

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

David Cummings,

Complainant

against

Docket # FIC 2023-0633

Chief Court Administrator, State of
Connecticut, Judicial Branch; and State of
Connecticut, Judicial Branch,

Respondents

November 20, 2024

The above-captioned matter was heard as a contested case on May 14, 2024, June 18, 2024, and October 22, 2024, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.¹

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies with respect to their administrative functions, within the meaning of §1-200(1), G.S.

2. It is found that by letter dated November 10, 2023, the complainant made the following request to the respondents:

[a] All records of Judicial Branch Marshalls located at Rockville Superior Court subject David Cummings including (TTD-CV-18-5011646-S Cummings v Liberty Mutual Group Inc. ET AL), (TTD-CV-18-14-50005830-S David Cummings v CT Heritage homes inc et al) which were documented maintained, sent to and or received from anyone, including any complaints made and or received from anyone, logs, emails, memos, notes, letters, text messages, pictures video. Time period from 2020 to the present date November 2023.

[b] The Judicial Branch Marshalls I am respectively requesting the name addresses and Job title who are assigned and or worked at 69

¹ The Commission notes that, following the June 18, 2024, hearing in this matter, a continued hearing was scheduled to convene on August 6, 2024. However, such hearing was continued at the request of the complainant and rescheduled to convene on September 24, 2024. However, the September 24, 2024 hearing was marked off due to the hearing officer's illness and rescheduled to October 22, 2024.

Brooklyn Street, Rockville Superior Court, during time period of 2021 to the present date 2023.

[c] I am respectively Requesting an Organizational chart, and description of the job titles subject The Judicial Branch Marshalls for the Tolland JD at Rockville Superior Court. Located at 69 [B]rooklyn Street Vernon Connecticut and 20 Park Street, Vernon Connecticut.

[d] "Special Operation" I am respectively requesting an organizational chart and any record describing the role and function, procedures and responsibilities [sic] of the Judicial Branch "Special Operations."

[e] "Special Operation" All records subject David Cummings including (TTD-CV-18-5011646-2 Cummings v Liberty Mutual Group Inc. ET AL), (TTD-CV 1450005830-S (David Cummings v. CT Heritage Homes Inc et al) and any other Superior court matter that involves David Cummings which were documented maintained, sent to and or received from anyone, including any complaints made and or received from anyone, logs, emails, memos, notes, letters, text messages, pictures, video Surveillance.

3. It is found that by email dated November 30, 2023, counsel to the respondents acknowledged the complainant's November 10, 2023, request, and provided the following response to such request:

My name is Andrei Tarutin, and I have been assigned to process your November 10, 2023 request.

Your request is being processed, and the requested documents are being gathered and evaluated to determine whether any of them are disclosable pursuant to the Freedom of Information Act.

This process requires some time before it can be completed, but I should be able to provide you with a date and time to inspect any documents responsive to your request and disclosable pursuant to the Freedom of Information Act by December 8, 2023.

4. It is also found that, in response to a communication from the complainant to the respondents' director of legal service, by email dated December 6, 2023, counsel reiterated to the complainant that a date and time to inspect responsive records would be provided by December 8, 2023. It is also found that respondents' counsel invited the complainant to contact him with any questions and requested that the complainant confirm receipt of his email.²

² The Commission notes that the complainant testified generally that there were several communications with the respondents pertaining to the request described in paragraph 2, above, as well as other requests, but such communications were not introduced by any of the parties in this matter.

5. By letter of complaint dated December 7, 2023, and filed December 8, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request to inspect and copy the records described in paragraph 2, above. The complainant also requested that the Commission impose a civil penalty against the respondents.

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 section 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 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 (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 that “[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 concluded that the requested records, to the extent they exist and relate to the respondents’ administrative functions, are public records, within the meaning of §§ 1-200(5) and 1-210(a), G.S.³

10. It is found that, by email and letter dated and mailed on December 8, 2023, the respondents responded to the complainant’s November 10, 2023, request, as well as other requests made by the complainant on November 6, 2023, and November 9, 2023, and provided two responsive records.

