

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Tim Reilly,

Complainant

against

Docket # FIC 2023-0499

Chief, Willimantic Police Department,
Town of Windham; Willimantic Police
Department, Town of Windham; and Town
of Windham,

Respondents

September 25, 2024

The above-captioned matter was scheduled to be heard as a contested case on April 3, 2024, at which time the respondents appeared but the complainant did not.

On April 11, 2024, the Commission issued a Proposed Final Decision in this matter, dated April 4, 2024, in which the hearing officer recommended that the complaint be dismissed for failure to prosecute. The initial Proposed Final Decision was scheduled to be considered by the Commission at its regular meeting of May 8, 2024. On April 26, 2024, the complainant filed a motion to postpone the consideration of the first Report of Hearing Officer. Thereafter, such matter was subsequently marked off the May 8, 2024 Commission meeting agenda and the first Report of Hearing Officer was rescheduled to be considered by the Commission at its regular meeting of May 22, 2024. On May 21, 2024, the complainant filed a Motion to Reopen, which the Commission granted.

Upon order of the hearing officer, dated June 3, 2024, a hearing was scheduled for June 6, 2024, at which time the complainant and respondents appeared, stipulated to certain facts, and presented 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, on September 5, 2023, by telephone, the complainant made an oral request to the Willimantic Police Department, to inspect body camera footage, radio communications, and police reports related to an incident that occurred on Pleasant Street in Windham, on September 4, 2023, which involved Officer Giller of the Willimantic Police Department and another individual, Daniel Kokoszka.
3. It is found that, during the telephone call on September 5, 2023, described in

paragraph 2, above, the complainant requested that the secretary for the respondents (the "Secretary"), who received the complainant's telephone call on September 5, 2023, write down his request and indicated that he sought to schedule a time to inspect the requested records during business hours at the respondent police department. It is found that the Secretary initially stated that the complainant must submit his records request in writing. However, it is found, that the Secretary ultimately accepted the complainant's oral request and informed the Deputy Chief of the Willimantic Police Department ("Deputy Chief") of such request.

4. It is found that, on September 6, 2023, the Deputy Chief emailed the complainant indicating that he was informed that the complainant had made a request on September 5, 2023 and stated "[i]t is not clear to me what you are looking for. Please email me exactly what you are looking for so I can respond appropriately."

5. It is found that, by email dated September 6, 2023, the complainant responded to the Deputy Chief's September 6, 2023 email contending that the Secretary was required to write down and process his request and that she should not have forwarded the request to the Deputy Chief. It is further found that, in his September 6, 2023 email, the complainant also stated as follows:

[s]eems to me, Robin¹ has got her panties in a bunch because I wouldn't go out of my way to make her taxpayer funded job easier for her... am I right?...

In addition to my original FOI request, taken by Robin yesterday, today I'd like to amend my request. Please add the following records to it:

I'd like the ... personnel file of Robin, her full name, her occupation, her salary, her benefits, her sum total weekly hours, resume, training records, disciplinary and commendations, and her badge number. Additionally, I'd like the departments recorded copy of my phone conversation with her, and complete itinerary of her activities associated with yesterday's FOIAR, including getting you involved.

...

Crack your whip and get that stooge of yours in order please. ...
(Emphasis added.)

6. It is found that, by letter dated September 7, 2023, the Deputy Chief acknowledged the complainant's request to inspect records, described in paragraph 2, above, stating as follows:

We received your oral Freedom of Information Request that was called in to [the] Secretary ... requesting (1) a report related to an incident on Pleasant Street on 09-04-2023 at approximately 6pm,

¹ The Commission notes that "Robin" refers to the Secretary.

and (2) the body camera footage from Officer Giller related to that incident. At the present time, the matter is still under investigation and so the records you are requesting are exempt from disclosure for reasons based upon C.G.S 1- 210(b). I understand that you are also looking for a list of FOIA requests. I am unable to fulfill that request as there is no list created for this information.

