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DOCKET NO.: HHB-CV-22-6074309-~~8~~ 11:04 SUPERIOR COURT

SPERA, MICHAEL, CHIEF OF POLICE DEPARTMENT, TOWN OF OLD SAYBROOK : JUDICIAL DISTRICT OF NEW BRITAIN : JUDICIAL DISTRICT OF NEW BRITAIN

v. : TAX AND ADMINISTRATIVE : APPEALS SESSION

FREEDOM OF INFORMATION COMMISSION : AUGUST 9, 2023

MEMORANDUM OF DECISION

The plaintiffs, Michael Spera, Chief of Police of the Town of Old Saybrook, the Old Saybrook Police Department (OSPD), and the Town of Old Saybrook (together, Old Saybrook), appeal the decision of the defendant, the Freedom of Information Commission (commission), ordering the disclosure of an eleven page written exit interview setting forth Officer Justin Hanna’s views on how Chief Spera runs certain aspects of the OSPD. Old Saybrook contends that Officer Hanna’s exit interview is exempt from disclosure under General Statutes § 1-210(b)(2) as “personnel or medical files, or similar files the disclosure of which would constitute an invasion of personal privacy.” Because the court concludes that how Chief Spera runs the OSPD is a legitimate matter of public concern, the court concludes that Officer Hanna’s exit interview is not exempt from disclosure under § 1-210(b)(2). Therefore, this appeal is dismissed.

FACTS

The administrative record before the court demonstrates the following facts as relevant to this memorandum of decision which, except where noted, are not in dispute.

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Justin Hanna was a police officer for the OSPD from July 2018 through March of 2021. Officer Hanna achieved the rank of Patrolman. In March of 2021, Office Hanna decided to leave the OSPD. In compliance with OSPD procedure, Officer Hanna completed an exit interview with Captain Jeffery DePerry of the OSPD. The purpose of Officer Hanna's exit interview was to learn from a departing employee's experiences; improve the OSPD's performance generally, and evaluate the overall performance of OSPD supervisors. At the time of Officer Hanna's departure, the Old Saybrook Board of Selectman (BoS) was also concerned about perceived difficulties in retaining sworn officers at the OSPD and how Old Saybrook could improve its retention of sworn police officers. See Return of Record (ROR), at 89-90. During the exit interview, Officer Hanna spoke orally to Captain DePerry and completed a written, eleven-page "Employee Exit Interview" form. The exit interview form asked Officer Hanna various questions regarding his experiences at the OSPD, including, how Officer Hanna viewed and evaluated several of his superior officers, what the OSPD did well, how the OSPD could improve, and how Officer Hanna rated several aspects of his job (e.g., overall pay, job training, working conditions).

The court has reviewed the entirety of Officer Hanna's exit interview *in camera*. The court agrees with the commission's factual finding that Officer Hanna's exit interview form contains highly critical comments and opinions regarding Chief Spera which are directly related to Chief Spera's operation and supervision of the OSPD. Officer Hanna also recounts several negative experiences that Officer Hanna claimed to have had with Chief Spera related to Officer Hanna's work at the OSPD. Officer Hanna's statements are exclusively related to

Chief Spera's official duties and the overall operation of the OSPD. Officer Hanna's exit interview's does not contain any statements regarding Chief's Spera's personal or private life or any statements unrelated to Chief Spera's official duties or the overall operation of the OSPD.

In July of 2021, Officer Hanna requested a copy of his exit interview. On July 23, 2021, the Old Saybrook BoS denied Officer Hanna's request. On July 30, 2021, Officer Hanna appealed to the commission. On July 13, 2022, the commission adopted a final decision ordering the disclosure of Officer Hanna's exit interview. The commission concluded that Officer Hanna's exit interview "contains [Officer Hanna's] personal impressions of Chief Spera, related to the chief's official duties and responsibilities as Chief of the Old Saybrook Police Department and that [Officer Hanna's exit interview] therefore pertains to a legitimate matter of public concern." Return of Record, at 202. On August 9, 2022, Old Saybrook filed this appeal.

LEGAL STANDARD

"Our resolution of [administrative appeals] is guided by the limited scope of judicial review afforded by the Uniform Administrative Procedure Act; General Statutes § 4-166 et seq.; to the determinations made by an administrative agency. We must decide, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily or illegally, or abused its discretion. Even as to questions of law, the court's ultimate duty is only to decide whether, *in light of the evidence*, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions of law reached by the

administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . Although the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given a statute by the agency charged with its enforcement. (Citations omitted; emphasis in original; internal quotation marks omitted). *Rocque v. Freedom of Information Commission*, 255 Conn. 651, 658, 774 A.2d 957 (2001).

