

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Dave Howey,

Complainant

against

Docket #FIC 2023-0533

Executive Director, Vernon Housing
Authority; and Vernon Housing Authority,

Respondents

October 9, 2024

The above-captioned matter was heard as a contested case on April 4, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. By motion dated and filed March 5, 2024, John Smith (“intervenor”), requested permission to intervene in this matter pursuant to 1-21j-31 of the Regulations of Connecticut State Agencies. On March 11, 2024, the hearing officer granted such motion.

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 September 29, 2023, the complainant requested a copy of “John Smith’s application for federal housing with the Vernon [H]ousing [A]uthority” (“federal housing application”).
3. It is found that, by email dated October 11, 2023, the respondents acknowledged the complainant’s request and denied it on the basis that the requested record, described in paragraph 2, above, is exempt from disclosure pursuant to §1-210(b)(2), G.S., because it would constitute an invasion of personal privacy, and the federal Privacy Act of 1974, 5 U.S.C. §552, et seq.¹
4. By letter of complaint, dated and filed October 22, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the record, described in paragraph 2, above.
5. Section 1-200(5), G.S., provides:

¹ The Commission notes that the complainant alleges he did not receive the respondents’ October 11, 2023 email.

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to ... (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing on this matter, and in his post-hearing brief, the complainant asserted that the portion of the requested record at issue is the intervenor’s answer to question seventeen of the federal housing application (“question 17”), which asks: “[a]re you or any member of your household ... subject to a lifetime registration requirement under a state sex offender registration program? __ Yes __ No If yes, explain:”.

10. On May 10, 2024, by order of the hearing officer, the respondents submitted to the Commission an unredacted copy of the federal housing application for an in camera inspection, along with an in camera index.

11. On the in camera index, the respondents contended that all of the information redacted from the in camera record is exempt from disclosure under the federal Privacy Act and §1-210(b)(2), G.S.²

12. With regard to the respondents’ claim that the requested record is exempt from disclosure pursuant to the federal Privacy Act, such provision states, in relevant part, that:

² Due to the findings in paragraphs 18 and 19, below, and the conclusion in paragraph 20, below, the respondents’ claim that the in camera records are exempt from disclosure pursuant to §1-210(b)(2), G.S., will not be further addressed herein.

[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

13. It is found, however, that the federal Privacy Act applies only to federal government agencies. 5 U.S.C. § 552a(a)(1) of the federal Privacy Act defines “agency” as follows: “the term ‘agency’ means agency as defined in section 552(e) of this title.”³ In turn, § 552(f) refers to the definition provided in the federal FOI Act: “‘agency’ as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.” See Danaher, 2008 WL 4308212, at *2 (“[T]he [federal FOI Act] and the Privacy Act apply only to ‘agencies’ as that term is defined under 5 U.S.C. § 551(1) and 5 U.S.C. § 552[(f)]. Under these definitions, ‘agency’ does not encompass state agencies or bodies.”). See also Docket #FIC 2015, Yvette Tyson v. Chief Executive Officer, Stamford Housing Authority, City of Stamford; and City of Stamford (January 13, 2016); and Docket #FIC 2012-673, Socorro Barron v. Property Manager, Ridgefield Housing Authority; and Ridgefield Housing Authority (July 24, 2013).

14. It is concluded, therefore, that the federal Privacy Act is part of the federal statutory scheme pertaining to federal agencies and has no bearing on whether the requested application is exempt under Connecticut’s FOI Act.

15. It is found, however, that the United States Department of Housing and Urban Development (“HUD”) governs the respondent agency. Specifically, HUD regulations dictate the respondents’ established policy and procedure regarding the disclosure of personal and financial information provided by public housing tenants. It is also found that the intervenor is a public housing tenant of the respondents.

16. It is found that a federal housing application is required by the respondents, as owner of the property, and HUD so they can monitor and manage HUD-assisted public housing programs and verify the personal and financial information provided by public housing tenants.

17. Section 5.659 of the Code of Federal Regulations, Chapter IX (4-1-23 Edition), states in relevant part that:

(c) [a]s a condition of admission to or continued occupancy of a unit with Section 8 assistance, the owner must require the family head, and such other family members ... to furnish or release to the owner or HUD such information as the owner or HUD determines to be necessary.... The use or disclosure of information obtained from a family or from another source ... shall be limited to

³ The Commission notes that § 552(e) of the federal FOI Act, as referenced in 5 U.S.C. § 552a(a)(1), was redesignated as § 552(f) by § 1802(b) of Pub. L. 99-570.

purposes directly connected with administration of the Section 8 program.

18. It is found that disclosing the information contained within the intervenor's public housing application to the complainant is not "directly connected with administration of the Section 8 program."

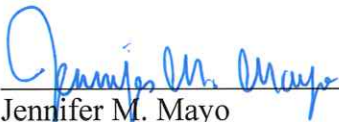
19. It is therefore found that although federal housing applications are public records within the meaning of §1-200(5), G.S., they are, however, exempt from public disclosure under §1-210(a), G.S., by operation of 24 C.F.R. IX §5.659. See Docket #FIC 92-58, Helen Gardner and The Prudential Connecticut Realty v. Executive Director, Hartford Public Housing Authority (February 10, 1993); and Docket #FIC 95-304, Ann Hodgdon, Neighborhood Legal Services, Inc. v. Director Windsor Public Housing Authority (July 10, 1996).

20. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 October 9, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

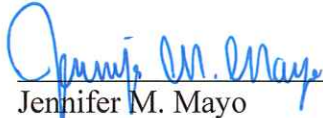
PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

DAVE HOWEY, 55 Groove Street, Apt 39, Vernon, CT 06066

EXECUTIVE DIRECTOR, VERNON HOUSING AUTHORITY; AND VERNON HOUSING AUTHORITY, c/o Attorney Michael S. Wrona, Halloran & Sage, LLP, 225 Asylum Avenue, One Goodwin Square, Hartford, CT 06103

GREATER HARTFORD LEGAL AID, INC., c/o Attorney Thomas Freeman, 999 Asylum Avenue, 3rd Floor, Hartford, CT 06105-2465



Jennifer M. Mayo
Acting Clerk of the Commission