7. It is found that, by a separate letter dated September 7, 2023, the Deputy Chief acknowledged the complainant's request for access to the records described in paragraph 5, above, stating as follows:

I am in receipt of your Freedom of Information request that was received via email on 09-06-2023 (in reference to Secretary Robin ...). The request is being reviewed and will take time to evaluate the request under the law. As soon as the information becomes available for your review, I will notify you via email.

8. It is found that, on September 13, 2023, the complainant emailed the Deputy Chief stating as follows:

Just so we are clear on the last line item of the request; I've asked for the total sum number, the number of FOIA requests received (presumably acknowledged) by your department in the two weeks (14 business days) prior to mine. Robin has told me that this would be impossible, and asked me "do you know how long that will take?" Which left the public and I all the more intrigued, and perplexed.

She even stated, after acknowledging and repeating back to me, my request verbally: "I'm not going to do this unless you put it in writing for me because I might forget."...

Oh, almost forgot; Please prepare the records I've requested for physical inspection, which will be carried out at your department, and also, electronic delivery. Please advise, and inform me when these records have been prepared for inspection.

Note, I will not be retaining, leaving to police department with the prepared physical copies of these public records. These public records will be inspected, recorded, copied through my own means, and promptly returned to Willimantic pd upon completion of this process, physically inhouse, in compliance with the Connecticut Code Sec. 1-210. (Formerly Sec. 1-19). Access to public records.

9. It is found that, on September 20, 2023, the complainant emailed the Deputy Chief, requesting the status of his records requests, and indicating that he would be in the area and that he would like to review the records he requested, if prepared.

10. By email dated September 21, 2023, the Deputy Chief stated the following to the complainant:

I am going through your two requests, and I want to reiterate that your first request, the one pertaining to the Pleasant Street incident was denied. That also included your request for the total number of FOIA requests received in a two-week period. That was denied as we have no prepared document showing that number.

The second request I replied to was about Robin and how you wanted the personnel file of her, her full name, her occupation, her salary, her benefits, her sum total of her weekly hours, her resume, training records, disciplinary and commendations, and her badge number. You wanted the department[s] recorded copy of your phone conversation with her, and a complete itinerary of her activities associated with yesterday's FOIAR, including getting how I became involved.

I sent you my response that I would review it under the law. Based on 1-210, I am denying access to her personnel file as it is an invasion of her privacy. I am also denying your request for her occupation, her salary, her benefits, her sum total of her weekly hours as none of that information is recorded in this building. You would have to obtain these from Finance or Human Resources at the Town Hall. She does not have a badge number and there is no recorded itinerary of her activities on that day.

You asked for a complaint form and the recorded conversation that you had with Robin. Both are attached.

11. By email, dated September 23, 2023, the complainant responded to the Deputy Chief's September 21, 2023 email, described in paragraph 10, above, as follows:

In spite of my better judgment, I'm writing you this morning to provide you with an opportunity to seek guidance from the city attorney (corporate counsel) of Willimantic/Windham before you end up costing the taxpayers in town a small fortune. ...

If I do not receive an amended response to my request from you, or from Willimantic PD, by noon on September 26 2023; I will file criminal charges, and a lawsuit against both you and Robin, in both your public and private capacities. In addition I will file a lawsuit against Willimantic PD, and the City of Willimantic too. ...

Your response is unacceptable, it is criminal....

12. By email to the Deputy Chief, dated September 27, 2023, the complainant further

stated as follows:

You will not ignore me [Deputy Chief], not like you do Daniel Kokoszka.

You will be held accountable, and so will your criminal friend Robin. ...

In the interim time, here's a new FOIA Request. I dare you to break the law again hot shot. I dare you to ignore this like you do the citizens your officers assault, harass, stalk, fabricate false charges upon, unlawfully detain and falsely arrest.

Let's see what you got hot shot!