11. With respect to the request described in paragraph 2, above, the respondents provided the following responses:

³ At the hearings, the complainant explained that he was not requesting copies of any pleadings or records filed in any court matters, but only records which fall within the respondents’ administrative functions. See Clerk v. FOI Comm’n, 278 Conn. 28, 53 (2006) (concluding that “administrative records” are records pertaining to the budget, personnel, facilities, and physical operations of the courts and that records created in the course of carrying out the courts’ adjudicatory functions are categorically exempt from the provisions of the FOI Act).

All records of Judicial Marshals related to David Cummings at Rockville Superior Court including any complaints made and or received from anyone, logs, emails, memos, notes, letters, text messages, pictures, video. The time frame for this request is 2020 - November 2023.

There are no records subject to the FOI Act that are responsive to this request.

Names, addresses and job titles of Judicial Marshals who are assigned and/or worked at 69 Brooklyn Street, Rockville, CT. The time frame for this request is 2021 to the present.

There is no list in existence that is responsive to this request, and the FOI Act does not require the Judicial Branch to create such a list.

Organizational chart and description of the job titles for Judicial Marshals for 69 Brooklyn Street, Rockville, CT and 20 Park Street, Rockville, Connecticut.

There is no chart in existence that is responsive to this request, and the FOI Act does not require the Judicial Branch to create such a chart.

Organizational chart and any record describing the role and function, procedures and responsibilities of the "Special Operations."

Attached please find a copy of the requested organizational chart of the Office of Protective Intelligence formerly "Special Operations." There are no other records responsive to this request.

All records subject David Cummings documented, maintained or by "the Special Operations."

There are no records subject to the FOI Act that are responsive to this request.

12. It is also found that, by email dated December 11, 2023, the respondents' counsel followed up with the complainant, writing the following:

I have been unable to reach you over the phone last Friday, and you have not responded to any of my emails regarding your request to inspect the records in person.

If you still wish to come and inspect the documents yourself, please contact me at your earliest convenience via email or by calling 860.706.5120. Because I have been unable to contact you, I have mailed you our response and copies of the documents via USPS on Friday, December 8, 2023.

13. At the hearings, the respondents contended that all non-exempt public records responsive to the request, described in paragraph 2, above, were provided to the complainant, and that any records the respondents contended were exempt from disclosure were lodged with the Commission for an in camera inspection. The complainant disputed these contentions, and further argued that the respondents were not prompt and had not conducted a reasonable and diligent search for all responsive records.

14. Following the first hearing date, on May 16, 2024, the respondents submitted to the Commission copies of the records that they claimed were exempt from disclosure, along with an Index to Records Submitted for In Camera Inspection (“Index”).⁴ Such records shall hereinafter be referred to as IC-2023-0633-001 through IC-2023-0633-042. On the Index, the respondents claimed that such records, or portions thereof, were exempt from disclosure pursuant to §§ 1-210(b)(3)(A), 1-210(b)(3)(C), 1-210(b)(3)(E), 1-210(b)(2), and 1-210(b)(19), G.S. Each exemption will be addressed in turn.

§§ 1-210(b)(3)(A), 1-210(b)(3)(C), and/or 1-210(b)(3)(E), G.S.

15. First, the respondents contended that the following in camera records, or portions thereof, are exempt from disclosure pursuant to §§ 1-210(b)(3)(A), 1-210(b)(3)(C) and/or 1-210(b)(3)(E), G.S.: IC-2023-0633-001; IC-2023-0633-002 through IC-2023-0633-016 in their entirety, or portions thereof; IC-2023-0633-017 lines 10-12, and 23-24; IC-2023-0633-018; IC-2023-0633-019 lines 17, and 27-29; IC-2023-0633-020 lines 2-4; IC-2023-0633-021 lines 35-39; IC-2023-0633-022; and IC-2023-0633-023 through IC-2023-0633-038.

16. With respect to IC-2023-0633-001, the Commission notes that such record constitutes an objection to disclosure, made pursuant to §§ 1-210(b)(2) and 1-214(c), G.S., that was prepared and provided to the respondents on a date after the request described in paragraph 2, above. Therefore, IC-2023-0633-001 is not within the scope of records responsive to the request described in paragraph 2, above. Consequently, consideration of the disclosure of such record shall not be addressed further herein.

⁴ The Commission notes that, during the first hearing date, the respondents attempted to lodge the in camera records with an Index, dated May 14, 2024. However, the hearing officer returned the in camera records and corresponding Index to the respondents after an initial review revealed that each page of the in camera records was not marked with individual line numbers.

