

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Meghan Friedmann and
Hearst Media Connecticut,

Complainant

against

Docket # FIC 2022-0590

Chief, Police Department, Town of Old
Saybrook; Police Department, Town of Old
Saybrook; and Town of Old Saybrook,

Respondents

September 27, 2023

The above-captioned matter was heard as a contested case on March 2, 2023, at which time the complainants and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

On August 28, 2023, pursuant to an order of the hearing officer, the respondents submitted, without objection, an after-filed exhibit, which has been marked as Respondents' Exhibit 4 (after-filed): Affidavit of Michael A. Spera dated August 28, 2023.

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 August 19, 2022, the complainants requested that the respondents provide them with copies of the following records:

[a.] Any/all reports from the most recent internal affairs investigation of Tyler Schulz, including but not limited to the investigative report(s), report(s) explaining the final disposition of the case, but excluding exhibits.

[b.] Any/all disciplinary records resulting from the investigation.

[c.] Any/all appeals from that investigation, including but not limited to appeals of the disposition and/or discipline.

[d.] Any/all civilian and internal complaints pertaining to the investigation.

[e.] Any/all correspondence with Tyler Schulz regarding the investigation, as well as correspondence with Schulz and other entities, such as the police commission, documenting its results.

[f.] Any/all records documenting Schulz's departure from the department, including but not limited to letters of resignation and/or letters indicating Schulz's termination.¹

3. It is found that, by letter dated August 23, 2022, the respondents acknowledged the request and disclosed to the complainants a letter dated August 3, 2022 from the chief of the respondent police department to the Police Commission for the Town of Old Saybrook ("Police Commission") as well as an August 3, 2022 separation agreement among Tyler Schulz (a former police officer for the respondent department), his collective bargaining representative, and the Town of Old Saybrook (the "Town"). However, the respondents denied the complainants' request for the internal affairs investigation of Tyler Schulz.

4. It is found that, on August 24, 2022, the complainants sent an email to the respondents thanking them for the records that were disclosed but indicating that they planned to file an appeal with the Commission for the remainder of the records.

5. It is found that, on September 19, 2022, the complainants sent an email to the respondents requesting clarification regarding the decision not to release the internal affairs investigation records concerning Tyler Schulz.

6. By letter filed on October 17, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide all records responsive to the request described in paragraph 2, above.

7. 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.

¹ At the hearing in this matter, the complainants stated that they are not seeking the names and addresses of victims of sexual assault, domestic violence or family violence; thus, such information is outside the scope of the request described in paragraph 2, above.

8. 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.

9. 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.”

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

11. As a preliminary matter, the respondents contended, at the hearing in this matter, that the complainants’ appeal was not filed within thirty days of the FOI Act violation as required by §1-206(b)(1), G.S. Specifically, the respondents contended that they denied the complainants’ request on August 23, 2022, but the complainants did not file the complaint until October 17, 2022.

12. Section 1-206(b)(1), G.S., provides, in relevant part:

Any person denied the right to inspect or copy records under section 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. A notice of appeal shall be filed not later than thirty days after such denial

13. Our Supreme Court has held that the FOI Act “does not bar successive requests, nor does it bar successive denials, nor does it require an appeal within thirty days of the denial of any particular request.” Board of Education v. Freedom of Information Comm’n, 208 Conn. 442, 451(1988); see also Sedensky v. Freedom of Information Comm’n, No. HHB-CV13-6022849S, 2013 WL 6698055 (Conn. Super. Ct. 2013); Town of West Hartford v. Freedom of Information Comm’n, 218 Conn. 256 (1991). Such a rigid requirement “would frustrate the ‘strong legislative policy in favor of the open conduct of government and free public access to government records.’” Wilson v. Freedom of Information Comm’n, [181 Conn. 324, 328 (1980)].” Id; see also Docket #FIC 2004-552, David Reynolds and the Connecticut Catholic Conference v. Commissioner, State of Connecticut, Department of Public Health, et al., (August 10, 2005) (complaint was timely filed because less than thirty days prior to filing the complaint with the Commission the complainant sent a letter to the respondents requesting information concerning the respondents’ denial of records, which letter the Commission determined constituted a renewal of the complainants’ request for records); Docket #FIC 2019- 0159, Ross Garber v. Commissioner, State of Connecticut, Department of Banking; State of Connecticut,

Department of Banking (March 11, 2020) (complaint was timely filed when the last email exchange between the parties occurred five days prior to the filing of the complaint with the Commission, even though the initial records request occurred more than thirty days prior).

14. It is found that the complainants' September 19, 2022, letter constituted a renewal of their request for records. Therefore, it is concluded that the Commission has jurisdiction over the October 17, 2022, complaint, which was filed within thirty days of the denial of an FOI Act right, as required by §1-206(b)(1), G.S.

15. It is found that, in early August 2022, Mr. Schulz, a police officer then employed by the respondent police department, resigned from the department amid an internal affairs investigation. It is found that the respondent police department conducted an internal affairs investigation involving Mr. Schulz, the care of his assigned K-9 officer, and his possible inappropriate behavior while on duty. It is found that the chief of the respondent police department, in an August 3, 2022, letter to the Police Commission, determined that Mr. Schulz had been untruthful under oath, Mr. Schulz had admitted to participating in sexual acts while on duty, and evidence existed that Mr. Schulz had tampered with Automatic Vehicle Locator (AVL) equipment to conceal his whereabouts while on duty. It is found further that, on or about August 3, 2022, a separation agreement (the "Separation Agreement") was executed among Mr. Schulz, his collective bargaining representative, and the Town. It is also found that the Separation Agreement included an acknowledgement of Mr. Schulz's voluntary resignation as well as a provision whereby the Town agreed not to release the internal affairs investigation records to the public unless ordered to do so by a state administrative agency or other authority.

16. It is found that the August 3, 2022, letter, the Separation Agreement, and the internal affairs investigation records, described in paragraph 15, above, constitute all of the records responsive to the complainants' request described in paragraph 2, above, and that the internal affairs investigation records are the only records that had not been provided to the complainants as of the date of the complaint in this matter.

17. At the contested case hearing, the respondents contended that the internal affairs investigation records are exempt from disclosure pursuant to §1-210(b)(2), G.S. (invasion of personal privacy), §1-210(b)(3)(G) (identities of victims of certain crimes), and §1-210(b)(3)(H), G.S. (uncorroborated criminal allegations).

18. On March 8, 2023, the respondents submitted to the Commission a loose-leaf binder, with copies of the records referenced in paragraph 17, above, organized by tabs 1 through 56 along with an Index to Records Submitted for In Camera Inspection ("Index"). On the Index, the respondents described such records as "CCN 22-003 Investigation Report on Civilian Complaint against Patrolman Tyler Schulz and Accompanying Evidence," and contended that the entirety of in camera records are exempt from disclosure pursuant to §§1-210(b)(2), 1-210(b)(3)(G), and §1-210(b)(3)(H), G.S.

19. It is found that the report concerning the internal affairs investigation of Tyler Schulz was submitted behind tab 1, which record shall be referred to as IC-2022-0590-1 through IC-2022-0590-48. It is found that the request described in paragraph 2, above, specifically excluded the exhibits to such internal affairs investigation report. It is found the records behind the

additional tabs of the binder constitute exhibits to such report and therefore are not responsive to the request at issue in this matter, except for the records behind the following tabs which are responsive to the requests described in paragraphs 2[b], 2[d] and 2[e], above: Tab 2, which records shall be referred to as IC-2022-0590-49 through IC-2022-0590-51; Tab 3, which records shall be referred to as IC-2022-0590-52 through IC-2022-0590-55; Tab 40, which records shall be referred to as IC-2022-0590-56 through IC-2022-0590-57; Tab 41, which records shall be referred to as IC-2022-0590-58 through IC-2022-0590-61; Tab 42, which record shall be referred to as IC-2022-0590-62; and Tab 51, which record shall be referred to as IC-2022-0590-63. It is found that all other records contained within the binder, aside from IC-2022-0590-1 through IC-2022-0590-63, are beyond the scope of the request at issue in this matter and therefore are not required to be produced.

20. The respondents claimed that the in camera records are exempt pursuant to §§1-210(b)(3)(G) and (H), G.S. Such sections provide that nothing in the FOI Act shall require the disclosure of:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of a crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of . . .(G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof . . .(H) uncorroborated allegations subject to destruction pursuant to section 1-216.

(Emphasis supplied.)

21. After a careful review of the in camera records, it is found they are records of a law enforcement agency, not otherwise available to the public, within the meaning of §1-210(b)(3), G.S.

22. The Commission has long held that internal affairs investigation records are not records compiled in connection with the detection or investigation of crime, but rather concern a non-criminal internal investigation of alleged violations of administrative regulations. See, e.g. Docket #FIC 2016-0687, Chappell v. Chief, Police Department, Town of West Hartford, et al. (July 20, 2017) (holding that an internal affairs investigation report was not exempt pursuant to §1-210(b)(3)(H), G.S., as “such records were compiled in connection with an internal affairs investigation,” which, “is, by its nature, a civil investigation, not a criminal investigation”); see also Docket #FIC 2011-224, Kevin Brookman v. Daryl Roberts, Chief, Police Department, City of Hartford (January 25, 2012); Docket #FIC 2007-416, Junta for Progressive Action, et. al., v. John A. Danaher III, Commissioner, State of Connecticut, Department of Public Safety (November 8, 2007); Docket #FIC 1996-153, Tracey Thomas and the Hartford Courant v. Legal Affairs Unit, State of Connecticut, Department of Public Safety (November 30, 1996).

23. After a careful review of the in camera records, it is found they were compiled in connection with an internal affairs investigation, and not in connection with the detection or investigation of a crime, within the meaning of §1-210(b)(3)(G). G.S.

24. Accordingly, it is concluded that the in camera records are not exempt from disclosure pursuant to §1-210(b)(3)(G) or (H), G.S.

25. The respondents also contended that the in camera records are exempt pursuant to §1-210(b)(2), G.S., because disclosure of such records would constitute an invasion of Mr. Schulz's personal privacy.

26. Section 1-210(b)(2), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

27. The Supreme Court set forth the test for the exemption contained in 1-210(b)(2), G.S., in Perkins v. Freedom of Infor. Comm'n, 228 Conn. 158, 175 (1993) ("Perkins"). The claimant must first establish that the records in question are personnel, medical or similar files. Second, the claimant must demonstrate that disclosure of the files would constitute an invasion of personal privacy. To demonstrate that disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: that the information at issue does not pertain to a legitimate matter of public concern, and that disclosure of the information would be highly offensive to a reasonable person.

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

(b) 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 (1) 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 (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein 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 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. . . . 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.

(Emphasis supplied.)

29. Additionally, §1-206(b)(1), G.S., requires the Commission to order

the public agency to notify any employee whose records are the subject of an appeal, and the employee's collective bargaining representative, if any, of the commission's proceedings and, if any such employee or collective bargaining representative has filed an objection under said subsection (c) § 1-214, the agency shall provide the required notice to such employee and collective bargaining representative by certified mail, return receipt requested or by hand delivery with a signed receipt....

30. It is found that the in camera records constitute a “personnel” or “similar” file within the meaning of §1-210(b)(2), G.S.

31. At the hearing in this case, the respondents provided no evidence that they notified Mr. Schulz of the complainants’ records request described in paragraph 2, above. Instead, the respondents contended that Mr. Schulz objected to the complainants’ request, within the meaning of §1-214, G.S., based upon the provision in the Separation Agreement prohibiting the respondents from disclosing to any member of the public (unless ordered to do so by a state administrative agency or other authority) the contents of any internal investigations regarding Mr. Schulz, as described in paragraph 15, above.

32. It is found that the Separation Agreement does not constitute written notice to Mr. Schulz or his collective bargaining representative of the complainants’ records request described in paragraph 2, above, nor does it constitute a written objection from Mr. Schulz or his collective bargaining representative, within the meaning of §1-214(b) and (c), G.S., particularly since the Separation Agreement was executed prior to the complainants’ request. It is found further that the respondents failed to prove that Mr. Schulz or his collective bargaining representative filed a written objection signed under the penalties of false statement that included a statement attesting that there is good ground to support the objection and that it was not interposed for delay.

33. Accordingly, it is found that the respondents did not, upon receipt of the request, described in paragraph 2, above, “immediately” notify Mr. Schulz, in accordance with §1-

214(b), G.S. It is also found that Mr. Schulz did not file a written objection that conformed to the requirements of §1-214(c), G.S.

34. It is therefore concluded that the respondents violated §1-214(b) and (c), G.S.

35. However, it is found that the respondents notified Mr. Schulz and his collective bargaining representative, by letter dated March 1, 2023, of the proceedings in this matter and further provided him with a copy of the Notice of Hearing and Order to Show Cause in this matter, in compliance with the Commission's order pursuant to §1-206(b)(1), G.S.

36. It is found that, despite having notice, Mr. Schulz did not appear at the hearing in this matter to intervene for the purpose of offering evidence as to why the disclosure of the in camera records would legally constitute an invasion of his privacy within the meaning of §1-210(b)(2), G.S. It is further found that no witnesses testified at the hearing, except for the complainants' witness.

37. Recognizing that the right to privacy is personal in nature and can be asserted only by the person claiming to be injured, the Commission has concluded any existing privacy rights belong to the employee, and not to the agency that maintains the employee's records. Docket #FIC 2019-0676, Cynthia Olivero v. Mayor, City of New London; and City of New London (July 22, 2020); Docket #FIC 2012-711, Kevin Litten and the Waterbury Republican-American v. Chief, Police Department, City of Torrington, (June 26, 2013) (right to assert invasion of privacy belongs to the person whose privacy is at issue, and respondents do not have standing to assert such exemption); Docket #FIC 2002-580, Ken Byron and the Hartford Courant v. First Selectman, Town of Westbrook (September 10, 2003); Docket #FIC 2001-489, Jonathan Kellogg, Trip Jennings and Waterbury Republican-American v. Chief, Police Department, Borough of Naugatuck and Rick Smolicz, (September 25, 2002); Docket #FIC 2000-022, Thedress Campbell v. City Treasurer, City of Hartford (August 9, 2000); Docket #FIC 1997-068, Walter J. Casey v. Chairman, Board of Education, Town of Darien (October 22, 1997).

38. It is therefore concluded that the respondents in this case lack standing to assert the privacy rights of Mr. Schulz.

39. Even assuming that the respondents had standing to assert Mr. Schulz's privacy rights, it is found that they offered no evidence, at the hearing in this matter, that the information contained in the in camera records does not pertain to legitimate matters of public concern, and that disclosure of such information would be highly offensive to a reasonable person.

40. Moreover, the Connecticut Supreme Court has stated that "when a person accepts public employment, he or she becomes a servant of and accountable to the public." Perkins, 228 Conn. at 177. Nowhere is the public's interest in obtaining information about its public servants more justified than in the area of law enforcement. The Supreme Court has emphasized that "because of the public interest in fairness of police investigations, there is a general presumption in favor of disclosure...." Department of Public Safety v. Freedom of Infor. Comm'n, 242 Conn. 79, 88 (1997).

41. It is found that, after a careful review of the in camera records, they relate to Mr. Schulz' conduct while on duty which formed the basis for the chief of the respondent department to recommend disciplinary action and which, ultimately, led to the officer's resignation. It is found that in the camera records facilitate the public's understanding and evaluation of the respondent police department's investigative process, decision-making, and overall handling of an important matter involving a police officer. As such, the contents of the in camera records, with the exception of the information identified in paragraph 42, below, relate to a legitimate matter of public concern.

42. Upon careful review of the in camera records, it is found that the names and addresses of the following individuals do not relate to a legitimate matter of public concern under the facts of this case: the person who made the underlying complaint to the respondent department; the other individual(s) identified as having intimate relations with Mr. Schulz; and Mr. Schulz's former spouse. See Rocque v. Freedom of Infor. Comm'n, 255 Conn. 651, 664 (2001) (the name of a sexual harassment complainant "is not of legitimate public concern"). It is further found that disclosure of such names and addresses would be highly offensive to a reasonable person, within the meaning of §1-210(b)(2), G.S.

43. It is concluded that the records described in paragraph 42, above, are permissibly exempt from disclosure pursuant to §1-210(b)(2), G.S. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainants.

44. However, it is further concluded the remainder of the requested records are not permissibly exempt from disclosure pursuant to §1-210(b)(2), G.S., since they pertain to a legitimate matter of public concern.

45. With the exception of those records described in footnote 1 and in paragraph 42, above, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the requested records from the complainants.

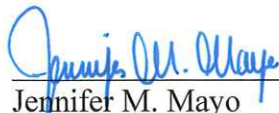
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall forthwith provide the complainants with copies of IC-2022-0590-1 through IC-2022-0590-63.

2. In complying with paragraph 1 of the order above, the respondents may redact the specific information referenced in footnote 1 and in paragraph 42 of the findings, above.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of September 27, 2023.



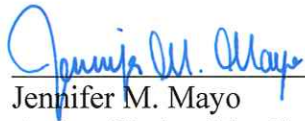
Jennifer M. Mayo
Acting Clerk of the Commission

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:

MEGHAN FRIEDMANN AND HEARST MEDIA CONNECTICUT, 100 Gando Drive,
New Haven, CT 06513

CHIEF, POLICE DEPARTMENT, TOWN OF OLD SAYBROOK; POLICE DEPARTMENT, TOWN OF OLD SAYBROOK; AND TOWN OF OLD SAYBROOK,
c/o Attorney Patrick J. McHale, Kainen, Escalera & McHale, P.C., 21 Oak Street, Suite 601,
Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission