



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866) 374-3617 Tel: (860) 566-5682 Fax: (860) 566-6474 • www.ct.gov/foi • email: foi@ct.gov

Chris Chappell,  
Complainant(s)

against

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

Notice of Rescheduled  
Commission Meeting

Docket #FIC 2016-0687

August 3, 2017

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, August 9, 2017 and August 23, 2017 at 2:00 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, September 13, 2017.**

Any brief, memorandum of law or request for additional time, as referenced in the July 21, 2017 Transmittal of Proposed Final Decision, should be received by the Commission on or before August 30, 2017.

By Order of the  
Freedom of Information  
Commission

Wendy R.B. Paradis,  
Acting Clerk of the Commission

Notice to: Chris Chappell  
Attorney Kimberly J. Boneham  
Attorney Garmon Newson II

2016-0687/RTRA/VDH//TAH/WRBP/08/03/17



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Chris Chappell,  
Complainant(s)

against

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

Notice of Rescheduled  
Commission Meeting

Docket #FIC 2016-0687

July 31, 2017

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, August 9, 2017 at 2:00 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m.** on **Wednesday, August 23, 2017.**

Any brief, memorandum of law or request for additional time, as referenced in the July 21, 2017 Transmittal of Proposed Final Decision, should be received by the Commission on or before August 11, 2017.

By Order of the  
Freedom of Information Commission

W. Paradis,  
Acting Clerk of the Commission

Notice to: Chris Chappell  
Attorney Kimberly J. Boneham  
Attorney Garmon Newson II

#FIC2016-0687/RTRA/VDH/TAH/WRBP/07/31/17



# FREEDOM OF INFORMATION



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Chris Chappell

Complainant(s)

against

Chief, Police Department, Town of West Hartford; Police Department, Town of West Hartford; and Town of West Hartford

Respondent(s)

Notice of Meeting

Docket #FIC 2016-0687

July 21, 2017

## 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, August 9, 2017**. 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 July 28, 2017**. 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 July 28, 2017**. **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 July 28, 2017** 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

Wendy R.B. Paradis  
Acting Clerk of the Commission

Notice to: Chris Chappell  
Attorney Kimberly J. Boneham  
Attorney Garmon Newson II

FIC# 2016-0687/ITRAVDH/TAH/WRBP/2017-07-21

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Chris Chappell,

Complainant

against

Docket #FIC 2016-0687

Chief, Police Department,  
Town of West Hartford; and  
Police Department; Town of  
West Hartford,

Respondents

July 20, 2017

The above-captioned matter was heard as a contested case on April 25, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts 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 email dated June 16, 2016, the complainant requested that the respondents provide him with records pertaining to Sgt. Eric Rocheleau. Specifically, the complainant requested records concerning any internal affairs investigations regarding Sgt. Rocheleau, including the following:
  - a. All investigators' notes, transcripts and interview records;
  - b. Video and audio records;
  - c. Pre-draft reports and drafts of the final report;
  - d. The "chief changed/final report;"
  - e. Emails and memoranda from all personnel, including officers, supervisors, assistant chiefs and the Chief of Police, as well as the personnel office, corporation council and attorneys;
  - f. Evaluations;
  - g. Disciplinary records;
  - h. Current investigation records;
  - i. Letters of reprimand;

- j. Records of suspension; and
- k. Any negative records/comments from his formal personnel file, his squad personnel file and the supervisor database.

3. It is found that, by email dated June 23, 2016, the respondents, through Assistant Chief of Police Robert McCue, acknowledged the complainant's request. It is found that the respondents informed the complainant that it was not clear to them whether the complainant was requesting access to records or copies of the records.<sup>1</sup> It is further found that the respondents requested that several aspects of the request be clarified, including whether the complainant was seeking internal affairs investigations conducted by Sgt. Rocheleau, or those in which Sgt. Rocheleau may have been the subject, and whether he was requesting emails that Sgt. Rocheleau authored, was mentioned in, or that pertained to policy violations. In addition, the respondents noted that the complainant had indicated that he wanted "any negative records/comments" from Sgt. Rocheleau's personnel file. The respondents informed the complainant that whether a record was "negative" was subjective and they were not required under the Freedom of Information ("FOI") Act to conduct such research.

4. It is found that, by email also dated June 23, 2016, the complainant asked the respondents whether he should plan to review responsive records and select the pages he wanted copied, or whether the police department would simply go through the information and select the items that were negative and/or disciplinary in nature. In addition, it is found that the complainant limited his request as follows: "The scope of my request is limited to information regarding Sgt. Rocheleau's violations of training doctrine, policy or law." (The "June 23<sup>rd</sup> Request").