Subsequently, on May 16, 2024, the hearing officer received the in camera records, properly marked with line numbers, and a corresponding Index. Upon receipt, the hearing officer directed the respondents to provide a signed copy of the Index to the complainant. The respondents represented that they did so. However, the complainant contended that he did not receive pages 4-5 of the Index, consisting of the instructions to the custodial party for completion of the Index, until the October 22, 2024 hearing date.

17. At the time of the request, §1-210(b)(3), G.S., provided, in relevant part, that nothing in the FOI Act shall be construed to 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 crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of (A) ... the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, ... (C) signed ... statements of witnesses, ... [and] (E) investigatory techniques not otherwise known to the general public....

18. At the hearing, the respondents contended that the in camera records described in paragraph 15, above, are maintained by the Office of Protective Intelligence, a unit within the Judicial Marshal Services that is a “law enforcement agency,” within the meaning of §1-210(b)(3), G.S. In support of this contention, the respondents relied on §§6-32f, 53a-3, 54-1(f), and 7-294a, G.S.

19. Section 6-32f, G.S., entitled “*Courthouse security. Judicial Marshals: Employment Standards*,” provides:

(a) The Judicial Department shall be responsible for courthouse security and shall employ judicial marshals for such purpose. The Chief Court Administrator shall establish employment standards and implement appropriate training programs to assure court security. On and after October 1, 2011, the Judicial Department shall make available on its Internet web site a written summary of such employment standards, including, but not limited to, the standards for selection, continuance of employment and promotion for such judicial marshals.

(b) Any property used by the sheriffs for court security shall be transferred to the Judicial Department. The Chief Court Administrator shall be responsible for the custody, care and control of courthouse facilities.

(c) As used in this section, “courthouse security” and “court security” include the provision of security services to any judicial facility or to any facility of a state agency pursuant to a written agreement, provided (1) such facility is located contiguous to a courthouse, and (2) the Chief Court Administrator determines that, based on the proximity and design of the courthouse and the contiguous facility, the security requirements are mutual and best served through the provision of security services by judicial marshals.

20. The Director of Marshal Services (hereinafter, “Director” or “Director of Marshal Services”) appeared and testified in this matter. The Director testified, and it is found, that the Judicial Marshal Services and specifically, the Office of Protective Intelligence, is responsible for the detection, assessment, and monitoring of potential safety threats for the branch, as well as inmate transportation and custody. It is found that the Director’s testimony is consistent with the authority described in §6-32f, G.S., but that neither the statute nor the testimony support a finding that the Judicial Marshal Services, along with the Office of Protective Intelligence, constitutes a “law enforcement agency” within the meaning of §1-210(b)(3), G.S.

21. The respondents also contended that, because judicial marshals are “peace officers,” and therefore are empowered to make arrests, that the Judicial Marshal Services, including the Office of Protective Intelligence, is a “law enforcement agency,” within the meaning of §1-210(b)(3), G.S. Section 53a-3(9), G.S., provides that judicial marshals are peace officers while “in the performance of the duties of a judicial marshal.” Section 54-1f, G.S., entitled “*Arrest without a warrant. Pursuit outside precincts,*” authorizes judicial marshals, acting as peace officers, to make arrests in limited circumstances: “[f]or purposes of this section, the respective precinct or jurisdiction of a ... judicial marshal shall be wherever such marshal is required to perform duties. Peace officers, as defined in subdivision (9) of section 53a-3, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when the person is taken or apprehended in the act or on the speedy information of others....”

22. However, the respondents failed to prove that under the facts and circumstances of this case, judicial marshals were acting as peace officers, and that the in camera records described in paragraph 15, above, relate to functions performed by peace officers.

23. Finally, the respondents contended that, the Judicial Marshal Services, along with the Office of Protective Intelligence, is a “law enforcement unit,” as defined by §7-294a, G.S., and therefore a “law enforcement agency,” within the meaning of §1-210(b)(3), G.S.

24. Section 7-294a, G.S., entitled “*Police Officer Standards and Training Council: Definitions,*” sets forth the definitions applicable to the General Statutes governing the Police Officer Standards and Training Council. The Police Officer Standards and Training Council is responsible for the development of state and municipal police officer training, adopting and enforcing professional standards for the certification and decertification of police officers, and *the development of comprehensive standards programs for “law enforcement units,”* among other duties, as set forth in §7-294d, G.S.

