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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Russell Mace,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-003

Commissioner, State of Connecticut, Department of
Children and Families; and State of Connecticut,
Department of Children and Families,
Respondent(s)

September 16, 2015

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, October 14, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE October 2, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE October 2, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE October 2, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Russell Mace
Commissioner, State of Connecticut, Department of Children and Families; and State of
Connecticut, Department of Children and Families
cc: Craig Washington

2015-09-16/FIC# 2015-003/Trans/wrbp/CAL/VDH

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Russell Mace,

Complainant

against

Docket #FIC 2015-003

Commissioner, State of Connecticut,
Department of Children and Families; and
State of Connecticut, Department of
Children and Families,

Respondents

September 16, 2015

By letter dated February 20, 2015, the Commission advised the complainant that, unless he responded in writing, it would not take further action on his complaint because records of the respondent Department concerning child protection activities are not subject to disclosure pursuant to the Freedom of Information Act ("FOIA"). By letter dated May 12, 2015, the complainant stated that he needed a written decision from the Commission.

Accordingly, the above-captioned matter was heard as contested case on September 3, 2015, at which time the complainant appeared and presented testimony, an exhibit and argument on the complaint. The respondents failed to appear.

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)(A), G.S.
2. It is found that, by letter dated December 9, 2014, the complainant made a detailed request to the respondent Department for nine categories of records, all of which concerned different aspects of the respondent Department's case with Link Number 240160 (the "requested records").
3. It is found that, by letter dated and filed with the Commission on January 6, 2015, the complainant appealed to the Commission, alleging that the failure of the respondents to provide requested records violated the FOIA.
4. Section 1-200(5), G.S., provides:

“Public 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, printed, photostated, photographed or recorded by any other method.

5. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

Except 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. (emphasis added)

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

6. It is concluded that the requested records are “public records” within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

7. At the hearing, all nine categories of the requested records were individually reviewed and the complainant gave testimony as to each of the nine categories. Based on this review, it is found that all of the requested records pertain to child protection activities of the respondent Department and that the case Link Number referenced in paragraph 2, above, is a case that pertains to the complainant’s two children. It is further found that the complainant is listed on the registry of the respondent Department.

8. Section 17a-101k, G.S., provides, in relevant part, that the “information contained in the [DCF] registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of the federal law or regulations.”

9. Section 17a-28(b), G.S., provides, in relevant part, that “[n]otwithstanding the provisions of [the FOI Act], records maintained by [DCF] shall be confidential and shall not be disclosed. Such records of any person may only be disclosed, in whole or in part, to any individual...with the consent of the person or as provided in this section.”

10. “Person” is defined in §17a-28(a)(1), G.S., as “(A) any individual named in a record, maintained by [DCF], who (i) is presently or at any prior time was a ward of or committed to the commissioner for any reason; (ii) otherwise received services, voluntarily or involuntarily, from [DCF]; (iii) is presently or was at any prior time the subject of an investigation by [DCF]; (B) the parent of a person, as defined in subparagraph (A) of this subdivision, if such person is a minor; or (C) the authorized representative of a person; as defined in subparagraph (A) of this subdivision, if such person is deceased[.]”

11. Section 17a-28(m), G.S. provides, in relevant part:

“[i]n addition to the right of access provided in section 1-210, any person...shall have the right of access to any records made, maintained or kept on file by [DCF]...when those records pertain to or contain information or materials concerning the person seeking access thereto....”

12. Previous commission and court decisions have addressed precisely the same issue presented by this case: whether, based on the language in §17a-28(m), G.S., the confidentiality provision contained in §17a-28(b), G.S., applies to parents, because the records they seek “concern” or “pertain” to them. Parents have argued that the confidentiality provision applies only to “third parties.”

13. Connecticut courts have held otherwise. In Marlowe v. State of Connecticut, Freedom of Information Commission, Superior Court, J.D. New Britain, Docket No. CV 99 0493 141 (October 12, 1999, McWeeny, J.) (“Marlowe”), the court ruled that the FOI Commission lacks jurisdiction to determine the rights of access to DCF records pertaining to child protection activities. See also Groton Police Dept. v. Freedom of Information Commission, 104 Conn. App. 150, 165-166 (2007). The court also noted, that not all DCF records are exempt from FOIA, citing Department of Children and Families v. Freedom of Information Commission, 48 Conn. App. 467 (1998). “Clearly, DCF records which do not pertain to child protection activities are subject to disclosure under FOIA. It is in this substantive context in which §17a-28(m) should be construed.” Marlowe, supra, at 6.

14. In Kimberly Albright-Lazzari v. Freedom of Information Commission, 136 Conn. App. 76 (2012), the Appellate Court reviewed and affirmed the holding in Marlowe. The confidentiality provision contained in §17a-28(b), G.S., does provide otherwise than, and is therefore an exception to, the basic disclosure provision of §1-210(a), G.S.

15. It is concluded that the respondents have not violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with the requested records because the requested records pertain to the child protection activities of the respondent Department.

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.

A handwritten signature in black ink, appearing to read 'Clifton A. Leonhardt', written over a horizontal line.

Clifton A. Leonhardt
as Hearing Officer

FIC2015-003/HOR/CAL/09162015