5. It is found that, by email dated June 28, 2016, the respondents informed the complainant that he could not take the records into his possession and review them; rather, he could inspect responsive records at the respondents' Records Division or obtain copies at fifty cents per page. In addition, it is found that, the respondents contended that the June 23<sup>rd</sup> Request was still "very broad" and that it would be helpful if the complainant would break the request down into specific requests.

6. It is found that, by email dated July 5, 2016, the complainant replied as follow: "Let's make it simple. I will start with a review of his personnel file and the internal affairs investigation for illegal possession of marijuana." (The "July 5<sup>th</sup>" Request).

7. It is found that, by email dated July 7, 2016, the respondents informed the complainant that the narrowed scope of the July 5<sup>th</sup> Request should speed up the process. However, in response to the internal affairs portion of the request, the respondents maintained that they were not clear about the records the complainant was requesting. The respondents suggested that perhaps the complainant was seeking records related to the investigation into improper storage of training materials in the K-9 office.

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<sup>1</sup> In his request, the complainant seeks "information for Sgt. Eric Rocheleau," and then proceeds to set forth multiple categories of records. Accordingly, the request could be read as one seeking access to, or requesting copies of, public records.

8. It is found that, by email dated July 8, 2016, the complainant clarified that he was requesting the report wherein Sgt. Rocheleau received a suspension as well as any other record of suspension or discipline.

9. It is found that, by email dated July 13, 2016, the respondents informed the complainant that they had begun processing his request.

10. It is found that, by email dated July 21, 2016, the complainant inquired into the status of his request. The complainant stated that it was his understanding that the media had made a similar request of the respondents and that such request had been fulfilled in much less time. The complainant requested that the respondents provide him with an anticipated completion date.

11. It is found that, by email dated July 22, 2017, the respondents informed the complainant that they were not sure what media request he was referring to, but they anticipated that it would take them approximately four to six more weeks to gather the records, make copies, locate all the people associated with the incident to check their files for additional records, and conduct a review of the records to determine whether the records could be or had to be released.

12. It is found that, by email dated August 6, 2016, the complainant again inquired into the status of his request.

13. It is found that, by email dated August 10, 2016, the respondents informed the complainant that they would notify him when releasable records were ready for his review.

14. It is found that, by email dated August 29, 2016, the complainant asked whether, while the respondents continued to gather records, he might be able to begin "to visually inspect the record in accordance with CGS 1-210."

15. It is found that, by email dated August 30, 2016, the respondents replied, in part, as follows: "You have not requested to review a single record, but have requested to review several. I am not clear on which of the various records you wish to specifically review prior to getting all the requested records. Can you please be specific as to what 'the record' is you are referring to?"

16. It is found that, by email dated August 31, 2016, the complainant requested to review the internal affairs investigation referred in paragraph 6, above, while the respondents compiled the remaining responsive records.

17. It is found that, by email dated September 6, 2017, the respondents informed the complainant that the internal affairs investigation report was available for review at the respondents' Records Division.

18. It is found that, by email dated September 14, 2016, the complainant inquired into the status of his request for a third time. In addition, the complainant reminded the

respondents that, on July 22<sup>nd</sup>, they had informed him that it would take approximately four to six more weeks to process his request and that, thus far, more than seven weeks had passed. See ¶ 11, above. The complainant requested that the respondents explain why there was such an excessive delay in processing this request.<sup>2</sup>

19. It is found that, by email dated September 14, 2016, the respondents reminded the complainant that they had made the internal affairs investigation available for review, and that, due to the size of this request, as well as the required clarifications, it was taking the respondents a considerable amount of time to compile the records. However, the respondents did believe that additional records should be available for the complainant's review "shortly." Finally, the respondents offered to allow the complainant to begin his review of assembled records as they became available.

20. It is found that, by email dated September 14, 2016, the complainant inquired whether the internal affairs investigation that was available at the Records Division was the "full, unedited version" or merely the one that is on file in the Records Division

21. It is found that, by email dated September 14, 2016, the respondents replied, in part, as follows: "I'm not sure I understand your question. The document is the IA investigation that I believe you requested. . . ."

22. It is found that, by email dated September 14, 2016, the complainant informed the respondents that he would review the available internal investigations report and then wait for the remainder of the records to be assembled.

23. It is found that, by email dated September 15, 2016, the respondents informed the complainant that they would notify him when the remaining records were ready for his review. In addition, the respondents reiterated that they were confused by the complainant's use of the phrase "full unedited version" to describe the internal affairs investigation.

