

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Yvonne Perkins,

Complainant

against

Docket #FIC 2018-0408

Chief, Police Department, City of
Danbury; Police Department, City
of Danbury; and City of Danbury,

Respondents

April 24, 2019

The above-captioned matter was heard as a contested case on February 21, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts, presented testimony, exhibits and argument on the complaint. For purposes of hearing, this case was consolidated with FIC 2018-0325, Yvonne Perkins v. Chief, Police Department, City of Danbury; Police Department, City of Danbury; and City of Danbury.

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 four different letters, all dated June 26, 2018, the complainant made requests for records to the respondents. Specifically, it is found that the complainant requested copies of the following records:
 - a) Sergio Droz booking tape dated June 18, 2018;
 - b) All recorded telephone calls that occurred between 2:00 PM and 5:30 PM on June 21, 2018, from two specified telephone numbers;
 - c) Jeffrey Clark booking tape dated June 21, 2018; and
 - d) All written statements pertaining to parking ticket 207586; a copy of the call to dispatch regarding parking ticket 207586; a copy of the dispatch

recording regarding parking ticket 207586; the officer badge number, title and ranking who issued parking ticket number 207586; and, any and all information related to parking ticket number 207586.

3. It is found that the respondents acknowledged the complainant's request by email dated June 27, 2018.

4. By email dated July 26, 2018, the complainant alleged that the respondents violated the Freedom of Information ("FOI") Act, by denying her copies of the requested records described in paragraph 2, above.

5. 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.

6. 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.

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 found that to the extent the respondents maintain the requested records, such records are public records within the meaning of §1-200(5), 1-210(a) and 1-212(a), G.S.

9. It is found that the respondents provided certain records described in paragraph 2, above, to the complainant, and further, that certain requested records did not exist. At the hearing in this matter, the complainant stated that only the records described in paragraph 2.a and 2.b, above, were still at issue. Accordingly, only those records will be further addressed herein.

10. With respect to the record described in paragraph 2.a, above, it is found that the respondents withheld such record because the arrested party being recorded clearly states his social security number on the recording. The respondents claim that §1-210(b)(2) G.S., exempts this information from release, as such release would constitute an invasion of privacy.

11. With respect to the records described in paragraph 2.b, above, it is found that one requested telephone line is not recorded. Accordingly, there are no responsive records related to that line. It is concluded that the respondents did not violate the FOI Act with respect to that portion of the complainant's request.

12. With respect to the second telephone line described in paragraph 2.b, above, (203) 796-1510, it is found that such line is the arrested persons' phone line and that eight (8) calls were recorded during the requested time period. It is further found that one such call included a prisoner speaking with a bail bond company and that during that call, the prisoner divulged his private credit card number, card expiration date and security code. The respondents withheld the recording claiming that release would constitute an invasion of privacy, pursuant to §1-210(b)(2) G.S.

13. Section 1-210(b)(2), G.S., permits the nondisclosure of "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

14. The Supreme Court set forth the test for the §1-210(b)(2), G.S., exemption in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993), which test has been the standard for disclosure of records pursuant to that exemption since 1993. The Commission takes administrative notice of the multitude of court rulings, Commission final decisions and instances of advice given by Commission staff members which have relied upon the Perkins test, since its release in 1993.

15. Specifically, under the Perkins test, the claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that disclosure of such information is highly offensive to a reasonable person.

16. Based on the evidence adduced in this matter, it is found that the records described in paragraph 2.a and 2.b, above, do not constitute "personnel or medical files and similar files," within the meaning of §1-210(b)(2), G.S.

17. Nevertheless, the Commission notes that it has long declined to order the release of social security numbers. Similarly, the Commission has declined to order the release of personal financial information such as bank account numbers and personal financial institution information. See Docket # FIC 2012-711; Kevin Litten and Waterbury Republican-American v. Chief, Police Department, City of Torrington; and Police Department, City of Torrington (July

24, 2013); and Docket # FIC 2000-537; James Leonard, Jr. v. Chief, Police Department, City of New Britain (March 28, 2001).

18. At the hearing in this matter, the complainant stated that she would accept the records described in paragraphs 2.a and 2.b, above, with the social security number and credit card information redacted. The respondents contended, however, that they were unable to redact the information from the records.

19. The fact that sensitive personal information is contained within a portion of a record does not allow for the entire record to be exempt from disclosure. Based on the foregoing, it is found that the respondents violated the disclosure provisions of §§1-210 and 1-212, G.S., when they failed to provide the complainant with the records described in paragraph 2.a and 2.b, above, with the social security number and credit card information redacted therefrom.

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

1. Forthwith, the respondents are ordered to provide the complainant with copies of the records described in paragraphs 2.a and 2.b of the findings, above, free of charge.

2. In complying with the paragraph 1 of the order, the respondents may redact the respective social security number and credit card information, described in paragraphs 10 and 12 of the findings, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 24, 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:

YVONNE PERKINS, 124 Coalpit Hill Road, Unit 33, Danbury, CT 06810

CHIEF, POLICE DEPARTMENT, CITY OF DANBURY; POLICE DEPARTMENT, CITY OF DANBURY; AND CITY OF DANBURY, c/o Attorney D. Randall DiBella, Cramer & Anderson LLP, 51 Main Street, New Milford, CT 06776

Cynthia A. Cannata
Acting Clerk of the Commission