25. Section 7-294a(8), G.S., defines a “law enforcement unit” as “any agency or department of this state or a subdivision or municipality thereof ... whose *primary functions*

include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection or investigation of crime.” (Emphasis added).

26. It is found that the respondents failed to prove that among the primary functions of the Judicial Marshal Services and Office of Protective Intelligence is the “enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection or investigation of crime.” Rather, in accordance with §6-32f, G.S., and the testimony of the Director, the Judicial Marshal Services, along with the Office of Protective Intelligence, is primarily responsible for the security of the branch and the custody and transport of inmates.

27. Based on all of the foregoing, it is found that the respondents failed to prove that the Judicial Marshal Services, along with the Office of Protective Intelligence, constitute a “law enforcement agency” within the meaning of §1-210(b)(3), G.S. Consequently, the records described in paragraph 15, above, are not exempt from disclosure pursuant to §1-210(b)(3) G.S., as records of a law enforcement agency.

28. It is therefore concluded that the respondents violated the promptness and disclosure provisions of §§1-210(a) and 1-212(a), G.S., by declining to disclose a copy of the following in camera records to the complainant: IC-2023-0633-002 lines 1-29, and 31-36; IC-2023-0633-003 lines 1-3, 6, and 20-36; IC-2023-0633-004 lines 9-11, 13-15, 18, and 32; IC-2023-0633-005; IC-2023-0633-006 lines 1-22, 23 (with the exception of the highlighted portion), 24-30, and 33-34; IC-2023-0633-007 lines 1-4, 6, 7, 8 (with the exception of the highlighted portion), 9 (with the exception of the highlighted portion), 10-15, 18-19, and 28-30; IC-2023-0633-008 lines 1, 7, 8, 12, 13, 15, 17, 18 (with the exception of the highlighted portion), 20 (with the exception of the redacted portion), 21-27, and 30; IC-2023-0633-009 lines 1-8, 10-11 (with the exception of the highlighted portions), 12-17, and 19-38; IC-2023-0633-010 lines 1-10, 11 (with the exception of the highlighted portions), 12-30, and 32-27; IC-2023-0633-011 lines 4-5, 6 (with the exception of the highlighted portions), 7-8, 10 (with the exception of the highlighted portions), 11, 12-13 (with the exception of the highlighted portions), 14-17, and 18-22; IC-2023-0633-013 lines 1-4, 6-7, 9 (with the exception of the highlighted portions), 10-14, 16-23, 28-29, 31, and 33-36; IC-2023-0633-014 lines 1, 3-7, and 32; and IC-2023-0633-015 lines 1-7, 8-9 (with the exception of the highlighted portions), 10-17, 18-19 (with the exception of the highlighted portions), and 20-31; IC-2023-0633-016 lines 1-4, and 7; and IC-2023-0633-017 through IC-2023-0633-022.

§§1-210(b)(2) and 1-214, G.S.

29. Next, the respondents contended that IC-2023-0633-001, and the following portions of IC-2023-0633-002 through IC-2023-0633-015, are exempt from disclosure pursuant to §1-210(b)(2), G.S.: IC-2023-0633-002 lines 30 and 37; IC-2023-0633-003 lines 4-5, and 7-19; IC-2023-0633-004 lines 12, 16-17, and 19-31; IC-2023-0633-006 line 23 (highlighted portion only); IC-2023-0063-007 lines 5, 8-9 (highlighted portions only), and 27; IC-2023-0633-008 lines 2-6, 9-11, 14, 16, 18 (highlighted portions only), 19, and 20 (highlighted portions only); IC-2023-0633-009 lines 9, 10-11 (highlighted portions only), 18 (highlighted portions only), and 39

(highlighted portions only); IC-2023-0633-010 lines 11 (highlighted portion only), 31 and 38; IC-2023-0633-011 lines 1-3, 6 (highlighted portion only), 9, 10 (highlighted portion only), 12 - 13 (highlighted portions only), 18, and 23-37; IC-2023-0633-012 lines 1-9, 11-14; IC-2023-0633-013 lines 5, 8, 9 (highlighted portion only), 15, 24-27, 30 and 32; IC-2023-0633-014 lines 2, 8-31, 33-36; and IC-2023-0633-015 lines 8-9 (highlighted portions only), and 18-19 (highlighted portions only).

30. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall require disclosure of “personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy”

31. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. FOI Comm’n, 228 Conn. 158, 175 (1993). First, the claimant must establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: (1) that the information sought does not pertain to legitimate matters of public concern, and (2) that disclosure of such information is highly offensive to a reasonable person. Id. 175.

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

(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.

(b)(2) 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 not legally constitute an invasion of privacy, the agency shall first disclose the requested records to the person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(b)(3) Nothing in this section 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 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. Notwithstanding any provision of this subsection or subsection (b) of section 1-206 to the contrary, if an employee's collective bargaining representative files a written objection under this subsection, the employee may subsequently approve the disclosure of the records requested by submitting a written notice to the public agency.

33. It is concluded that the respondents had a reasonable belief that disclosure would legally constitute an invasion of personal privacy.

34. It is found that the respondents received a written objection to disclosure of the in camera records described in paragraph 29, above. It is found that IC-2023-0633-001 constitutes such written objection, and that such objection was made pursuant to §§ 1-210(b)(2) and 1-214(c), G.S.⁵ It is found that such person objected to disclosure of the portions of the in camera records that, if disclosed, would reveal their identity and personal information, and therefore that disclosure would constitute an invasion of privacy. During the hearing, the respondents also contended that there were safety and security concerns with respect to the disclosure of such information to the complainant.

⁵ As already explained in paragraph 16, above, IC-2023-0633-001 is not within the scope of records responsive to the request described in paragraph 2, above, and therefore, consideration of the disclosure of such record shall not be addressed further herein.

35. After a careful in camera inspection, it is found that IC-2023-0633-002 through IC-2023-0633-016, on their face, do not constitute “personnel or medical files,” within the meaning of §1-210(b)(2), G.S.

36. With respect to whether such in camera records are “similar to” “personnel” or “medical” files, within the meaning of §1-210(b)(2), G.S., the Supreme Court has concluded that whether a file is similar in nature to a personnel or medical file “requires a functional review of the document[s] at issue.” The Court explained:

If a document or file contains material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is ‘similar’ to a personnel file. Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered ‘similar’ to a personnel file for the purposes of §1-210(b)(2).

Connecticut Alcohol & Drug Abuse Comm’n v. FOI Comm’n, 233 Conn. 28, 41 (1995).

37. Based on the foregoing, and a careful in camera inspection, it is found that IC-2023-0633-002 through IC-2023-0633-015 pertain to the objecting person’s complaints and concerns related to their workplace that would ordinarily be considered in making personnel-type decisions, that were used to make personnel-like decisions and enabled the respondents to take remedial action.

38. Based on the foregoing, it is concluded that IC2023-0633-002 through IC-2023-0633-016 constitute “similar files,” within the meaning of §1-210(b)(2), G.S.

39. With regard to whether disclosure of the in camera records described in paragraph 29, above, would constitute an invasion of personal privacy, within the meaning of §1-210(b)(2), G.S., it is found that disclosure of such records would reveal the identity of the person who made the workplace related concerns and complaints, as well as information about that person’s personal life that does not relate to the conduct of the public’s business. It is also found, based on a careful review of the in camera records, that the objecting person expressed serious concerns about their safety and the security of the branch.

40. It is found, based on the unique facts and circumstances of this case, that the identity of the person objecting to disclosure, as well as information about that person’s personal life, is not a legitimate matter of public concern. It is also found disclosure of such portions of the in camera records would be highly offensive to a reasonable person. It is therefore found that disclosure of the in camera records described in paragraph 29, above, would constitute an invasion of personal privacy, within the meaning of §1-210(b)(2), G.S.

41. Accordingly, it is concluded that such records are exempt from disclosure pursuant to §1-210(b)(2), G.S., and the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

§99 of Public Act 24-81

42. Next, the respondents contended that IC-2023-0063-023 through IC-2023-0063-028 are exempt from disclosure pursuant to §99 of Public Act 24-81, which was signed into law by the Governor on May 30, 2024, over six months after the request described in paragraph 2, above, was made.

