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William Ramos,
Complainant(s)
against

Chief, Police Department, Town of Groton; Police Department, Town of Groton; and Town of Groton,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0129

November 10, 2016

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, December 7, 2016.** At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE November 22, 2016***. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE November 22, 2016***. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed ***ON OR BEFORE November 22, 2016***, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: William Ramos c/o Attorney James Clark
Attorney Michael P. Carey

FIC# 2016-0129/Trans/wrbp/KKR//VB/2016-11-10

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

William Ramos,

Complainant

against

Chief, Police Department, Town of Groton; and Police Department, Town of Groton,

Respondents

Report of Hearing Officer

Docket #FIC 2016-0129

November 9, 2016

The above-captioned matter was heard as a contested case on August 25, 2016, 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 letter dated December 17, 2015, the complainant requested from the respondents a copy of the "investigative file," related to a complaint of child abuse, which complaint was filed with the respondent police department on May 30, 2015 (the "requested records"). It is found that the complainant is the father of the alleged child abuse victim.

4. It is found that, by letter dated February 4, 2016, the respondents denied the complainant's request on the ground that the requested records are exempt from disclosure pursuant to §17a-101k, G.S., and the appellate court's decision in Groton Police Department v. Freedom of Information Commission, 104 Conn. App. 150 (2007).

5. By letter dated and filed February 16, 2016, the complainant 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., 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.

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. (Emphasis added).

8. 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."

9. Section 17a-101k, G.S., provides, in relevant part:

> (a) The Commissioner of Children and Families shall maintain a registry of the commissioner's findings of abuse or neglect of children pursuant to section 17a-101g....The regulations adopted pursuant to subsection (i) of this section shall provide for the use of the registry on a twenty-four-hour daily basis to prevent or discover abuse of children and the establishment of a hearing process for any appeal by a person of the commissioner's determination that such person is responsible for the abuse or neglect of a child pursuant to subsection (b) of section 17a-101g. The information contained in the registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of federal law or regulations. Any violation of this section or the regulations adopted by the commissioner under this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year. (Emphasis added).

10. In Groton Police Department v. Freedom of Information Commission, 104 Conn. App. 150 (2007), the appellate court ruled that §17a-101k, "falls within the opening sentence of §1-210(a), which 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...shall be public

records...,'" and, "because §17a-101k, mandates confidentiality of information regarding child abuse, records of child abuse, wherever located, are exempted from the general rule of disclosure."

11. The respondents submitted the requested records, consisting of a police incident report, and a video of a forensic interview of the alleged victim, for in camera inspection. The respondents claimed, at the hearing and on the index to the in camera records, that the requested records are entirely exempt from disclosure pursuant to §17a-101k, G.S., and the appellate court's decision in Groton. On the index, the respondents alternatively claimed that portions of such records are exempt from disclosure pursuant to §§1-210(b)(3)(B), (C), and (G).

12. After careful inspection of the in camera records, described in paragraph 11, above, it is concluded that such records are "information relative to child abuse," within the meaning of §17a-101k, G.S.

13. In Groton, the requestor, like the complainant in the present case, was the parent of an alleged child abuse victim. The Commission concluded in Groton, that, because of the requestor's status as the parent of the alleged child abuse victim, she implicitly waived the confidentiality provision in §17a-101k, G.S., by requesting the records under the FOI Act. The Commission thus ordered the records disclosed, with certain redactions.

14. The police department appealed to the superior court, which sustained the appeal, concluding that the confidentiality requirements in §17a-101k, G.S., may not be implicitly waived. The appellate court upheld the superior court's decision. According to the appellate court, the requestor's status as a parent of an alleged victim was immaterial to the request for records under the FOI Act, because, by invoking the FOI Act, a requestor is not seeking the records as a parent, but as member of the general public. "[A] decision by the commission recognizing waiver would be, in effect, allowing a member of the general public to waive the protection of §17a-101k, which would be a bizzare result." Citing to the Supreme Court's decision in Chief of Police v. Freedom of Information Commission, 252 Conn. 377, 387 (2000), the Groton court reiterated that "[t]he issue of whether a record is disclosable under the [A]ct 'does not depend in any way on the status or motive of the [requestor], because the [A]ct vindicates the public's right to know, rather than the rights of any individual.'"

15. Although the complainant in the present case acknowledged the appellate court's decision in Groton, he argued, at the hearing in this matter, that Groton is factually distinguishable from this case because he is "seeking the [requested] records solely as the legal guardian of the victim, [and] not...as a member of the public," and he has *explicitly* waived the confidentiality provision in §17a-101k, G.S,[1] on behalf of his child, "solely for disclosure of the...records to [himself] and [his] attorneys." For these reasons, according to the complainant, Groton does not control the outcome of this case, and he therefore is entitled to receive a copy of the requested records.

[1] The complainant submitted an affidavit as evidence of his explicit "waiver" of the confidentiality provisions contained in §17a-101k, G.S.

16. The complainant' argument that he may waive the confidentiality provision in §17a-101k, G.S., however, is derived from his status as the parent of the alleged victim, a fact that the appellate court in Groton specifically concluded was not relevant to the question of whether the records are disclosable under the FOI Act. It is concluded that, under the court's reasoning in Groton, as set forth in paragraph 14, above, the complainant, by requesting the records under the FOI Act, was requesting such records as a member of the public, and as such, he cannot explicitly waive the confidentiality requirement in §17a-101k, G.S.

17. Alternatively, the complainant argued, at the hearing in this matter, that Groton was wrongly decided and urged this Commission to refuse to follow it. It is concluded, however, that appellate court's decision in Groton is binding on the Commission.

18. Based upon the foregoing, it is concluded that the requested records are exempt from disclosure pursuant to §17a-101k, G.S., and the appellate court's decision in Groton. Accordingly, the Commission need not consider the respondents' alternative claims of exemption.

19. It is further concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged.

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

1. The complaint is dismissed.

Kathleen K. Ross

Kathleen K. Ross
as Hearing Officer

FIC 2016-0129/hor/kkr/10272016