24. It is found that, by email dated September 15, 2016, the complainant replied that he was referring to an unedited draft of the internal affairs investigation, as well as notes.

25. By email dated and filed September 29, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with access to and, then as designated, copies of the requested records.

26. 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

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<sup>2</sup> The Commission notes that, at this point, three months had passed since the complainant had issued his original request.

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.

27. 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.

28. 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.”

29. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

30. It is found that, after the complaint was filed with the Commission, the parties continued to communicate about the request.

31. It is found that, by email dated October 13, 2016, the complainant inquired into the status of his request for a fourth time.<sup>3</sup>

32. It is found that, by email dated October 13, 2016, the respondents stated that they were not refusing to release records. The respondents contended that much of the delay was due to the size of the request, the amendments to the request, and their need for clarification. The respondents further contended that they informed the complainant that certain records were ready for his review, but that the complainant refused to review the records until the entire request had been processed.

33. It is found that, by email dated October 18, 2016, the complainant informed the respondents that, due to the extended period of time that had passed, he would like to begin reviewing the records that were ready for him.

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<sup>3</sup> The Commission notes that, at this time, a hundred and nineteen days had passed since the complainant had issued his original request.



34. It is found that, by email dated November 7, 2016, the respondents informed the complainant that all of the non-exempt public records were ready for his review.<sup>4</sup>

35. It is found that, by the time of the contested case hearing, the only record at issue in this case was a version of an internal affairs investigation report prepared by the respondents' Special Investigations Division (also known as Internal Affairs), as well as the handwritten notes on or about such record.

36. It is found that, in 2015, four pounds of marijuana were discovered in the respondents' canine office. It is found that the marijuana was in a unlocked container and there was no paperwork or other documentation attached to the marijuana (or in the container) that explained the substance's origin. It is found that the discovery lead to an internal affairs investigation by the Special Investigations Division. It is found that Lt. Kevin McCarthy was the officer in charge of investigating and preparing a report concerning the marijuana, including where it came from and why it was being maintained in an unsecured container in the canine office. It is found that Lt. McCarthy conducted his investigation, prepared his investigative report and turned the report in to Chief of Police Tracey Gove. (The "First Draft"). It is found that Chief Gove circulated the First Draft to his two assistant chiefs and to the assistant director of human resources. It is found that the assistant chiefs and the assistant director reviewed the First Draft and provided their comments and suggestions on the investigative report to the chief. It is found that, after this review process, Chief Gove returned the First Draft back to Lt. McCarthy with his handwritten notes in the margin of the report, which notes indicated the revisions the chief wanted to see incorporated into the report. It is found Lt. McCarthy made the indicated revisions and returned the investigative report back to Chief Gove. (The "Second Draft"). It is found that once the Second Draft was returned to Chief Gove it was then provided to Assistant Chief Daniel Coppinger so that determinations concerning discipline regarding the unsecured marijuana could be made and implemented.

37. It is found that the complainant has been provided with access to the Second Draft.

38. It is found, however, that the complainant seeks access to the First Draft, as well as Chief Gove's handwritten notes. It is further found that the First Draft is what the complainant was referring to when he used the phrase "full, unedited version."

39. At the conclusion of the contested case hearing, the complainant moved to have the Commission conduct an in camera inspection of the First Draft and the associated notes. The hearing officer granted the complainant's motion.

40. On April 25, 2017, the respondents lodged in camera records with the Commission. The in camera records consist of one document comprising fifty-eight pages. The document contains handwritten notes throughout. Such records shall be identified as IC-

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<sup>4</sup> The Commission notes that, at this time, a hundred and forty-four days had passed since the complainant had issued his original request.

2016-0687-01 through IC-2016-0687-58.

41. The respondents contended that the First Draft and the handwritten notes are exempt from disclosure pursuant to §1-210(b)(1), G.S., (preliminary drafts and notes), §1-210(e)(1), G.S., (a disclosure statute read in conjunction with §1-210(b)(1), G.S.) and §1-216, G.S., (uncorroborated allegations of criminal activity). In addition, Sgt. Rocheleau testified at the contested case hearing to support his contention that disclosure of the First Draft would be constitute an invasion of his personal privacy pursuant to §1-210(b)(2), G.S. The Commission will take up these claims in order.

42. Section 1-210(b)(1), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require disclosure of:

Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure....

