

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION
AFTER REMAND

David Collins and The New London Day,

Complainants

against

Docket # FIC 2019-0710

Associate Attorney General, State of
Connecticut, Office of the Attorney General;
State of Connecticut, Office of the Attorney
General; Auditors, State of Connecticut,
Auditors of Public Accounts; and State of
Connecticut, Auditors of Public Accounts,

Respondents

May 11, 2022

The above-captioned matter was heard as a contested case on October 7, 2020, at which time the complainants and the respondents appeared, stipulated to certain facts, 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 telephonically.¹

A Report of Hearing Officer, dated March 16, 2021, was considered by the Commission at its regular meeting of April 28, 2021 ("Commission meeting"). After hearing argument on the Report of Hearing Officer, the Commission voted, 7-1, to remand the matter to the hearing officer to address certain arguments made by the parties during the Commission meeting.

Following the Commission meeting, the Hearing Officer issued an Order to the respondents to submit the records at issue for in camera inspection. On May 19, 2021, the respondents delivered such records to the Commission with an Index to Records Submitted for In Camera Inspection. Such records shall be referred to as IC-2019-0710-001 through IC-2019-0710-012.

The Hearing Officer also issued an Order to the parties to submit a brief on the issues raised during the April 28, 2021 Commission meeting.

On August 23, 2021, the respondents filed their brief with the Commission. However, the complainants did not file a brief.

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

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 November 21, 2019, the complainants requested from the Office of the Attorney General (“OAG”) a copy of a “whistleblower complaint about management misuse of funds at the Connecticut Port Authority.”
3. It is found that, by letter dated November 22, 2019, the OAG acknowledged receipt of the request identified in paragraph 2, above, but denied the request, writing “[t]o the extent that you are requesting documents contained in a whistleblower investigation, those records are exempt from disclosure pursuant to Conn. Gen. Stat. § 1-210(b)(13). In addition, this is a pending investigation and Conn. Gen. Stat. §4-61dd authorizes this office to withhold the records of a whistleblower investigation during the pendency of said investigation.”
4. By letter of complaint filed November 25, 2019,² the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying their request for certain public records.
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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.³
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.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date through June 30, 2021. Consequently, the Commission retains jurisdiction.

³ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.”

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 is concluded that the records responsive to the request described in paragraph 2, above, 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 Auditors of Public Accounts (“Auditors”) did not receive the request, described in paragraph 2, above, from the complainant, but rather, received it for the first time from this Commission on January 27, 2020, when the Commission notified the parties of the complaint in this matter.

10. Section 1-206(b)(1), G.S., states in relevant part: “Any person denied the right to inspect or copy records under 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission....”

11. It is therefore found that at the time of the complaint, the respondent Auditors, State of Connecticut, Auditors of Public Accounts; and State of Connecticut, Auditors of Public Accounts had not denied the complainants’ request for records, or denied any other right under the FOI Act within the meaning of §1-206(b)(1), G.S. It is therefore concluded that the respondent Auditors, State of Connecticut, Auditors of Public Accounts; and State of Connecticut, Auditors of Public Accounts did not violate the FOI Act under the facts of this case.

12. At the hearing in this matter, the respondents contended that the records responsive to the request described in paragraph 2, above, are entirely exempt from disclosure pursuant to §§1-210(b)(13) and 4-61dd, G.S.

13. Section 1-210(b)(13), G.S., provides that disclosure is not required of [r]ecords of an investigation or the name of an employee providing information under the provisions of section 4-61dd [i.e., Whistleblower Statute] or sections 4-276 to 280 [i.e., CT False Claims Act], inclusive.”

14. Section 4-61dd, G.S., known as the whistleblower statute, provides, in relevant part:

(a) Any person having knowledge of any matter involving (1) corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state department or agency, any quasi-public agency, as defined in section 1-120, or any Probate Court, (2) corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, or (3) corruption by an entity receiving financial

assistance pursuant to title 32 that has failed to meet its contractual obligations or has failed to satisfy any condition regarding such financial assistance, may transmit all facts and information in such person's possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation.

...

(d)...In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section or sections 4-276 to 4-280, inclusive, disclose the identity of such person without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation....

15. The Superior Court has examined the meaning of §§1-210(b)(13) and 4-61dd, G.S., and concluded that “[t]he unambiguous language of § 1-210(b)(13)...provides two exemptions from disclosure for ‘records of an investigation’ and ‘the name of an employee providing information’ under §4-61dd.” State of Connecticut, Office of the Attorney General v. Freedom of Information Commission, 2011 WL 522872, at *5 (Conn. Super. Ct. Jan. 20, 2011). The court further explained that §4-61dd, G.S., “adds exemptions from disclosure that are ‘in addition to’ those set forth in §1-210(b)(13) . . .” in that §4-61dd, G.S., “adds a mandatory prohibition that persons providing information ‘shall not’ be disclosed ‘during the pendency of the investigation.’” Id. at *6.

16. In the present case, it is found that the Auditors received three complaints alleging wrongdoing at the Connecticut Port Authority (“Port Authority”), a quasi public agency.

17. It is found that the first complaint, submitted by an individual identified by the respondents as Whistleblower One, was received on or about May 2019. It is further found that

the initial contact was not in writing and therefore the investigators at the Auditors of Public Accounts convened a meeting to interview Whistleblower One. It is further found that the Auditors who participated in that meeting drafted notes based on the information provided. It is further found that the Auditors treated such notes as the complaint and proceeded to review the allegations consistent with §4-61dd(a), G.S. IC-2019-0710-001 through IC-2019-0710-010 constitute the first complaint received by the Auditors.

18. It is further found that, during the course of the Auditors' investigation of the first complaint, on or about July 2019, the Auditors received an anonymous email from an individual who the respondents identified as Whistleblower Two. It is further found that the Auditors considered the email a second complaint and proceeded to review the allegations consistent with §4-61dd(a), G.S. IC-2019-0710-011 constitutes the second complaint received by the Auditors.

19. It is further found that on or about October 2019, Whistleblower One emailed the Auditors with additional allegations of wrongdoing against the Port Authority. It is further found that the Auditors considered the allegations set forth in the email to be different from those that were set forth in the May 2019 complaint, deemed it a third complaint, and proceeded to review the allegations consistent with §4-61dd(a), G.S. IC-2019-0710-012 constitutes the third complaint received by the Auditors.

20. It is found that Whistleblower One is identified by name in the in camera records. It is further found that merely redacting the individual's name will not protect his or her identity given the detailed allegations set forth in IC-2019-0710-001- IC-2019-0710-010 and IC-2019-0710-012. Similarly, although IC-2019-0710-011 was submitted anonymously by Whistleblower Two, it is found that disclosure would reveal the identity of the whistleblower given the detailed allegations set forth therein.

21. It is therefore found, based on the credible testimony of Deputy Auditor John Rasimas and Assistant Attorney General Gregory O'Connell, and after a careful inspection of the in camera records, that disclosure of the in camera records in this case would reveal the name of an employee, or identity of a person providing information under the provisions of §4-61dd, G.S., in contravention of §§1-210(b)(13) and 4-61dd, G.S.

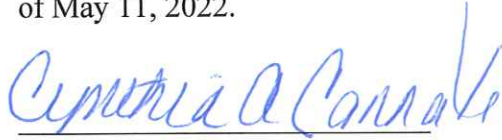
22. Based upon the facts and circumstances of this case, it is concluded that IC-2019-0710-001 through IC-2019-0710-012 are exempt from disclosure pursuant to §§1-210(b)(13) and 4-61dd, G.S.

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

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

1. The complaint is hereby dismissed.
2. Nothing herein shall be construed as a conclusion that all whistleblower complaints are exempt from disclosure pursuant to §§1-210(b)(13) and 4-61dd, G.S. Such determinations will necessarily be made on a case by case basis.

Approved by Order of the Freedom of Information Commission at its regular meeting
of May 11, 2022.



Cynthia A. Cannata
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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:

DAVID COLLINS AND THE NEW LONDON DAY, 47 Eugene O'Neill Drive, New London, CT 06320

ASSOCIATE ATTORNEY GENERAL, STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL; STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL; AUDITOR, STATE OF CONNECTICUT, AUDITOR OF PUBLIC ACCOUNTS; AND STATE OF CONNECTICUT, AUDITOR OF PUBLIC ACCOUNTS,
c/o Assistant Attorney General Phillip Miller, State of Connecticut, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission