

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

David Moore,

Complainant

against

Docket # FIC 2022-0241

Mayor, City of Shelton; and City of Shelton,

Respondents

May 24, 2023

The above-captioned matter was heard as a contested case on January 10, 2023, at which time the complainant and the respondents appeared and presented testimony, exhibits, and argument on the complaint. By order of the hearing officer, the hearing was reopened for the purpose of taking additional evidence. The reopened hearing was held on April 18, 2023, at which time the complainant and the respondents again appeared and presented additional 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 letter dated May 18, 2022, the complainant requested that the respondents provide him an opportunity to inspect the following records:

[a]ny and all records related to any investigations involving Shelton Police Department employee, Manny Rosario. The records release is confined to the years 2020, 2021 and 2022 and should include, but is not [to] be limited to, the identification of the incident case number assigned to the investigation, the agency and/or investigators assigned to conduct the investigation, all reports, memorandums, emails text messages, interviews both recorded and transcribed, notes, photographs, video or audio recordings, documents indicating all findings and conclusions and any other records associated with the origins, investigation, findings, discipline imposed and grievances filed related to these incidents.

3. It is found that, by email received and filed on June 1, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the request described in paragraph 2, above.

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

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

[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.

6. 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.”

7. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. At the January 10, 2023 hearing in this matter, the respondents testified that they had located a single record, consisting of three pages, that was responsive to the request described in paragraph 2, above. The respondents claimed that such record was exempt from disclosure pursuant to §1-210(b)(2), G.S.

9. Following the January 10, 2023 hearing, the respondents submitted the record described in paragraph 8, above, for in camera inspection. Such record will be referenced hereafter as IC-2022-0241.

10. 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.”

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

(b)(1) 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 legally constitute an invasion of privacy, the agency shall immediately notify in writing (A) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned, and (B) the collective bargaining representative, if any, of each employee concerned....

(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. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. 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.

12. It is found that the requested records are "personnel" or "similar" files within the meaning of §1-210(b)(2), G.S.

13. At the April 18, 2023 hearing, the respondents testified that they verbally notified Mr. Rosario of the request described in paragraph 2, above, during a telephone conversation, and that Mr. Rosario informed the respondents during that conversation that he did not consent to the disclosure of the requested records. However, it is found that the respondents did not present any evidence that they provided written notice of the request to Mr. Rosario in accordance with §1-214(b), G.S. It is also found that the respondents did not present any evidence that, at the time the respondents denied the request, they had received a written objection from Mr. Rosario in accordance with the requirements of §1-214(c), G.S.

14. Based on the foregoing, it is found that the respondents failed to prove that they complied with the process required by §1-214, G.S. Accordingly, it is concluded that the respondents violated the FOI Act by failing to comply with §1-214, G.S.

15. To prove that a public record is exempt from disclosure pursuant to §1-210(b)(2), G.S., the party claiming the exemption must establish that the records in question are personnel, medical, or similar files, and that disclosure of such records would constitute an invasion of personal privacy. *Perkins v. Freedom of Information Commission*, 228 Conn. 158, 168 (1993). In determining whether disclosure would constitute an invasion of personal privacy, the party asserting the exemption must establish “that the information sought by the request both does not pertain to legitimate matters of public concern,” and that such information “is highly offensive to a reasonable person.” *Id.* at 175.

16. In *Perkins*, the Supreme Court recognized that “disclosures relating to the employees of public agencies are presumptively legitimate matters of public concern.” *Perkins* at 174. The court further explained 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, especially in regard to the dates and times required to perform public duties. 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.

17. Mr. Rosario did not appear at the hearings in this matter to testify in support of his objection to disclosure of IC-2022-0241. The respondents also did not present any other testimony to support the assertion that disclosure of such record would constitute an invasion of Mr. Rosario's personal privacy, within the meaning of §1-210(b)(2), G.S.

18. Based on a careful in camera inspection, it is found that IC-2022-0241 contains information that is a legitimate matter of public concern because such record relates to the conduct of a public employee in the performance of his official duties. It is further found that disclosure of such record would not be highly offensive to a reasonable person.

19. Based on the foregoing, it is found that disclosure of IC-2022-0241 would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by denying the complainant's request.

20. At the April 18, 2023 hearing in this matter, the complainant contended that there was an internal affairs investigation concerning Mr. Rosario during the time period set forth in the request described in paragraph 2, above, and that the respondents conducted an inadequate search because they failed to locate records related to such investigation.

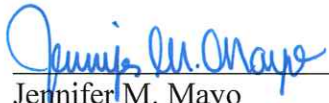
21. Based on the credible testimony presented at the hearing, it is found that the respondents conducted a thorough search for records responsive to the request described in paragraph 2, above, and that IC-2022-0241 is the only record in the respondents' possession that is responsive to the request.

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

1. Forthwith, the respondents shall provide the complainant with a copy of IC-2022-0241, free of charge.

2. Henceforth, the respondents shall strictly comply with the requirements of §§1-210 and 1-214, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 24, 2023.



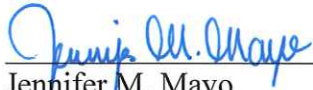
Jennifer M. Mayo
Acting Clerk of the Commission

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:

DAVID MOORE, 62 Tuckahoe Drive, Shelton, CT 06484

MAYOR, CITY OF SHELTON; AND CITY OF SHELTON, c/o Attorney Thomas G. Cotter, The Cotter Law Firm LLC, 80 Ferry Boulevard, Suite 216, Stratford, CT 06615 and Attorney Francis A Teodosio, Teodosio Stanek LLC, 375 Bridgeport Avenue, Shelton, CT 06484



Jennifer M. Mayo
Acting Clerk of the Commission