

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Daniel Dunn,

Complainant

against

Docket #FIC 2022-0167

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

Respondents

April 12, 2023

The above-captioned matter was heard as a contested case on January 26, 2023, and March 9, 2023, at which times 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 email dated February 25, 2022, the complainant requested a copy of the following records:
  - (a) “[c]ivil [c]omplaints to the police department submitted for the years 2016, 2017, 2018, 2019, 2020, 2021, and 2022 (to date)”; and
  - (b) “[u]se of [f]orce [r]eports for the years 2016, 2017, 2018, 2019, 2020, 2021, and 2022 (to date).”
3. It is found that, by email dated February 25, 2022, the respondents acknowledged the complainant’s request. It is also found that, by email dated March 11, 2022, the respondents provided a list of civilian complaints, the final disposition of such complaints, and the corresponding file number for such civilian complaints (“complaint logs”). It is further found, however, that the respondents did not provide the complainant with a copy of the civilian complaints themselves.
4. It is found that, by email dated April 13, 2022, the complainant asked the respondents for an estimated timeline for production of the records described in paragraph 2, above.

5. By letter filed April 14, 2022, the complainant appealed to this Commission, alleging the respondents violated the Freedom of Information (FOI) Act by denying his request.

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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

7. 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 (1) inspect such records promptly during regular office or business hours . . . or (3) receive a copy of such records in accordance with section 1-212....

8. 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.”

9. It is found that the requested records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the contested case hearing in this matter, the respondents stipulated that they maintained certain records responsive to the complainant’s request, described in paragraph 2(a), above, at the time of the complainant’s request, and that such records, subsequently, were destroyed, in accordance with the state’s records retention procedure and with approval of the State’s Public Records Administrator and the State’s Archivist.<sup>1</sup>

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<sup>1</sup> The Commission notes that jurisdiction over the retention and destruction of public records rests with the State’s Public Records Administrator. See Dept. of Public Safety v. Freedom of Information Commission, 103 Conn. App. 571, 577 (2007) (the Commission is a creature of statute with limited jurisdiction; it can only administer and enforce the provisions set forth in the FOI Act).

11. The respondents conceded, and it is concluded, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the records described in paragraph 10, above, to the complainant.<sup>2</sup>

12. It is found that the respondents maintain two records responsive to the complainant's request, described in paragraph 2(a), above. At the March 9<sup>th</sup> contested case hearing, the respondents argued that such records are exempt from disclosure due to the "nature" of the records.

13. At the conclusion of the March 9<sup>th</sup> contested case hearing, the respondents submitted the records at issue to the Commission for in camera inspection, along with an in camera index. On the in camera index, the respondents described the in camera records as "[i]nternal [a]ffairs file[s]" ("in camera records") and contended that such records are entirely exempt from disclosure pursuant to §1-210(b)(2), G.S.

14. 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."

15. The general rule under the FOI Act is disclosure; exceptions to this rule must be narrowly construed, and the burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. New Haven v. FOI Commission, 205 Conn. 767, 775 (1988); Ottochian v. FOI Commission, 221 Conn. 393 (1992). "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." Director, Retirement & Benefits Service v. FOI Commission, 256 Conn. 764, 773 (2001), citing New Haven, supra.

16. In order to prove the applicability of §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).

17. The respondents did not identify the person or persons whose privacy allegedly would be invaded by disclosure of the in camera records, and it is found that the respondents offered no evidence that they had notified such individuals of the request. However, after careful inspection of the in camera records, it is found that such records are personnel or similar files of the officers who were the subjects of the internal affairs investigations.

18. It is found that the respondents offered no evidence that the in camera records do not pertain to a legitimate matter of public concern or that disclosure of such information would be

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<sup>2</sup> The respondents also testified that they have since made certain changes to the Town of Hamden's retention and destruction policies and procedures in order to help ensure that this situation does not occur again.

highly offensive to a reasonable person. However, after a careful inspection of the in camera records, it is found that such records pertain to a legitimate matter of public concern, with the exception of the information described in paragraph 20, below.

19. 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.

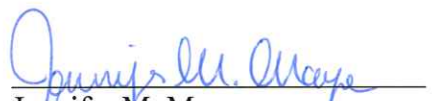
20. It is found that portions of the records identify certain individuals who were not the subject of the internal affairs investigation. It is therefore found, based on the facts and circumstances of this case, that the identities of such individuals do not pertain to a legitimate matter of public concern and that disclosure of such information would be highly offensive to a reasonable person.

21. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to disclose a copy of the in camera records described in paragraph 13, above, to the complainant, except for the information described in paragraph 20, above.

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

1. Within seven (7) days of the date of the Final Decision in this matter, the respondents shall provide a complete copy of the in camera records described in paragraph 13 of the findings, above, free of charge, to the complainant.
2. In complying with paragraph 1 of the Order, the respondents may redact the identities of the individuals described in paragraph 20 of the findings, above.
3. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 12, 2023.

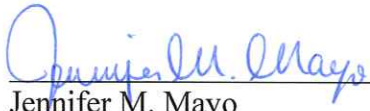
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**DANIEL DUNN**, c/o Attorney Joseph Sastre, The Law Office of Joseph R. Sastre, LLC, 852 Plainville Avenue, Farmington, CT 06032

**CHIEF, POLICE DEPARTMENT, TOWN OF HAMDEN; POLICE DEPARTMENT, TOWN OF HAMDEN; AND TOWN OF HAMDEN**, c/o Attorney Bryan L. LeClerc, Berchem Moses P.C., 75 Broad Street, Milford, CT 06460



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Jennifer M. Mayo  
Acting Clerk of the Commission