43. In 1980, the Connecticut Supreme Court interpreted the phrase “preliminary drafts and notes” in the FOI Act. See Wilson v. FOIC, 181 Conn. 324 (1980) (“Wilson”). The Wilson court ruled that “preliminary drafts or notes reflect that aspect of an agency’s function that precedes formal and informal decision making. . . . It is records of this preliminary, deliberative and predecisional process that . . . the exemption was meant to encompass.” Wilson, 181 Conn. at 332. In addition, the Wilson court interpreted the phrase “preliminary drafts and notes” in the FOI Act as identical to the deliberative process privilege found in 5 U.S.C. §552(b)(5) of the federal Freedom of Information Act, with the exception that, under Connecticut’s FOI Act, the public agency carried the additional burden to show that “the public interest in withholding such document clearly outweighs the public interest in disclosure.” See Wilson, 181 Conn. at 333-340.

44. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, which added to the FOI Act the language now codified in §1-210(e)(1). See ¶ 46, below.

45. It is found that with adoption of Public Act 81-431, the Connecticut Legislature made clear that the Connecticut FOI Act required more robust disclosure than is required by the deliberative process privilege permitted at the federal level.

46. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S., which provides, in relevant part, as follows:

Notwithstanding the provisions of [§1-210(b)(1), G.S.], disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental

decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

47. After a careful review of the in camera records, it is found that, with regard to the First Draft itself, (the handwritten notes will be addressed separately), such document is not a preliminary draft, within the meaning of §1-210(b)(1), G.S. Rather, it is found that the First Draft was the culmination of Lt. McCarthy's investigation into the unsecured marijuana in the respondent agency's canine office. It is found that, at the time the investigation was assigned to him, Lt. McCarthy was the supervisor of the Special Investigations Division. It is found that Lt. McCarthy conducted a complete investigation concerning the unsecured marijuana, drew conclusions from the evidence he gathered, and made concrete findings and conclusions concerning the overall matter and those involved. It is found that no section of Sgt. McCarthy's internal affairs investigation report was left blank or was otherwise incomplete.

48. Furthermore, even if the First Draft could somehow be considered a preliminary draft, it is nonetheless subject to disclosure as an interagency recommendation or report "comprising part of the process by which governmental decisions. . . are formulated," within the meaning of §1-210(e)(1), G.S.

49. The Commission notes that the respondents contend that the First Draft falls under the second prong of §1-210(e)(1), G.S., and is therefore exempt. They claim it is a "memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency." (Emphasis supplied). It is found, however, that this argument does not square with the facts in this case or with the plain language of §1-210(e)(1), G.S.

50. It is found that Lt. McCarthy submitted his internal investigation report to Chief Gove, who is the final decision maker over the matter in question, and that Chief Gove distributed Lt. McCarthy's report to his staff for review, discussion and comment. It is found that, subsequent to such dissemination, Chief Gove determined that certain aspects of Lt. McCarthy's findings and conclusions should be revised. Accordingly, it is found that the First Draft became subject to revision after the respondents' submission to and discussion among the members of the respondent agency. Based on all of the facts in this case, it is found that the First Draft completed by Lt. McCarthy constituted a "report comprising part of the process by which governmental decisions" concerning the unsecured marijuana as well as employee discipline were formulated.

51. With regard to the Chief Gove's handwritten notes on the First Draft, it is found that these are "preliminary . . . notes," within the meaning of §1-210(b)(1), G.S. It is further found that the respondents made a good faith determination that the public interest in withholding the notes clearly outweighed the public interest in disclosure. Accordingly, it is found that the notes are exempt from disclosure pursuant to §1-210(b)(1), G.S. It is further

found that the notes are not “interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report,” within the meaning of §1-210(e)(1), G.S. Accordingly, it is concluded that the respondents did not violate the FOI Act when they refused to disclose such notes to the complainant.

52. Next, the respondents claim that the First Draft is exempt pursuant to §1-210(b)(3)(H), G.S., which section provides that nothing in the FOI Act shall require the disclosure of the following:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of a crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of . . . (H) uncorroborated allegations subject to destruction pursuant to section 1-216. (Emphasis supplied).

53. Section 1-216, G.S., which section is read in conjunction with §1-210(b)(3)(H), G.S., provides as follows:

Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records.

54. After a careful review of the in camera records, it is found that such records are records of a law enforcement agency, not otherwise available to the public. However, it is found that such records were compiled in connection with an internal affairs investigation. It is found that an internal affairs investigation is, by its nature, a civil investigation, not a criminal investigation. Accordingly, it is found that the in camera records were not “compiled in connection with the detection or investigation of crime,” within the meaning of §1-210(b)(3)(H), G.S. It is therefore concluded that the First Draft is not exempt from disclosure pursuant to §§1-210(b)(3)(H) or 1-216, G.S.

