

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Dick Conrad (Jackson Newspapers),

FINAL DECISION

Complainant

Docket #FIC83-187

against

June 13, 1984

East Haven Board of Police  
Commissioners.

Respondent

The above captioned matter was heard as a contested case on November 10, 1983 at which time the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint. The matter was subsequently continued to February 21, 1984 and again to March 21, 1984 for the taking of further evidence.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. On or about June 29, 1983 two civilian complaints were made by telephone against a member of the East Haven police force, Joseph Ridarelli.
3. Prior to the June 29, 1983 complaints, Ridarelli had been the subject of a one day suspension, which suspension was under appeal at the time of the complaints.
4. On or about July 6, 1983, Ridarelli, pursuant to a settlement negotiated by his collective bargaining unit, agreed to resign from the police force and withdraw his appeal from the one-day suspension in exchange for the dropping of charges and the destruction of any records relating to the investigation of the June 29, 1983 complaints and the resulting report to the chief of police.

5. By letter dated August 17, 1983 the complainant made a request of the respondent for access to inspect and/or copy records relating to Ridarelli's suspension and subsequent resignation, such records to include:

- (a) civilian complaints against Ridarelli;
- (b) results of any internal affairs investigation of such civilian or other complaints;
- (c) minutes of meetings of the respondent relating to Ridarelli's suspension and resignation; and
- (d) Ridarelli's letter of resignation.

6. By letter dated August 26, 1983 the respondent advised the complainant that he would be provided with access to the requested minutes and letter of resignation, but that civilian complaints and investigation records were exempted from disclosure by §§1-19(b)(2) and (4), G.S. Furthermore, the respondent claimed, disclosure would violate a collective bargaining agreement which provided that disciplinary procedures were to be closed to the public unless an open hearing was requested.

7. By letter of complaint filed with the Commission on September 6, 1983 the complainant appealed the denial of his request for access to civilian complaints and to results of any internal affairs investigation of civilian or other complaints against Joseph Ridarelli.

8. The respondent claims that any attempt by this Commission to order disclosure in contravention of an existing collective bargaining agreement would be an unconstitutional interference with a contract.

9. This Commission is without jurisdiction to address the respondent's claim regarding the constitutionality of the effect of an order of disclosure upon the town's contract with a collective bargaining unit.

10. The respondent failed to prove that at the time of the complainant's request it was involved in any pending claim or litigation regarding the subject of the records in question.

11. It is concluded that the records in question are not exempted from disclosure by §1-19(b)(4), G.S.

12. It is also found that an agreement by the town with a collective bargaining unit that disciplinary hearings shall be closed unless otherwise requested does not in any way affect the disclosability of documents which might be related to such hearings. Furthermore, a public agency may not by agreement abrogate the public's right to access to public records.

13. The charges against Ridarelli involved infractions of departmental rules, not criminal activities. The respondent claims that the records relating to the charges are not public documents, but internal affairs records.

14. It is found that records of citizen complaints serve a function which is distinct from the recording of data for personnel or similar purposes. Records of police internal affairs investigations and the administrative dispositions thereof relate directly to the conduct of the public's business. The respondent's claim that the records are not public records is therefore unpersuasive.

15. It is also found that police officers have no privacy rights with respect to the subject matter of complaints against them as police officers because such complaints relate directly to the conduct of the public's business. Disclosure of the records in question, therefore, would not constitute an invasion of personal privacy with respect to Joseph Ridarelli.

16. It is concluded that the records in question, to the extent that they relate solely to Joseph Ridarelli, are not exempted from disclosure by §1-19(b)(2), G.S.

17. Although not raised by the respondent, it is found that statements from complaining parties or other materials compiled in connection with civilian complaints may chronicle the non-criminal conduct of civilians as well as of Ridarelli.

18. Accounts of civilian non-criminal conduct may, if disclosed, constitute an invasion of personal privacy.

19. To the extent that civilian complaints against Ridarelli record civilians' non-criminal conduct, the disclosure of which would constitute an invasion of personal privacy, the personally identifiable portions of such records are exempted from disclosure pursuant to §1-19(b)(2), G.S.

20. The Commission finds unpersuasive the respondent's claim that because the civilian complaints against Ridarelli were exposed as a result of a communication between attorney Richard Hershatter, counsel for the respondent, and a client they are exempted from disclosure by §1-19(b)(10), G.S.

21. It is found that pursuant to an agreement with Ridarelli's collective bargaining unit, the town of East Haven destroyed six out of a total eight sets of copies of records relating to complaints against Ridarelli. Following the November 10, 1983 hearing before the Commission on the above matter, a copy which had remained in the hands of police officer Frank W. Konefsky was retrieved by the chief of police and destroyed. One copy of the records in question remains in the hands of counsel to the respondent, Mr. Hershatler.

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

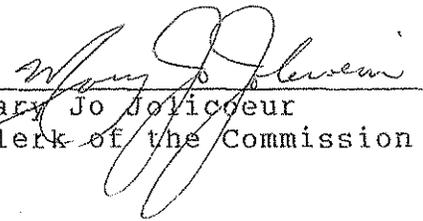
1. The respondent shall provide the complainant with access to inspect and copy the records relating to the June 29, 1983 complaints against Joseph Ridarelli, including the investigative records and the report to the chief of police.

2. The respondent shall also provide the complainant with access to inspect and copy records relating to other complaints against Ridarelli, including records of any internal affairs investigations thereof.

3. The respondent may mask the records referred to above so as to prevent disclosure of the names of civilians or other identifying material to the extent that disclosure of such information would constitute an invasion of such civilians' personal privacy within the meaning of §1-19(b)(2), G.S.

4. The Commission finds that the circumstances of the above case indicate an unconscionable disrespect for both the public rights created by the Freedom of Information Act and for this Commission. The respondent has shown itself to be willing to bargain away the public's right to access and to destroy public records which were the subject of a complaint which had not only been brought to this Commission but actually heard. The evidence presented by the respondent indicated a pattern of prevarication and a desire to obfuscate the fact-finding process. The Commission recommends that the circumstances of the above matter be referred to the office of the state's attorney for further investigation to determine whether the respondent's actions violated §1-21k(a), G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of June 13, 1984.

  
Mary Jo Jolicœur  
Clerk of the Commission