43. Section 99 of Public Act 24-81 provides in relevant part:

Sec. 99. (NEW) (Effective from passage) (a) ... Any person requesting data, records or files that have been shared by one state agency with another state agency pursuant to any statute, regulation, data sharing agreement, memorandum of agreement or understanding or court order, including, but not limited to, a request made pursuant to the [FOI] Act, as defined in section 1-200 of the general statutes, shall direct such request to the state agency from which such data, records or files originated.

(b) Notwithstanding the provisions of [the FOI Act], if a state agency that is not the originating state agency receives a request for data, records or files as described in subsection (a) of this section, such state agency shall (1) promptly refer such request to the state agency from which such data, records or files originated, and (2) notify, in writing, the person who submitted the request for such data, records or files that such request has been referred to the originating state agency. Such written notification shall include the name, address and telephone number of the originating state agency and the date on which the referral was made to the originating state agency.

44. Based on a careful in camera inspection, it is found that IC-2023-0063-023 through IC-2023-0063-028 constitute records that were shared by another state agency with the respondents.

45. However, the Commission has already concluded that §99 of Public Act 24-81 does not apply retroactively. See Docket #FIC 2023-0558; Jacqueline Rabe Thomas, Investigative Reportr v. Secretary, State of Connecticut, Office of Policy and Management; and State of Connecticut, Office of Policy and Management (October 9, 2024) (concluding that §99 of Public Act 24-81 affects substantive rights because it imposes new limitations on the public's right to access public records, and therefore, shall not be construed to have a retrospective effect.”)

46. Accordingly, it is concluded that §99 of Public Act 24-81 is not a basis for nondisclosure of IC-2023-0063-023 through IC-2023-0063-028.

47. Notwithstanding the conclusion reached in paragraph 46, above, it is clear, based on a careful in camera inspection of IC-2023-0063-023 through IC-2023-0063-028, that such records, on their face, constitute records which are mandatorily exempt from disclosure under the FOI Act as information that originated in the Connecticut On-Line Law Enforcement Communications Teleprocessing (“COLLECT”) system.

48. The Commission has previously found that the COLLECT system is a statewide criminal justice system that is dedicated to the law enforcement and criminal justice agencies in the State of Connecticut. See Docket #FIC 2016-0535; Sastre v. Chief, Police Department, Town of Manchester; Police Department, Town of Manchester; and Town of Manchester (April 12, 2017). The Commission has held that the COLLECT system is part of the National Crime Information Center (“NCIC”) system and that records obtained through such system are exempt from disclosure pursuant to §29-164f, G.S.⁶

49. The Commission takes administrative notice of its previous decisions in which it held that records accessed by way of the COLLECT system are exempt from mandatory disclosure. See e.g., Docket #FIC 2015-518; Lazzari v. Chief, Police Department, Town of Newington, et al. (February 10, 2016); and Docket #FIC 2013-562; Anania v. University of Connecticut, et. al. (May 28, 2014).

50. Based on all of the foregoing, and a careful in camera inspection, it is concluded that the in camera records described in paragraph 42, above, are exempt from mandatory disclosure pursuant to §29-164f, G.S. It is further concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding from the complainant copies of such records.

§§ 1-210(b)(19), G.S.

51. Finally, the respondents contended that the following in camera records, or portions, thereof, are exempt from disclosure pursuant to §§ 1-210(b)(19), G.S.: IC-2023-0633-004 lines 2-8; IC-2023-0633-006 lines 31-32; IC-2023-0633-007 lines 16-17; IC-2023-0633-007 lines 20-26; IC-2023-0633-008 lines 28-29; IC-2023-0633-016 lines 5-6; IC-2023-0633-016 lines 9-15; IC-2023-0633-029 through IC-2023-0633-038; IC-2023-0633-039; IC-2023-0633-040 and IC-2023-0633-041; and IC-2023-0633-042 lines 16, 17 (highlighted portions only), and 21-24 (highlighted portions only).

52. Section 1-210(b)(19), G.S., provides, in relevant part, that the FOI Act shall not require disclosure of:

[r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk, including a risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in,

⁶ Section 29-164f, G.S., provides, in relevant part, that “[t]he National Crime Prevention and Privacy Compact is hereby entered into and enacted into law with any and all of the states and the federal government legally joining therein....” In Comm’r of Public Safety v. FOI Comm’n, 144 Conn. App. 821, 831 (2013), the Appellate Court concluded that §29-164f, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S. Id.

such institution or facility... Such reasonable grounds shall be determined by. . . (B) by the Chief Court Administrator with respect to records concerning the Judicial Department... Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel; and
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official....

53. The Commission notes that IC-2023-0633-040 and IC-2023-0633-0041 constitute records that were created by the respondents following receipt of the request described in paragraph 2, above, and that such records are not within the scope of the complainant's request. Therefore, consideration of the disclosure of such records shall not be addressed further herein.

54. It is found that the Director of Judicial Marshal Services serves as the Chief Court Administrator's designee for determinations regarding Judicial Branch security. The Commission similarly so found in Docket #FIC 2023-0126; Daniel Kokoszka v. O'Donovan Murphy, Director of Judicial Marshal Services; and Judicial Marshal Services (Feb. 14, 2024).

55. It is found that within the Office of Protective Intelligence, certain Judicial Branch employees are designated as "intelligence liaison officers" and/or "intel analysts" who collect

and maintain information as part of their duty to maintain the safety and security of the branch, and that such individuals share information with state and local law enforcement agencies. It is found that the designation of such individuals as “intelligence liaison officers” and/or “intel analysis” is not made known to the public, because doing so could compromise their work.

56. Based on the evidence at the hearing, as well as a careful in camera inspection, it is found that the Director had reasonable grounds to believe that disclosure of IC-2023-0633-004 lines 2-8; IC-2023-0633-007 lines 20-26; and IC-2023-0633-016 lines 9-15, may result in a safety risk, including a risk of harm to people in the judicial branch or to the facility itself, as well as the disclosure of information regarding the movement or assignment of security personnel. It is further found that the reasons given were bona fide, and not pretextual, or irrational.

57. Accordingly, it is concluded that such records are exempt from disclosure pursuant to §1-210(b)(19)(vii), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) or 1-212(a), G.S., by declining to disclose such records to the complainant.

58. However, with respect to IC-2023-0633-006 lines 31-32, IC-2023-0633-007 lines 16-17, IC-2023-0633-008 lines 28-29, and IC-2023-0633-016 lines 5-6, described on the Index as “direct phone numbers of security personnel,” it is found that the respondents failed to prove that the Director had reasonable grounds to believe that disclosure may result in a safety risk within the meaning of §1-210(b)(19), G.S.

59. Accordingly, it is concluded that such portions of the in camera records are not exempt from disclosure pursuant to §1-210(b)(19), G.S., and that the respondents violated the promptness and disclosure provisions of §§1-210(a) or 1-212(a), G.S., by declining to disclose such records to the complainant.

60. With respect to IC-2023-0633-029 through IC-2023-0633-038, it is found, based on the testimony of the Director, along with a careful in camera inspection, that such records constitute a report generated by the Judicial Marshal Services, which is maintained by the Office of Protective Intelligence, and relates to the monitoring of a security concern. It is also found that disclosure of such report may result in a safety risk, including a risk of harm to people in the judicial branch or to the facility itself.

61. Therefore, it is found that the Director had reasonable grounds to believe that the disclosure of such records may result in a safety risk, including a risk of harm to people in the judicial branch or to the facility itself, as well as the disclosure of a security report. It is further found that the reasons given were bona fide, and not pretextual, or irrational.

62. Accordingly, it is concluded that such records are exempt from disclosure pursuant to §1-210(b)(19)(i), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) or 1-212(a), G.S., by declining to disclose such records to the complainant.

63. With respect to IC-2023-0633-039, it is found, based on the testimony of the Director, along with a careful in camera inspection, that such record constitutes a copy of a photograph derived from a surveillance system of the respondents. It is found that the Director had reasonable grounds to believe that disclosure of such record may reveal information about the respondents' video surveillance system, such as areas covered and not covered by surveillance cameras, which may compromise the security of the branch.

64. Therefore, it is found that the Director had reasonable grounds to believe that the disclosure of such record may result in a safety risk, including a risk of harm to people in the judicial branch or to the facility itself. It is further found that the reasons given were bona fide, and not pretextual, or irrational.

65. Accordingly, it is concluded that such records are exempt from disclosure pursuant to §1-210(b)(19), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) or 1-212(a), G.S., by declining to disclose such records to the complainant.

