

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Roger Moore, Metropolitan Editor,  
The Hartford Courant; Lynne Garnett,  
Reporter, The Hartford Courant;  
and The Hartford Courant

Report of Hearing Officer

February 8, 1985

Complainants

Docket #FIC 85-22

against

Commissioner, Department of Public  
Safety of the State of Connecticut

Respondent

The above captioned matter was heard as a contested case on February 7, 1985 at which time the complainants and the respondent appeared, stipulated as to certain facts, and presented testimony, exhibits and argument on the complaint. Chris Powell, Managing Editor, The Journal Inquirer, sought and was granted leave to intervene in the proceedings of February 7, 1985 and participated fully therein, pursuant to §1-21j-28 of the Regulations of Connecticut State Agencies.

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. By letter filed with the Commission on February 5, 1985, the complainants alleged that the respondent had denied their request for public records in violation of the Freedom of Information Act.
3. It is found that on January 31, 1985 the complainants made a written request to the respondent for copies of, or access to, "all State Police reports, records and memoranda on any investigations conducted by your department into the conduct of Waterbury Assistant State's Attorney Arthur M. McDonald."

4. It is found that the records specified in paragraph 3, above, consist of a State Police file numbered 84-00250-0. The file consists of an investigation of alleged bribe receiving by former Assistant State's Attorney Arthur McDonald. The file includes investigatory reports, documentation of meetings with prosecutors and their staffs, and police reports of observations of conduct of the suspect and statements made by the suspect.

5. The records described in paragraph 4, above, are public records within the meaning of §§1-18a(d) and 1-19, G.S.

6. The respondent claims that the subject records are exempt from public disclosure pursuant to §1-19(b)(3)(B), G.S.

7. §1-19(b)(3)(B), G.S., permits a public agency to withhold from public disclosure:

"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...information to be used in a prospective law enforcement action if prejudicial to such action." (Emphasis added).

8. It is found that Judge Martin McKeever is conducting a judicial inquiry into allegations against Arthur McDonald.

9. State's Attorney John J. Kelley, who has been appointed to assist Judge McKeever, represented to the respondent that disclosure of the subject records would not be in the public interest because it would result in the disclosure of information that "may be used in prospective law enforcement actions" and which would "have an adverse effect on prospective law enforcement actions."

10. The respondent relies entirely on State's Attorney Kelley's representation for the assertion of the applicability of the exemption in §1-19(b)(3)(B), G.S. The respondent otherwise maintains that the subject records are contained in a closed State Police file to which §1-19(b)(3)(B), G.S., does not apply.

11. It is concluded that the respondent failed to prove by competent and credible evidence the applicability of the exemption in §1-19(b)(3)(B), G.S.

12. The respondent further claims that it may not disclose the requested records because Judge McKeever has sealed the records of the judicial inquiry into the allegations against Arthur McDonald, pursuant to §54-47(c), G.S.


13. §54-47(c), G.S., provides that: "Such [judicial] inquiries shall be conducted in public or private as said court or chief court administrator orders."

14. It is concluded that §54-47(c), G.S., empowers the court to seal court records but does not empower the court to preclude disclosure of State Police records that is otherwise required by the Freedom of Information Act.


15. It is therefore concluded that the respondent has failed to comply with the provisions of §§1-15 and 1-19, G.S., by failing to provide the complainants with copies of, or access to, the public records described in paragraph 4, above.

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

1. The respondent shall forthwith provide the complainants with copies of, or access to, the public records described in paragraph 4, above.

  
Commissioner Robert J. Leeney  
as Hearing Officer

Approved by order of the Freedom of Information Commission at its regular meeting of February 13, 1985.

  
Mary Jo Jolicoeur  
Clerk of the Commission