- 1.) Your roster photograph.
- 2.) Your wages, salary, benefits, overtime hours, your personnel file.
- 3.) A copy of your bond ... you know, ... you[']re lawfully required to have in order to work for the peoples city of Willimantic Connecticut as a public servant (law enforcement officer)
- 4.) Any and all internal communications with Robin since September 05 2023 to present day. This includes email, stick[y] notes, text messages, internal chats, upon all devices ... this includes your personal cellphone and or other devices you use in you[r] official, publuc capavity [sic.]... on my time and money, and that of all the other tax payers you crooks steal from.
- 5.) Roster Photographs of the entire Willimantic Police Department, including names, badge numbers, and official titles of each and every employee.

Pleasw [sic.] prepare these records for electronic delivery and physical inspection. ...

Good luck! Your career depends on this now.

Very truly and sincerely yours,

Tim Reilly, Connecticutcuts [sic.] soon to be ELECTED Constitutional Sheriff, who's coming to Willimantic to arrest you, and your criminal police force. Let's hope they don't resist... because that will only cause them even more punishment.

It's too bad you want to do things the hard way. This could've been avoided, but your ego, ignorance and arrogance, coupled with that of Robin, has clearly gotten the best of you.

You're a disgrace. ... Test me [Deputy Chief], I dare you, I wish you would.

13. By letter of complaint dated, and filed on, October 3, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by withholding the records requested in paragraphs 2 and 5,² above, and by, among other things, "willfully, maliciously, deliberately" obstructing his request, "in an act of retaliation and defiance on behalf of the 'The Blue Line,' [i]e. in this case, Willimantic PD."³

14. By letter dated October 3, 2023, the respondents, through their attorney, informed the complainant of the following:

Your recent requests for records made pursuant to Connecticut's Freedom of Information Act, which includes requests for employee personnel files ([the Secretary and Deputy Chief]) among other records, have been forwarded to my office for review and response. On behalf of my client, this letter is to inform you that the records are being reviewed for potential privilege and exemption, as well as the Town's compliance with Conn. Gen. Stat. §1-214(b). I will get back to you as soon as the records you requested are available for your review.

It is my understanding that the records request that you made by telephone on September 5, 2023 (acknowledged on September 6, 2023) has been denied as it pertained to records of an open and ongoing police investigation involving Pleasant Street, which are exempt under Conn. Gen. Stat. §1-210(b)(3). Further, your request for information regarding the total number of FOI requests received in a two-week period has been denied as no responsive written record exists.

15. 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

² The Commission notes that the complainant's October 3, 2023 complaint, at issue in this case, does not mention his request for the records concerning the Deputy Chief, as described in paragraph 12, above, and that the September 27, 2023 email described in paragraph 12, above, was not attached to his complaint. Although such request was not contained within the four corners of the complaint, the parties treated such request as part of this case and, therefore, the Commission will address claims related to the Deputy Chief's personnel file.

³ The complainant also alleged that the Secretary committed the crime of coercion, described in §53a-192, G.S., when she "refused to acknowledge [the complainant's] official request, and threatened she would not process it, until [he] met her unlawful demands/requirements."

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.

16. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

17. 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.”

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

19. It is found that, by letter dated March 6, 2024, the respondents notified the Secretary, pursuant to §1-214(b), G.S., that the respondent police department received a request, pursuant to the FOI Act, for a copy of her employment personnel file, and that the respondent police department reasonably believed that the disclosure of certain information contained within the Secretary’s personnel file, including but not limited to her social security number, day and month of birth, home address, home telephone numbers, driver’s license number, credit report/financial history and high school transcript, would legally constitute an invasion of privacy. It is further found that, in the March 6, 2024 letter, the respondents also notified the Secretary of her right to submit to them a written objection to the disclosure of such information.

20. It is found that, by written notice dated March 6, 2024, the Secretary objected to the disclosure of the information described in paragraph 19, above, pursuant to §1-214(c), G.S.

21. It is found that, by letter dated March 15, 2024, the respondents notified the Deputy Chief, pursuant to §1-214(b), G.S., that the respondent police department received a request, pursuant to the FOI Act, for a copy of his employment personnel file, and that the respondent police department reasonably believed that the disclosure of certain information contained within the Deputy Chief’s personnel file, including but not limited to his social security number, day and month of birth, personal telephone numbers, driver’s license number, credit report/financial history, medical information, and certain other information from his background and/or polygraph test, would legally constitute an invasion of privacy. It is further found that, in the March 15, 2024 letter, the respondents also notified the Deputy Chief of his right to submit to them a written objection to the disclosure of such information.

22. It is found that, by written notice dated March 18, 2024, the Deputy Chief objected to the disclosure of the information described in paragraph 21, above, pursuant to §1-214(c), G.S.

23. It is found that, by letter dated March 27, 2024, which was emailed to the complainant on March 28, 2024, the respondents informed the complainant as follows:

Please be advised that this office represents the Town of Windham. The non-exempt records responsive to the above-referenced requests for records made pursuant to Connecticut's Freedom of Information Act, namely the employee personnel files of [the Secretary and Deputy Chief], are now available to you after having been reviewed for potential privilege and exemption, as well as the Town's compliance with Conn. Gen. Stat. §1-214 (b). Both [the Secretary and Deputy Chief] have timely lodged objections to the release of information contained in responsive records, the disclosure of which would constitute an invasion of their respective privacy.

24. It is found that, in the respondents' March 27, 2024 letter and March 28, 2024 email, described in paragraph 23, above, the respondents provided the complainant with a link to access the personnel files of the Deputy Chief and the Secretary, portions of which were redacted.

25. At the contested case hearing on this matter, the complainant testified that one of his colleagues, a fellow journalist, Daniel Kokoszka, filmed Officer Giller of the Willimantic Police Department, responding to a domestic dispute call for service on September 4, 2023 on Pleasant Street in Windham, CT. The complainant testified that Mr. Kokoszka was filming the police response from a public sidewalk, but the individual, who placed the call for service with the Willimantic Police Department, took contention with Mr. Kokoszka's presence and began swearing and yelling at him. The complainant contended that the officer should have charged that individual for interfering with his colleague's lawful activities and for harassing him, but rather the officer pursued Mr. Kokoszka into a neighboring town to arrest him for interfering with the police officer's duties at the scene.

26. The complainant testified, and it is found, that on September 5, 2023, he telephoned the Willimantic Police Department to request the body cam footage of Officer Giller, the radio communications and the police report related to the September 4, 2023 incident with Mr. Kokoszka. The complainant further testified that the Secretary attempted to disengage from the phone call by referring him to the dispatch window where he claims criminal complaints are taken but not FOI Act requests. The complainant also testified that he had "a back and forth about this process" and that the Secretary, at one point, stated that she would not fulfill his request unless he submitted the request in writing. The complainant contended that the FOI Act did not require him to submit the request in writing and that he was seeking to schedule a time to inspect the records.

27. The complainant further testified, and it is found that, during the course of his telephone call with the Secretary, on September 5, 2023, he requested that she also provide him with the sum total of records requests that were submitted to the Willimantic Police Department

in the two weeks prior to September 5, 2023.

28. At the hearing, the complainant testified, and it is also found, that the Secretary forwarded the complainant's request to the Deputy Chief, who denied his requests and that it was at this time that he requested the Secretary's and Deputy Chief's personnel files. The complainant testified that he received copies of the redacted personnel files, but contested the redactions. He also contended that the respondents are legally required to provide him copies of the body camera footage, the police reports, and radio communications concerning the September 4, 2023 incident with Mr. Kokoszka as well as the sum total of the FOI Act requests that the Willimantic Police Department received in the two weeks prior to his September 5, 2023 request.⁴

29. At the hearing, the respondents' witness testified that, with respect to the records concerning the incident that occurred on September 4, 2023 with Mr. Kokoszka, at the time of the complainant's request, there was an open and ongoing investigation by the Willimantic Police Department related to Mr. Kokoszka. Therefore, the respondents contended that such records were exempt from disclosure pursuant to §1-210(b)(3)(D), G.S. The respondents also testified that, at the time of the complainant's September 5, 2023 request, described in paragraph 2, above, an arrest was reasonably possible, if not probable, and that Mr. Kokoszka was, in fact, arrested on October 12, 2023 for the September 4, 2023 incident.⁵

30. The respondents also testified that the Willimantic Police Department maintains or possesses no records that list all of the FOI Act requests that were submitted to it prior to September 5, 2023, nor any records which identify the number of FOI Act requests that it received prior to September 5, 2023. The respondents further contended that the FOI Act does not require them to answer questions, create records, or conduct research.

31. With respect to the records related to the Deputy Chief and the Secretary, the respondents testified, and it is found, that the respondent police department maintains the personnel files, but does not maintain records concerning payroll or records responsive to the other requests described in paragraphs 5 and 12, above. The respondents also contended that the information redacted in the Deputy Chief's and the Secretary's personnel files was permissibly withheld pursuant to §1-210(b)(2), G.S., and that they complied with the notification provisions of §1-214(b), G.S., and that the Secretary and the Deputy Chief both filed a written objection that satisfied the requirements of §1-214(c), G.S.

⁴ At the hearing, the complainant also stated that when he becomes sheriff he will be arresting "dirty cops in Connecticut," and that "on a personal, private level, I could file a lien on the houses of [the Deputy Chief and the Secretary], and make sure I attach myself to their pensions properly. This is not rhetoric, this is what I have had to do."

⁵ The complainant also contended that he had reiterated his request for the records concerning the September 4, 2023 incident after he filed his complaint with the Commission and after Mr. Kokoszka's arrest and, at which time, the respondents should have provided him with the requested records concerning the September 4, 2023 incident because the investigation was closed. However, under *Commissioner of Public Health v. Freedom of Info. Comm'n*, 311 Conn. 262, 280 (2014), the relevant question, when determining whether records are exempt from mandatory disclosure, under the FOI Act, is what the law required at the time of the request. Public agencies are not required to hold records requests open in the event that circumstances might change in the future. Nevertheless, the respondents indicated, at the contested case hearing on this matter, that the investigation of the September 4, 2023 incident is now closed and that they are willing to provide the complainant with records related to that incident, separate and apart from this matter.

32. Additionally, at the hearing, the complainant requested that the Commission conduct an in camera inspection of the withheld records, or portions thereof, to determine if such records or information are exempt from disclosure.

33. Following the hearing in this matter, the hearing officer issued two orders to the respondents to submit the records at issue in this case to the Commission for in camera inspection, along with an Index to Records Submitted for In Camera Inspection ("Index").

34. On June 28, 2024, the respondents submitted the redacted personnel files of the Deputy Chief and the Secretary along with an Index ("June 28, 2024 Index"). On the June 28, 2024 Index, the respondents claimed that portions of the personnel files of the Deputy Chief and the Secretary are exempt from disclosure pursuant to §§1-210(b)(2) and 1-210(b)(3), G.S., and that certain other withheld information was not responsive to the complainant's requests described in paragraphs 2, 5 and 12, above. Such records will hereinafter be referred to as IC 6.28.2024-2023-0499-1 through IC 6.28.2024-2023-0499-584.

35. On August 8, 2024, the respondents submitted the records related to the complainant's request for records concerning the September 4, 2023 incident along with an Index ("August 8, 2024 Index"). On the August 8, 2024 Index, the respondents claimed that certain records, which can fairly be described as police reports and twelve recordings concerning the September 4, 2023 incident are exempt from disclosure pursuant to §§1-210(b)(3)(D) and 1-210(b)(3)(G), G.S. Such records will hereinafter be referred to as IC 8.8.2024-2023-0499-1 through IC 8.8.2024-2023-0499-2 and IC 8.8.2024-2023-0499-Recording 1 through IC 8.8.2024-2023-0499-Recording 12.

36. With respect to the complainant's contention that the respondents violated the FOI Act when the Secretary, on September 5, 2023, requested or instructed the complainant to make his request in writing, §1-212(a), G.S., provides that "[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record." Accordingly, the FOI Act requires that requests for copies be made in writing. Plan. & Zoning Comm'n of Town of Pomfret v. Freedom of Info. Comm'n, 130 Conn. App. 448 (2011).

37. However, a requirement that a requester put a request in writing before being allowed to inspect public records is an impermissible agency rule that diminishes and curtails the right to inspect records within the meaning of §1-210(a), G.S. See, e.g., Jody Gemmell v. John Hodge et al., Docket #FIC 2006-433 (August 22, 2007); Christopher Hoffman et al. v. Leon J. O'Connor et al., Docket #FIC 95-365 (September 11, 1996). It is found that the complainant's September 5, 2023 request, described paragraph 2, above, can fairly be deemed a request to inspect records.

38. The Commission cautions the respondents that the FOI Act does not authorize an agency to require that a request to inspect records made pursuant to §1-210(a), G.S., be made in writing. However, it is found that the respondents ultimately did not impose such a requirement on the complainant and, therefore, it is concluded that the respondents did not violate the FOI Act in this regard.

39. With respect to the respondents' claim that portions of certain in camera records are

exempt from disclosure pursuant to §§1-210(b)(3)(D) and 1-210(b)(3)(G), G.S., such statutes provide that disclosure is not required of:

[r]ecords 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 ... (D) information to be used in a prospective law enforcement action if prejudicial to such action ... [and] (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....

40. On the August 8, 2024 Index, the respondents claimed that portions of the following in camera records contain “Name and Address of Sexual Assault Victim” and are exempt from disclosure pursuant to §1-210(b)(3)(G), G.S.: IC 8.8.2024-2023-0499-1, lines 17, 28, 29, and IC 8.8.2024-2023-0499-2, lines 13, 14, 15, and 20.

41. After a careful inspection of the in camera records, it is found that the records described in paragraph 40, above, were compiled in connection with the detection or investigation of crime and portions of such records would result in the disclosure of the name and address of a sexual assault victim.

42. It is concluded that portions of the records described in paragraph 40, above, are exempt from disclosure pursuant to §1-210(b)(3)(G), G.S. Accordingly, it is 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.

43. On the August 8, 2024 Index, the respondents claimed that IC 8.8.2024-2023-0499-1 through IC 8.8.2024-2023-0499-2 and IC 8.8.2024-2023-0499-Recording 1 through IC 8.8.2024-2023-0499-Recording 12 are exempt from disclosure pursuant to §1-210(b)(3)(D).

44. In Drumm v. Freedom of Info. Comm'n, 348 Conn. 565, 590 (2024) (“Drumm”), the Connecticut Supreme Court concluded that

the legislature intended the law enforcement exception to apply only when a law enforcement agency is able to make the threshold showing that an arrest or prosecution is at least reasonably possible. It need not be probable or likely, but it must be more than only remotely or theoretically possible. This standard effectuates the legislative intent of providing open access to public records without unduly hamstringing ongoing investigations.

45. The court, in Drumm, also emphasized that

the respondents [bare] the burden before the commission of

establishing not only that there was a reasonable possibility that the investigation will result in a law enforcement action, but also that, for each individual document or set of documents sought to be withheld, it is reasonably possible that the requested files contain information that will be used in such a law enforcement action and that disclosure of that information would be prejudicial.

Drumm, 348 Conn. at 601.

46. Based upon the Administrative Record and a careful inspection of the in camera records described in paragraph 43, above, it is found that such records were compiled in connection with the detection or investigation of crime and that, at the time of the complainant's records request described in paragraph 2, above, an arrest or prosecution was at least reasonably possible. It is found, however, that the respondents failed to prove that disclosure of such records would be prejudicial to any such prospective law enforcement action, as the respondents provided no testimony on such issue whatsoever and, under the circumstances of this case, such issue cannot be determined from the face of the records themselves. As such, it is found that the respondents failed to prove that the in camera records described in paragraph 43, above, are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

47. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding from the complainant access to the records described in paragraph 43, above, except for those portions described in paragraph 40, above, which are exempt pursuant to §1-210(b)(3)(G), G.S.

48. With respect to the respondents' claim that certain in camera records, or portions thereof, described on the June 28, 2024 Index as "Personnel and/or Medical File; Invasion of Personal Privacy," are exempt from disclosure pursuant to §1-210(b)(2), G.S., such statute provides that disclosure is not required of "[p]ersonnel or medical and similar files the disclosure of which would constitute an invasion of personal privacy."

49. Section 1-214(b), G.S., in relevant part states:

[w]henever 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....

50. It is found that written objections to disclosure signed by the Secretary and the Deputy Chief were filed with the respondents, within the meaning of §1-214, G.S., as described in paragraphs 20 and 22, above, respectively.

51. In order to prove the applicability of the invasion of privacy exemption under §1-

210(b)(2), G.S., the claimant must first establish that the files in question are personnel or medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy, by establishing both of two elements: (1) the information sought does not pertain to a legitimate matter of public concern; and (2) disclosure of such information would be highly offensive to a reasonable person. See Perkins v. Freedom of Info. Comm'n, 228 Conn. 158, 175 (1993) (“Perkins”).

52. In Connecticut Alcohol and Drug Abuse Commission, et al. v. Freedom of Info. Comm'n, (“CADAC”), 233 Conn. 28, 41 (1995), the Supreme Court further expounded on the threshold test for the exemption contained in §1-210(b)(2), G.S:

We conclude that such a determination requires a functional review of the documents at issue. Just as a "medical" file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual, a "personnel" file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. 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).

53. In Joao Godoy v. Chief, Police Department, Town of Avon, et al., Docket #FIC 2009-437 (June 9, 2010) (“Godoy I”), and Joao Godoy v. Mark Rinaldo, Chief, Police Department, Town of Avon et al., Docket #FIC 2009-502 (June 9, 2010) (“Godoy II”), respectively, the Commission found that the disclosure of certain information in a police officer’s personnel file did not pertain to legitimate matters of public concern and the disclosure of such information would be highly offensive to a reasonable person, due to the minor nature of an offense (i.e., an infraction) relating to an incident that occurred nearly 10 years prior, when the applicant was 17 years old. In addition, with respect to reports of polygraph examinations of employees and former employees of the Avon Police Department, the Commission found that disclosure of the following information would be highly offensive to a reasonable person: medical and mental health history, sexual conduct, financial history, social security number, and any information concerning possible criminal activity by the applicant/polygraph subject under the age of 17. See also Eric Garrison v. Supervisor, Unclaimed Prop. Div., State of Conn., Off. of the Treasurer, Docket # FIC 89-76 (September 13, 1989) (social security numbers may be permissibly redacted in order to afford a protection that is widely recognized and preserved in federal and Connecticut law) (“Garrison”); Town of Avon v. Freedom of Info. Comm'n, No. HHBCV196056393, 2020 WL 5102098 (Conn. Super. Ct. Aug. 6, 2020) (public employee’s date of birth and watercraft operator number was exempt from disclosure pursuant to §1-210(b)(2), G.S.) (“Avon”).

54. It is found that the records, or portions thereof, described in paragraph 48, above, are

comprised of social security numbers, days and months of birth, home telephone numbers or personal cellphone numbers, home addresses, personal email addresses, driver's license numbers, vehicle information, credit reports/financial histories, grade/GPA information from high school, medical information, polygraph test examination questions and responses, and certain other background information, as well as, the day and month of birth, telephone numbers, and residential addresses of relatives and personal references included in an employment application, and it is found that such records constitute "[p]ersonnel or medical and similar files" within the meaning of §1-210(b)(2), G.S.

55. Upon careful review of the in-camera records and the facts and circumstances of this case, described in paragraphs 48 and 54, above, it is found that such information does not pertain to legitimate matters of public concern within the meaning of Perkins. See also Godoy I, Godoy II, Garrison, and Avon.

56. Upon careful review of the in-camera records and the facts and circumstances of this case, described in paragraphs 48 and 54, above, it is found that disclosure of such information would be highly offensive to a reasonable person because it contains the kind of intimate details of a person's life that are normally private matters, within the meaning of Perkins. See also Godoy I, Godoy II, Garrison, and Avon.

57. It is therefore concluded that the in camera records, or portions thereof, described in paragraphs 48 and 54, above, are permissively exempt from disclosure pursuant to §1-210(b)(2), G.S.

58. Accordingly, it is concluded that the respondents did not violate §1-210(a), G.S., by denying the complainant access to, or a copy of, in camera records, or portions thereof, described in paragraphs 48 and 54, above.

59. On the June 28, 2024 Index, the respondents claim that certain in camera records, or portions thereof, described as "Record of Law Enforcement Agencies; not responsive" are exempt from disclosure pursuant to §1-210(b)(3), G.S., and also are not responsive to the complainant's requests in this case.

60. It is found that, based upon the Administrative Record and a careful inspection of the in camera records described in paragraph 59, above, such records, or portions thereof, are not responsive to the complainant's requests described in paragraphs 2, 5 and 12 above.

61. Therefore, it is concluded that the respondents did not violate the FOI Act by failing to provide the complainant with access to the records described in paragraph 59, above.

62. With respect to the complainant's request for access to records pertaining to the total number of records requests that the Willimantic Police Department received within the two weeks prior to his September 5, 2023 request described in paragraph 2, above, it is found that the respondents do not maintain any such responsive records.

63. Therefore, it is concluded that the respondents did not violate the FOI Act by failing to provide the complainant with access to the records described in paragraph 62, above.

64. With respect to the complainant's request for access to other records pertaining to the Deputy Chief and the Secretary, described in paragraph 5 and 12, above, such as payroll records, it is found that the respondents do not maintain any responsive records.

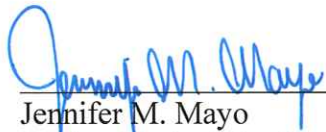
65. Therefore, it is concluded that the respondents did not violate the FOI Act by failing to provide the complainant with access to the records described in paragraph 64, above.

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

1. Within thirty days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with access to copies of the records described in paragraph 43, of the findings above, except for those portions described in paragraph 40, of the findings above, which are exempt pursuant to §1-210(b)(3)(G), G.S.

2. Henceforth, the respondents shall strictly comply with the disclosure provisions of the FOI Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 25, 2024.



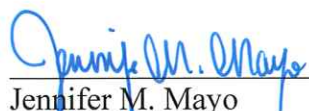
Jennifer M. Mayo
Acting Clerk of the Commission

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:

TIM REILLY, 46 Oakwood Lane, Columbia, CT 06237

**CHIEF, WILLIMANTIC POLICE DEPARTMENT, TOWN OF WINDHAM;
WILLIMANTIC POLICE DEPARTMENT, TOWN OF WINDHAM; AND TOWN OF
WINDHAM**, c/o Attorney Kristi D. Kelly, Suisman, Shapiro, Wool, Brennan, Gray &
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Jennifer M. Mayo
Acting Clerk of the Commission