“Our review of an agency’s factual determination is constrained by . . . § 4-183(j), which mandates that a court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . . This limited standard of review dictates that, with regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency. . . . An agency’s factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole.” (Citations omitted; internal quotation marks omitted). *Rocque*, supra, 255 Conn. 658-59.

Because the determination of whether Officer Hanna’s exit interview is exempt from disclosure “involves an application of the well settled meaning of § 1-210(b)(2) to the facts of this particular case,” the “appropriate standard of judicial review . . . is whether the

commission's factual determinations are reasonably supported by substantial evidence in the record taken as a whole." *Rocque*, supra, 255 Conn. 659-660.

"It must be noted initially that there is an overarching policy underlying [the Freedom of Information Act] . . . favoring the disclosure of public records. It is well established that the general rule under the act is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the . . . legislation [comprising the act]. The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." (Citations omitted; internal quotation marks omitted). *Rocque*, supra, 255 Conn. 660-61.

"The test for determining whether a disclosure constitutes an invasion of personal privacy under § 1-210(b)(2) was enunciated in *Perkins v. Freedom of Information Commission*, [228 Conn. 158, 175, 635 A.2d 783 (1993)]. In *Perkins*, [the Connecticut Supreme Court] adopted as the appropriate test for invasion of personal privacy under § 1-210(b)(2) the definition of a tort action for the invasion of personal privacy, delineated in § 652D of the Restatement (Second) of Torts (1977). [The Supreme Court] held that 'the invasion of personal privacy exception of § 1-210(b)(2) precludes disclosure . . . only when the information sought by a request does not pertain to legitimate matters of public concern and is highly offensive to a reasonable person.' *Perkins* explicitly rejected a balancing test and

ruled that the information sought must satisfy both parts of the test to be exempt from disclosure. (Citations omitted; internal quotation marks omitted). *Rocque*, supra, 255 Conn. 661-62.

LEGAL ANALYSIS

The court concludes that there is substantial evidence in the record supporting the commission's conclusion that Officer Hanna's exit interview is not exempt from disclosure under § 1-210(b)(2) because Officer Hanna's exit interview pertains to a matter of public concern. "[T]he public has a legitimate interest in the integrity of . . . police departments" *Hartford v. Freedom of Information Commission*, 201 Conn. 421, 435, 518 A.2d 49 (1986); see also *Department of Public Safety, Division of State Police v. Freedom of Information Commission*, 242 Conn. 79, 88, 698 A.2d 803 (1997) (affirming disclosure of police investigative report where "the information contained in the report was limited to matters of professional conduct."); *Tompkins v. Freedom of Information Commission*, 136 Conn. App. 496, 508-509, 46 A.3d 291 (2012) (instant message conversations pertained to a legitimate matter of public concern because they "contain the information which formed the basis for and triggered the internal affairs investigation in this case." Therefore, commission was correct in finding the conversations were "necessary to facilitate the public's understanding and evaluation of the [police department's] investigative process, decision-making and overall handling of an important matter involving a fellow police officer."). *Id.*, 509.

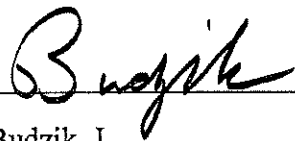
Here, Officer Hanna's comments in his exit interview relate exclusively to how Chief Spera performs his official duties as chief of police in Old Saybrook and other matters directly

affecting the operation and personnel of the OSPD. None of Officer Hanna's comments in his exit interview relate to any personal or private matters related to Chief Spera, or any matters that are unrelated to the operation of the OSPD. Moreover, at the time of Officer Hanna's departure, the Old Saybrook BoS was concerned about perceived difficulties in retaining OSPD officers. Officer Hanna's comments in his exit interview directly relate to that issue.

"[W]hen a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person's reasonable expectation of privacy is diminished.... The public has a right to know not only who their public employees are, but also when their public employees are and are not performing their duties." *Perkins v. Freedom of Information Commission*, supra, 228 Conn. 177. Chief Spera cannot prevent the disclosure of Officer Hanna's exit interview simply because it is highly critical of how Chief Spera performs his official duties.

CONCLUSION

For all the foregoing reasons, this appeal is dismissed.



Budzik, J.