66. Finally, with respect to IC-2023-0633-042 lines 16, 17 (highlighted portions only), and 21-24 (highlighted portions only), it is found, based on the testimony of the Director, along with a careful in camera inspection, that such portions of the in camera records pertain to the assignment of particular security personnel and that disclosure of those assignments could compromise the unit.⁷

67. It is therefore found that the respondents had reasonable grounds to believe that the disclosure of such records may result in a safety risk, including a risk of harm to people in the judicial branch or to the facility itself, as well as disclosure of the movement or assignment of security personnel. It is further found that the reasons given were bona fide, and not pretextual, or irrational.

68. Accordingly, it is concluded that such records are exempt from disclosure pursuant to §1-210(b)(19)(vii), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) or 1-212(a), G.S., by declining to disclose such records to the complainant.

69. Finally, the complainant contended that the respondents failed to prove that they conducted a reasonable and diligent search. It is found that upon receipt of the request described in paragraph 2, above, the respondents forwarded such request to the Director of Judicial Marshal Services for processing. It is found that the Director designated an administrative assistant within his office to conduct a search for records responsive to the request, and that records were compiled and provided to counsel for legal review. Nevertheless, the Commission notes that the respondents failed to put forth evidence regarding the nature and scope of their

⁷ The Commission notes that IC-2023-0633-042 was heavily redacted when such record was provided to the complainant because portions were not responsive to the complainant's request. The respondents, however, provided the hearing officer with a fully unredacted copy of such record. The Commission agrees with the respondents that such portions are not responsive to the complainant's request. Notwithstanding, the Commission also notes that the complainant obtained a copy of such record with the nonresponsive portions disclosed, though the source is unknown.

search and therefore, it is found that the respondents failed to prove that they conducted a reasonable and diligent search for all records responsive to the request described in paragraph 2, above.

70. It is therefore concluded that the respondents violated the promptness and disclosure provisions of §§1-210(a) or 1-212(a), G.S., by failing to prove that they provided a copy of all non-exempt responsive records to the complainant.

71. Notwithstanding the foregoing findings and conclusions, the Commission declines, in its discretion, to consider the imposition of civil penalties.

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

1. Within 30 days of the date of the Notice of Final Decision, the respondents shall provide the complainant with a copy of the records, or portions thereof in this matter, described in paragraph 28, above. In light of the facts and circumstances of this case, particularly the safety and security concerns raised by the respondents and described in the in camera records, the Commission declines, in its discretion, to order the disclosure of the identities of the individuals described as “witnesses” on the Index and appearing in IC-2023-0633-017 through IC-2023-0633-022.

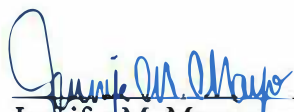
2. Within 30 days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with a copy of the records, or portions thereof in this matter, described in paragraph 58, above.

3. Within thirty days of the date of the Notice of Final Decision in this matter, the respondents shall conduct a thorough and diligent search for records responsive to the request described in paragraph 2, above, and shall provide the complainant with a copy of all records responsive to the request that have not already been disclosed or found exempt herein, free of charge. The respondents shall also provide an affidavit to the complainant, prepared by someone with knowledge of the respondents’ records and the search performed, detailing the nature and scope of the search. If no such records are located, the respondents shall also indicate that no additional responsive records were located.

4. Henceforth, the respondents shall strictly comply with the promptness and disclosure provisions of §§1-210(a) or 1-212(a), G.S.

5. The complainant is cautioned that, in accordance with §§1-206(b)(3)(C) and 1-206(b)(3)(D), G.S., the Commission may consider the nature, content, language or subject matter of communications made to any official of any agency by the person taking an appeal to the Commission, and/or a history of disruption of the Commission’s administrative process, in declining to schedule a future contested case hearing.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 20, 2024.



Jennifer M. Mayo

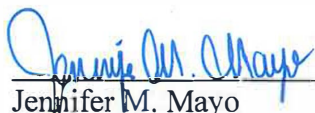
Acting Clerk of the Commission

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 CUMMINGS, PO Box 84, Ellington, CT 06029

**CHIEF COURT ADMINISTRATOR, STATE OF CONNECTICUT, JUDICIAL
BRANCH; AND STATE OF CONNECTICUT, JUDICIAL BRANCH**, c/o Attorney Andrei
Tarutin, Judicial Branch Legal Services, 100 Washington Street, PO Box 150474, Hartford, CT
06115



Jennifer M. Mayo
Acting Clerk of the Commission