55. Next, Sgt. Rocheleau contends that the disclosure of the First Draft would constitute an invasion of his personal privacy.

56. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall require disclosure of “. . . personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy . . . .”

57. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993). 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 such information is highly offensive to a reasonable person.

58. Section 1-214, G.S., provide in relevant part that:

(b) 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 legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein 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.

(c) A public agency which has provided notice under 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. . . . 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.

59. It is found that the agency respondents timely notified Sgt. Rocheleau of the request for access in this case, and that Sgt. Rocheleau timely objected, within the meaning of §1-214, G.S.

60. It is further found that the records at issue constitute a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

61. Furthermore, it is found that the records at issue have to do with an investigation into the manner in which a public employee was or was not performing critical aspects of his job. It is found that the investigation concerned potential misconduct. It is further found that this misconduct was squarely connected to the performance of public duties, as opposed to

personal matters unconnected to public employment. It is found that public has a legitimate interest in the misconduct of any of its public employees. Such legitimate interest is even more pronounced when the public employee is a police officer and an allegation of misconduct is involved. See Dep't of Pub. Safety v. FOIC, 242 Conn. 79, 88 (1997) (in which the Connecticut Supreme Court determined that, "because of the public interest in fairness of police investigations, there is a general presumption in favor of disclosure, even for investigative reports that exonerate police officers from charges that have been brought against them") (emphasis supplied). In this case, it is noted that Sgt. Rocheleau was not completely exonerated.

62. However, it is further found that, in the context of the instant internal affairs investigation certain potential criminal implications were considered in the First Draft. Specifically, it is found that IC-2016-0687-55 from lines 28 to the bottom of the page<sup>5</sup> and IC-2017-0687-56 from lines 2 through 12<sup>6</sup> concern criminal implications surrounding the internal affairs investigation. It is found such implications were neither substantiated nor pursued in the context of a subsequent criminal investigation. In fact, it is found that no criminal charges have ever been brought against anyone in connection with the unsecured marijuana.

63. It is found that the public has no legitimate interest in speculation concerning uncorroborated criminal implications. It is further found that the disclosure of such portions of the in camera records would be highly offensive to a reasonable person.

64. Accordingly, it is found that the specific portions of the in camera records referenced in paragraph 62 are exempt from disclosure pursuant to §1-210(b)(2), G.S., and it is concluded that the respondents did not violate the FOI Act when they refused to disclose such portions of the in camera records to the complainant.

65. It is found, however, that, other than the portions of the in camera records referenced in paragraph 62, above, the First Draft contains the information which formed the basis for, and which triggered, the internal investigation affairs in this case. It is further found that the records are necessary to facilitate the public's understanding and evaluation of the respondent police department's investigative process, decision-making and overall handling of an important matter involving a fellow police officer. It is found that the public has a legitimate interest in the remainder of the First Draft. It is further found that such disclosure would not be highly offensive to a reasonable person. Accordingly, it is found that the remainder of the First Draft is not exempt from disclosure pursuant to §1-210(b)(2), G.S.

66. Accordingly, it is concluded that, other than the portions of the in camera records specifically identified in paragraph 62, above, (and the handwritten notes discussed in paragraph 51, above), the respondents violated the disclosure provisions §§1-210(a) and 1-212(a), G.S., by denying the complainant's request for access to the requested records.

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<sup>5</sup> For ease of reference, line 28 is the second underlined header on page 55 of the in camera submission.

<sup>6</sup> For ease of reference, line 2 is the first underlined header on page 56 of the in camera submission.

67. Finally, the complainant contends that the records were not provided to him promptly.

68. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

69. In this case, regardless of what records the respondents believed they had to disclose or otherwise make available to the complainant, and despite the fact that there may have been some legitimate need for *some* clarification of the request, it is found that nothing in the administrative record justifies the one hundred and forty-four day delay in satisfying this request. Based on the standard set forth in Advisory Opinion #51, it is found that the respondents failed to provide the responsive records promptly to the complainant.

70. Accordingly, it is further concluded that the respondents violated the promptness provisions of the FOI Act by failing to provide the complainant with prompt access to the non-exempt portions of the requested records.

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

1. Henceforth, the respondents shall strictly comply with the access and promptness requirements of §§1-210(a) and 1-212(a), G.S.

2. The respondents shall forthwith provide the complainant with a copy of the records comprising the First Draft, as referenced in paragraph 40 of the findings, above. In complying with this order, the respondents may redact from the First Draft those portions of the document specifically identified in paragraphs 51 and 62 of the findings, above.



Valicia Dee Harmon  
as Hearing Officer