

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Timothy Leonard,

Complainant

against

Docket #FIC 2020-0446

Office of the City Attorney, City of  
Bridgeport; and City of Bridgeport,

Respondents

March 9, 2022

The above-captioned matter was heard as a contested case on October 8, 2021, and December 3, 2021, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted remotely pursuant to §149 of Public Act 21-2 (June Sp. Sess.).

Subsequently, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit, which has been admitted into evidence and marked as:

Respondents' Exhibit 5 (after-filed): Affidavit of Lieutenant Manuel Cotto, dated December 9, 2021.

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 online form dated May 12, 2020, the complainant requested a copy of the following records:
  - (a) Memorandum of Understanding or Memorandum of Agreement between the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Bridgeport Police Department as it relates to the ATF Task Force;
  - (b) Memorandum of Understanding or Memorandum of Agreement between the Connecticut Department of Emergency Services and Public Protection/Connecticut State Police and the Bridgeport Police Department as it

relates to the Connecticut Regional Auto Theft Task Force; and

(c) personnel file for Police Officer Christian Kaplan.

The complainant clarified during the December 3<sup>rd</sup> continued hearing that his request for Officer Kaplan's personnel file included Officer Kaplan's "training records".

3. It is found that, by email dated May 12, 2020, the respondents acknowledged the complainant's request and provided individual reference numbers for each request.

4. By letter of complaint, dated September 3, 2020, and filed September 8, 2020<sup>1</sup>, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records, described in paragraph 2, above.

5. At the time of the request, §1-200(5), G.S., provided:

"[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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.<sup>2</sup>

6. Section 1-210(a), G.S., provides, in relevant part:

[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.

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<sup>1</sup> On March 25, 2020, the Governor issued Executive Order 7M (§2(1)), thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), requiring the filing of an appeal with the Freedom of Information Commission not later than thirty days after any alleged denial. Executive Order 7M (§2(1)) applied to any appeal filed prior to April 19, 2021.

The Governor also issued Executive Order 7M (§2(2)), thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M (§2(2)), which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains jurisdiction.

<sup>2</sup> Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of "[p]ublic records or files" to also include data or information that is "videotaped".

7. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is found that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, as of the date of the continued hearing held on December 3, 2021, approximately 18 months after the date of the request, the respondents had not provided any responsive records to the complainant. Nevertheless, the respondents argued that they had not denied the request. The complainant expressed frustration with the delay.

10. At the first hearing held on October 8<sup>th</sup>, counsel for the respondents appeared without a witness capable of testifying as to how the request was handled administratively. The hearing officer continued the hearing to allow counsel to present a witness who would be competent to testify as to the reason for the delay in providing responsive records, the efforts made to search for responsive records, and whether the requested personnel file was reviewed prior to notifying the subject of such file of the request and giving him the opportunity to object to its disclosure.

11. It is found that, at the December 3<sup>rd</sup> continued hearing, the respondents called one witness, Ann Kubel, the administrative assistant to the police chief. Ms. Kubel testified, and it is found, that she was not the person who was assigned to respond to the request at the time it was made, and had only learned of the request on September 22, 2021, some 16 months after the date of the request. Ms. Kubel further testified that she searched in two file cabinets in the chief’s office for records responsive to the request described in paragraphs 2(a) and 2(b), above, and did not locate such records. She further testified that she was not aware of any other locations where such records might be filed.

12. It is found that Lt. Cotto, who had been assigned to respond to the request, did not appear at the December 3<sup>rd</sup> continued hearing. The hearing officer therefore ordered the respondents to provide to the complainant and the Commission an affidavit from Lt. Cotto regarding the nature and scope of the search for responsive records, and the reason for the delay in providing them. As noted above, Lt. Cotto’s affidavit was received and marked as Respondents’ Exhibit 5 (after-filed).

13. It is found, based on Ms. Kubel’s testimony and Lt. Cotto’s affidavit, that the respondents failed to conduct any search for records responsive to the request, described in paragraph 2, above, until September 22, 2021, approximately 16 months after the request was received and acknowledged by the respondents. According to Lt. Cotto’s affidavit, the 16 month delay resulted from his mistaken belief that another city employee would respond to the request. However, it is found that the respondents offered no explanation or reason for the continued delay in providing the requested records between September 22, 2021 and December 3, 2021.

14. Moreover, it is found that Lt. Cotto’s affidavit did not contain a description of the nature and scope of the search for responsive records, nor any statement that all locations where the requested records might reasonably be located had been searched. It is found, based on the

testimony of Ms. Kubel and Lt. Cotto, that the respondents failed to prove that they conducted a thorough search for records responsive to the request, described in paragraphs 2(a) and 2(b), above.

15. It is concluded that, by their failure to conduct even an initial search for responsive records for a period of 16 months, and by their failure thereafter to conduct a thorough search for such records, the respondents failed to prove that they provided all responsive records to the complainant. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

16. With regard to the request for Officer Kaplan's personnel file, described in paragraph 2(c), above, it is found that the respondents withheld the entire file on the ground that disclosure thereof would constitute an invasion of Officer Kaplan's personal privacy, pursuant to §1-210(b)(2), G.S.

