

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

John DiIorio,

Complainant

against

Docket #FIC 2022-0374

Commissioner, State of Connecticut,
Department of Banking; and State of
Connecticut, Department of Banking,

Respondents

March 22, 2023

On August 25, 2022, the complainant filed an appeal, claiming that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of certain requested records. On December 1, 2022, the respondents filed a motion to dismiss the appeal without a hearing¹, claiming that this Commission had determined in a previous decision that the requested records were exempt from disclosure. On January 6, 2023, the complainant filed a motion in opposition to the motion to dismiss. And, on January 9, 2023, the respondents filed a reply to the motion in opposition.

Upon review of the appeal and the legal arguments raised by the parties, and construing all allegations most favorably to the complainant, the Commission hereby grants the respondents’ motion to dismiss for the following reasons:

1. In the instant matter, it is found that, by letter dated July 25, 2022, the complainant, through counsel, requested that the respondents provide him with “[t]he documents referred in the attached Final Decision (Docket Number FIC 2019-0650), at finding 17.”

2. It is found that, by email dated July 28, 2022, the respondents denied the complainant’s request.

¹ Section 1-206(b)(4)(A), G.S., provides that: “in the case of an appeal to the commission by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom of Information Act. . . .”

3. By letter of complaint, dated August 24, 2022 and received August 25, 2022, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with copies of the records referenced in paragraph 1, above.

4. The Commission takes administrative notice of its Final Decision in John DiIorio v. Comm’r, State of Connecticut, Dep’t of Banking, et al., Docket #FIC 2019-0650 (Aug. 26, 2020) (“DiIorio 1”). In the Final Decision, the Commission determined that the following in camera records were exempt from disclosure in their entirety pursuant to §36a-21, G.S. IC-FOI-00001 through IC-FOI-00042; IC-FOI-00050 through IC-FOI-00052; and IC-FOI-00122 through IC-FOI-00139. See DiIorio 1, ¶¶ 17, 19.

5. Section 36a-21, G.S., provides, in relevant, part:

(a) Notwithstanding any provision of state law and except as provided in subsections (b) and (d) of this section and subdivision (2) of subsection (a) of section 36a-534b, the following records of the Department of Banking shall not be disclosed by the commissioner or any employee of the Department of Banking, or be subject to public inspection or discovery:

(1) Examination and investigation reports and information contained in or derived from such reports, including examination reports prepared by the commissioner or prepared on behalf of or for the use of the commissioner;

(2) Confidential supervisory or investigative information and records obtained or collected by a state, federal or foreign regulatory or law enforcement agency;

(3) Information obtained, collected or prepared in connection with examinations, inspections or investigations, and complaints from the public received by the Department of Banking, if such records are protected from disclosure under federal or state law or, in the opinion of the commissioner, such records would disclose, or would reasonably lead to the disclosure of: (A) Investigative information the disclosure of which would be prejudicial to such investigation, until such time as the investigation and all related administrative and legal actions are concluded; (B) personal or financial information, including account or loan information, without the written consent of the person or persons to whom the information pertains; or (C) information that would harm the reputation of any person or affect the safety and soundness of any person whose activities in this state are subject to the supervision of the commissioner, and the disclosure of such information under

this subparagraph would not be in the public interest; and. . .

(b) The commissioner may, without waiving any privilege, disclose the records described in subsection (a) of this section for any appropriate supervisory, governmental, law enforcement or other public purpose. Any such disclosure shall be made under safeguards designed to prevent further dissemination of such records. In any proceeding before a court, the court may issue a protective order in appropriate circumstances to protect the confidentiality of any such record and order that any such record on file with the court or filed in connection with the court proceeding be sealed and that the public be excluded from any portion of the proceeding at which any such record is disclosed.

(c) No director, officer, employee or agent of any Connecticut bank, Connecticut credit union or licensee under section 36a-380 or 36a-628 shall disclose without the prior written consent of the commissioner any information contained in an examination report about such bank, credit union or licensee which information is not otherwise a matter of public record.

(d)(1) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the system, as defined in section 36a-2, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all federal and state regulatory officials with mortgage or other financial services industry oversight authority without the loss of privilege or the loss of confidentiality protection provided by federal or state law. For purposes of this subsection, the commissioner may enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or associations representing governmental agencies.

(2) Any information or material that is under subdivision (1) of this subsection subject to privilege or confidentiality shall not be subject to (A) disclosure under any federal or state law governing disclosure to the public of information held

by an officer or agency of the federal government or the respective state; or (B) subpoena, discovery or admission into evidence in any private civil action or administrative process, except a person may, at such person's discretion, waive in whole or in part a privilege held by the system concerning such information and material.

(3) Any law of this state relating to the disclosure of confidential supervisory information or of any information or material described in subdivision (1) of this subsection that is inconsistent with subdivision (1) shall be superseded by the requirements of this subsection

6. In DiIorio 1, with regard to the in camera records identified in paragraph 4, above, the Commission made the following findings and conclusions:

After a careful inspection of the in camera records, it is found that the in camera records [] are records of the Connecticut Department of Banking. Additionally, it is found that such records constitute examination and investigation reports and information contained in or derived from such reports; confidential supervisory or investigative information and records obtained or collected by a state, federal or foreign regulatory or law enforcement agency; information obtained, collected or prepared in connection with examinations, inspections or investigations, and complaints from the public received by the Department of Banking; investigative information the disclosure of which would be prejudicial to such investigations; and information received through agreement with the Conference of State Bank Supervisors (CSBS), the American Association of Residential Mortgage Regulators (AARMR), as well as other associations representing governmental agencies. It is concluded that such records are exempt from release in accordance with §§36a-21(a)(1), 36a-21(a)(2), 36a-21(a)(3)(A), and 36a-21(d), G.S., as contended by the respondents. Accordingly, it is concluded that the respondents did not violate the FOI Act by denying the complainant access to such records.

DiIorio 1, ¶ 19.

7. In the instant matter, the complainant has again requested copies of the in camera records identified in paragraph 4, above. The complainant contends that such records are no longer exempt from disclosure “because, inter alia, the investigation and administrative and legal actions have been concluded.” In support of this contention, the complainant cites §36a-

21(a)(3)(A), G.S.

8. In their motion to dismiss, the respondents dispute that the “investigation and administrative and legal actions” have concluded. They further contend that, even if this were true, such a fact would be an insufficient basis upon which to order the disclosure of the in camera records identified in paragraph 4, above, as this Commission determined that such records were exempt from disclosure pursuant §36a-21(a)(3)(A), G.S., as well as other statutory provisions.

9. In fact, in DiIorio 1, this Commission determined that IC-FOI-00050 through IC-FOI-00052 were exempt from disclosure pursuant to §§36a-21(a)(2) and 36a-21(d), G.S., not §36a-21(a)(3)(A), G.S. The Commission further determined that IC-FOI-00122 though IC-FOI-00139 were exempt from disclose pursuant to §36a-21(a)(2), G.S., not §36a-21(a)(3)(A), G.S. Unlike the exemption provided for in §36a-21(a)(3)(A), G.S., the exemptions to disclosure provided for in §§36a-21(a)(2) and 36a-21(d), G.S., are not subject to temporal limitations.

10. Moreover, with regard to IC-FOI-00001 through IC-FOI-00042, while this Commission did determine that such records were exempt from disclosure pursuant to §36a-21(a)(3)(A), G.S., it further determined that IC-FOI-00001 through IC-FOI-00040 were also exempt from disclosure pursuant to §§36a-21(a)(1) and 36a-21(a)(2), G.S., and that IC-FOI-00041 and IC-FOI-00042 were also exempt from disclosure pursuant to §36a-21(a)(2). Just like §§36a-21(a)(2) and 36a-21(d), G.S., the exemption to disclosure provided for in §§36a-21(a)(1), G.S., is not subject to a temporal limitation.

11. Accordingly, it is concluded that the respondents are correct in that, even if the investigation and administrative and legal actions have concluded and the provisions of §36a-21(a)(3)(A), G.S., no longer exempt the records from disclosure, such records remain exempt from disclosure in their entirety pursuant to other statutory provisions.

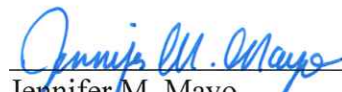
12. It is further concluded that the respondents have not violated the FOI Act, as alleged in the complaint

13. Therefore, the Commission hereby grants the respondents’ motion to dismiss pursuant to the provisions of §1-206(b)(4)(A), G.S.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 22, 2023.



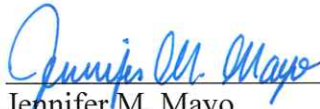
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JOHN DIORIO, c/o Attorney Ann Rubin, Carmody Torrance Sandak Hennessy LLP, 50 Leavenworth Street, PO Box 1110, Waterbury, CT 06702

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF BANKING;
AND STATE OF CONNECTICUT, DEPARTMENT OF BANKING**, c/o Assistant Attorney General John Langmaid, Esq., Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission