public records and must be disclosed in accordance with §§1-200(5) and 1-210(a), G.S., unless they are exempt from disclosure.

10. At the hearing in this matter, the respondents contended that disclosure of certain portions of the records described in paragraph 4, above, which records concern allegations of sexual harassment, would constitute an invasion of personal privacy of the police chief, the individual who filed the complaint against the police chief, and other city employees. The respondents claimed that those portions were exempt from disclosure pursuant to §1-210(b)(2), G.S., relying on Rocque v. Freedom of Information Commission, 255 Conn. 651 (2001). No city employee, including the police chief, moved to intervene in this matter, and the respondents offered no witnesses.

11. On May 4, 2022, and May 16, 2022, the respondents submitted unredacted copies of

six pages of records¹ for in camera inspection, which have been marked as IC-2021-0683-Ex.1-p.1 through Ex.1-p.4, and IC-2021-0683-Ex.2-p.1 through Ex.2-p.2.² On the in camera index, the respondents claimed that portions of such records are exempt from disclosure pursuant to §1-210(b)(2), G.S.

12. 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.”

13. Section 1-214, G.S., provides, in relevant part, that:

(b)(1) [w]henever 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 (A) each employee concerned...and (B) the collective bargaining representative, if any, of each employee concerned.

(2) 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 not legally constitute an invasion of privacy, the agency shall first disclose the requested records to the person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(3) Nothing in this section 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.

¹ Redacted copies of the records submitted for in camera inspection were marked as Joint Exhibits 1 and 2, at the hearing.

² The in camera records submitted by the respondents on May 4, 2022, did not include line numbers. The respondents resubmitted the in camera records with the lines numbered on May 16, 2022.

(c) A public agency which has provided notice under subdivision (1) of subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given... Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206....

14. It is clear that §§1-214(b)(1), (2) and (3), G.S., together, require that, upon receipt of a request to inspect or copy a personnel, medical or similar file, a public agency must review such file in order to determine whether it is reasonable to believe that disclosure of any of the records contained therein would legally constitute an invasion of the subject's privacy. Such review and determination must be made prior to notifying the subject of the file of the request and offering the subject an opportunity to object to disclosure. It is also clear that, if, after review of the file, the agency does not reasonably believe that disclosure of the file or any portion thereof would legally constitute an invasion of privacy, the agency is required to disclose such records to the requester.

15. It is found that the respondents reviewed the complaint and executive summary upon receipt of the October 7th request, and that Chief Wright, who is the subject of the complaint, objected to the disclosure of such records.

16. It is found, however, that the respondents failed to prove that they reviewed the complaint and executive summary and reasonably determined that disclosure of such records or any portion thereof would legally constitute an invasion of privacy, prior to notifying Chief Wright of the request and offering him the opportunity to object.

17. Based upon the foregoing it is concluded that the respondents violated §1-214(b), G.S.4

18. In order to prove the applicability of the invasion of privacy exemption under §1-210(b)(2), G.S., the claimant must first establish that the files in question are personnel or medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy, by establishing both of two elements: (1) the information sought does not pertain to a legitimate matter of public concern; and (2) disclosure of such information would be highly offensive to a reasonable person. See Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993).

19. In Perkins, the court noted that “disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern.” Perkins 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.

20. In Rocque, the court considered whether disclosure of records of an investigation of alleged sexual harassment by a public employee against a co-worker would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. The court observed that, in general, much of the information in such records is of legitimate public concern because it reveals a state agency’s procedures in investigating sexual harassment complaints. Rocque, supra, at 665. The court nonetheless held that, under Perkins, “the complainant’s identity and related identifying information...[and]...sexually explicit or descriptive information, such as allegations of sexual contact and sexual improprieties, and details of intimate personal relationships...are not of legitimate public concern, and their disclosure would be highly offensive to a reasonable person.” The court concluded in that case that “the identity of the complainant and the sexually explicit portions of the investigation documents are exempt from public disclosure under §1-210(b)(2)[G.S.]” Id. at 665, 667.