17. Section 1-210(b)(2), G.S., provides that disclosure is not required of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

18. Section 1-214, G.S., provides, in relevant part, that:

(b)(1) [w]henever 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 (A) each employee concerned...and (B) the collective bargaining representative, if any, of each employee concerned.

(2) 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 not legally constitute an invasion of privacy, the agency shall first disclose the requested records to the person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(3) Nothing in this section 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 subdivision (1) of 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, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given... 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. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206....

19. It is clear that §1-214(b)(1), (2) and (3), G.S., together, require that, upon receipt of a request to inspect or copy a personnel, medical or similar file, a public agency must first review such file in order to determine whether it is reasonable to believe that disclosure of any of the records contained therein would legally constitute an invasion of the subject's privacy. It is also clear that, if, after review of the file, the agency does not reasonably believe that disclosure of the file or any portion thereof would legally constitute an invasion of privacy, the agency is required to disclose such records to the requester.

20. It is found that the respondents failed to prove that they reviewed the records contained in Officer Kaplan's personnel file upon receipt of the request in order to determine whether disclosure of such file or any portion thereof would legally constitute an invasion of his privacy, prior to notifying Officer Kaplan of the request and offering him the opportunity to object. It is found that Officer Kaplan's written objection was signed on November 13, 2020, more than four months after the date of the request and more than two months after the complaint was filed with the Commission.

21. Based upon the foregoing it is concluded that the respondents violated §1-214(b)(1), (2) and (3), G.S.

22. In order prove the applicability of the invasion of privacy exemption under §1-210(b)(2), G.S., the claimant must first establish that the files in question are personnel or medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy, by establishing both of two elements: (1) the information sought does not pertain to a legitimate matter of public concern; and (2) disclosure

of such information would be highly offensive to a reasonable person. See Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993).

23. In Perkins the court noted that “disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern.” Perkins at 174. In addition, the court stated “that when 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.” Id. at 177.

24. Officer Kaplan appeared at the October 8<sup>th</sup> hearing and stated that he did not object to disclosure of records in his personnel file relating to his employment as a police officer. He testified that he only objected to “personal” or “private” information such as his home address, information about his family, medical information, and the like. The complainant stated that he was not seeking disclosure of such personal information.

25. With regard to the training files, at the hearing in this matter, the respondents argued that because officers’ training files are maintained at the Bridgeport Training Academy, separate from the remainder of the personnel file, they were not required to provide them to the complainant.

26. However, it is found that such training records are personnel or similar files, and therefore fall within the scope of the request, described in paragraph 2(c), above, regardless of their physical location. See Connecticut Alcohol and Drug Abuse Commission et al v. Freedom of Information Commission et al., 233 Conn. 28 at 41 (1995) (a principal purpose of “personnel file” is the furnishing of information for making personnel decisions; a file containing information used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered “similar” to a personnel file). To the extent the respondents were uncertain as to which records, in particular, the complainant was seeking, they had an obligation to seek clarification as part of their duty to provide responsive, non-exempt records under §§1-210(a) and 1-212(a), G.S.

27. It is found that the records contained in Officer Kaplan’s personnel file that relate to his employment duties and other “routine” matters, including his training records, pertain to legitimate matters of public concern and that disclosure of such records would not be highly offensive to a reasonable person. Moreover, as found in paragraph 24, above, Officer Kaplan testified that he did not object to disclosure of such records.

28. It is therefore concluded that disclosure of the records described in paragraph 27, above, would not constitute an invasion of Officer Kaplan’s privacy, and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant, except to the extent that such records include information such as home addresses, medical and tax information, social security numbers, information about family members and similar information.

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

1. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall perform a diligent and thorough search for all records responsive to the request, described in paragraphs 2(a) and 2(b) of the findings, above, and provide an affidavit to the complainant and to the Commission detailing the nature and scope of the search. If no responsive records are located, the respondents shall so state in the affidavit. If responsive records are located, the respondents shall so state in the affidavit and immediately provide a copy of such records to the complainant, free of charge.

2. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant a copy of all records in the personnel file, described in paragraph 2(c) of the findings, above, including the training records, free of charge. In complying with this order, the respondents may redact from such records information such as home addresses, medical and tax information, social security numbers, information about family members, and similar information.

3. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's public education officer to schedule training regarding the requirements of the FOI Act.

4. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-212(a), 1-214, G.S.

5. The Commission is disturbed by the length of the delay in providing the requested records to the complainant in this matter. The respondents are reminded that complying with the FOI Act should be considered a "primary duty", equal in importance to their other significant duties.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 9, 2022.



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:

**TIMOTHY LEONARD**, 129 Brook Run Lane, Stamford, CT. 06905

**OFFICE OF THE CITY ATTORNEY, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT**, c/o Attorney Dina A. Scalò, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604



Cynthia A. Cannata  
Acting Clerk of the Commission