21. In State of Connecticut, Department of Transportation, et. al. v. Freedom of Information Commission, No. CV 01-0508810, 122101 CTSUP, New Britain, J.D. (Schuman, J.) (December 21, 2001), the court found that the two-page summary of a sexual harassment investigation “contain[ed] some instances of what might be described as inappropriate conversation or crude talk.... But the document [did] not contain ‘sexually explicit or descriptive information, such as allegations of sexual contact and sexual improprieties, and details of intimate personal relationships’.... Accordingly, under the narrow holding of Rocque, the entire statement should be disclosed except for the names and other identifying information....” (emphasis in original).

22. It is found that the records described in paragraphs 4 and 11, above, are personnel or similar files, within the meaning of §1-210(b)(2), G.S.

23. Based upon careful in camera inspection, it is found that the following records, or portions thereof, which the respondents have described as “complainant in unrelated matter” on the in camera index, are not responsive to the October 7th request, and therefore shall not be further addressed herein: IC-2021-0683-Ex.1-p.2 (lines 16, 23, 28, 29, 30, 31, 32, 34, 35, 37), and IC-2021-0683-Ex.2-p.2 (lines 19, 23).

24. Based upon careful in camera inspection, it is found that the following records, or portions thereof, contain the name and other identifying information of the complaining employee: IC-2021-0683-Ex.1-p.1 (Notes, and lines 11, 12); IC-2021-0683-Ex.1-p.2 (lines 38-39, 41); IC-2021-0683-Ex.1-p.3 (Signature); IC-2021-0683-Ex.2-p.1 (lines 24, 25, 27, 28 (words 5 and 6), 29 (words 5 and 6), 31); and IC-2021-0683-Ex.2-p.2 (lines 6 (words 2 and 3), 8, 17 (word 14), 18 (word 1), 21 (words 1 and 2), 22 (words 6 and 7), 27). At the hearing, the complainants did not challenge the redaction of the name of the individual who filed the

complaint against the police chief, and therefore the allegation that the respondents violated the FOI Act by withholding such records, or portions thereof, need not be further addressed herein.

25. Based upon careful in camera inspection, it is found that the following records contain sexually explicit or descriptive information: IC-2021-0683-Ex.1-p.1 (lines 29-35, 36-38). It is found that such records are not a legitimate matter of public concern, and that disclosure of such portions would be highly offensive to a reasonable person.

26. It is found that disclosure of IC-2021-0683-Ex.1-p.1 (lines 29-35, 36-38) would constitute an invasion of privacy, within the meaning of §1-210(b)(2), G.S., and therefore are exempt from disclosure.

27. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding IC-2021-0683-Ex.1-p.1 (lines 29-35, 36-38) from the complainants.

28. Based upon careful in camera inspection, it is found that the following records, or portions thereof, do not contain the name and other identifying information of the complaining employee, nor sexually explicit or descriptive information: IC-2021-0683-Ex.1-p.1 (line 17); IC-2021-0683-Ex.1-p.2 (lines 2-5, 7-9, 14-15, 21, 24-25, 44); IC-2021-0683-Ex.1-p.4; IC-2021-0683-Ex.2-p.1 (lines 23, 28 (word 9), 29 (words 2, 8), 30); and IC-2021-0683-Ex.2-p.2 (lines 6 (word 16), 7, 17 (word 4), 18 (word 3), 21 (word 14), 22 (word 1)). It is found that such records, or portions thereof, pertain to a legitimate matter of public concern, and that the disclosure of such records or portions thereof would not be highly offensive to a reasonable person.

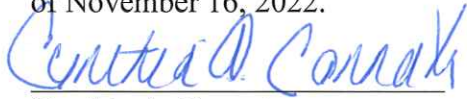
29. It is found that the disclosure of the records described in paragraph 28, above, would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S., and therefore are not exempt from disclosure.

30. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records, or portions thereof, described in paragraph 28, above, from the complainants.

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 records described in paragraph 28 of the findings, above, to the complainants, free of charge.
2. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-212(a), and 1-214(b), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 16, 2022.



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:

GREG SMITH AND THE DAY, 47 Eugene O'Neill Drive, New London, CT 06320

MAYOR, CITY OF NEW LONDON; AND CITY OF NEW LONDON, c/o Attorney Jeffrey T. Londregan, Conway, Londregan, Sheehan & Monaco, PC, 38 Huntington Street, New London, CT 06320 and Attorney Brian K. Estep, Esq., Conway, Londregan, Sheehan & Monaco, P.C, 38 Huntington Street, New London, CT 06320



Cynthia A. Cannata
Acting Clerk of the Commission