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William Regan and Susan Regan,
Complainant(s)
against

Town Manager, Town of Granby; Human Services Director, Town of Granby; and Town of Granby,
Respondent(s)

Notice of Meeting

Docket #FIC 2015-095

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, lst 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: William Regan and Susan Regan
Kevin M. Deneen, Esq.

2015-09-07/FIC# 2015-095/Trans/wrbp/LFS//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

William Regan and Susan Regan,

Complainants

against

Town Manager, Town of Granby; Human Services Director, Town of Granby; and Town of Granby,

Respondents

Report of Hearing Officer

Docket #FIC 2015-095

September 14, 2015

The above-captioned matter was heard as a contested case on June 22, 2015, at which time the complainants and the 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 the complainants requested records pertaining to the hiring process for the town's new director of public works.

3. It is found that on January 9, 2015, the respondents provided records responsive to the complainants' request.

4. It is found that the respondents provided, among other records, 15 pages of email correspondence and 18 pages of other responsive records.

5. It is found that the respondents informed the complainants that a requested list of applicants and their resumes were "not available."

6. By letter filed February 6, 2015, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with copies of all of the records they requested.

7. 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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

> 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, ... or (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

10. It is found that all the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S., to the extent that such records exist and are maintained by the respondents.

11. It is found that the respondents do not maintain a list of applicants for the position of Director of Public Works.

12. It is found that the respondents do maintain the resumes and applications of all applicants for the position, including those of the successful candidate and of the unsuccessful candidates.

13. The respondents told the complainants that the resumes and application materials were "not available" because they believed the records to be exempt in their entirety pursuant to §1-210(b)(2), G.S.

14. Section 1-210(b)(2), G.S., exempts from disclosure: "Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy[.]"

15. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993). The claimant must first 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: first, that the information sought does not pertain to legitimate matters of public concern, and second, that the disclosure of such information is highly offensive to a reasonable person.

16. Section 1-214(b), G.S., provides, in relevant part:

> Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned . . . Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

17. Section 1-214(c), G.S. provides, in relevant part:

> A public agency which has provided notice under subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned ... within seven business days from the receipt by the employee ... 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.

18. It is found that the respondents provided no evidence that they followed the notice requirements of §§1-214(b) and (c), G.S., with respect to any of the candidates, including the candidate who is now the director of public works and an employee of the respondents.

19. It is concluded that the respondents do not have standing to assert the privacy rights of their employee, and further, that any existing privacy rights belong to the employee, and not to the respondents. Kevin Litten and the Waterbury Republican-American v. Chief, Police Departmtyne, City of Torrington; et al; Docket #FIC 2012-711 (June 26, 2013) (respondents lack standing to assert privacy rights of employee); Ken Byron and the Hartford Courant v. First Selectman, Town of Westbrook, Docket #FIC 2002-580 (September 10, 2003); Jonathan Kellogg, Trip Jennings and Waterbury Republican-American v. Chief, Police Department, Borough of Naugatuck and Rick Smolicz, Docket #FIC 2001-489 (September 25, 2002); Thedress Campbell v. City Treasurer, City of Hartford, Docket #FIC 2000-022 (August 9, 2000); Walter J. Casey v. Chairman, Board of Education, Town of Darien, Docket #FIC 1997-068 (October 22, 1997) (right to assert invasion of privacy belongs to employee whose privacy is at issue, and respondents who failed to give required notice to employee do not have standing to assert exemption).

20. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly disclose the application materials of the successful candidate.

21. At the hearing in this matter, the respondents agreed to provide an unredacted copy of the successful candidate's application and resume and to disclose applications and resumes of the unsuccessful candidates redacted so as to shield the identities of such candidates.

22. It is found that on July 16, 2015, the respondents provided such records to the complainants. Together, such records comprise Respondents' Exhibit 1 (after-filed).

23. On August 10, 2015, the respondents submitted an unredacted copy of the applications and resumes of the unsuccessful candidates for in camera review.

24. It is found that following the hearing in this matter, communication among the parties continued, and on August 20, 2015, the respondents provided 22 additional records responsive to the complainants' request.

25. The complainants sent such records to the hearing officer, who accepted them as an after-filed exhibit, marked as Complainants' Exhibit D.

26. It is found that the records provided on August 20, 2015 consist of copies of correspondence to and from candidates selected for an interview, including letters informing of a scheduled interview, thank you letters from interviewed applicants, and letters informing candidates that they did not get the job, as well as an offer letter to the successful candidate.

27. It is found that the in camera records consist of 13 applications, ranging from 5 to 13 pages each.

28. Upon careful inspection of the in camera records, it is found that the requested job applications and resumes are personnel or similar files within the meaning of §1-210(b)(2), G.S.

29. The respondents provided no evidence that they notified the unsuccessful applicants of the complainants' disclosure request, or that any of the unsuccessful applicants objected to disclosure of any of the information contained in their applications.

30. It is found that the respondents redacted information that they claimed could identify the applicant, such as names and addresses of current and previous employers, employment history, educational institutions, and references, as well as personal information such as the applicant's name and address. It is found that the respondents did not redact descriptions of job duties and responsibilities, dates of employment, salary, job title, degrees awarded, honors, licenses or certifications.

31. It is found that the respondents redacted the correspondence pertaining to the unsuccessful candidates in the same manner as they redacted the applications and resumes.

32. It is found that except for birth month and date, home street addresses, personal email addresses, and social security numbers, the redacted information in the applications, resumes, and correspondence pertains to a legitimate matter of public concern; specifically, as

recognized by the complainants, whether the hiring process was conducted properly in light of various alleged improprieties that led to the resignation of the previous director of public works.

33. It is also found that disclosure of the redacted information (except for birth month and date, home street addresses, personal email addresses, and social security numbers) would not be highly offensive to a reasonable person.

34. It is found, therefore, that disclosure of the redacted information (except for birthdates, home street addresses, personal email addresses, and social security numbers) would not constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.

35. It is concluded, therefore, that §1-210(b)(2), G.S., does not exempt the redacted information from disclosure, except as noted in paragraph 34, above.

36. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the requested records in a prompt manner.

37. With respect to the complainants' request for emails, it is found, as described in paragraph 3, above, that the respondents provided 15 pages of responsive emails. At the hearing in this matter, the complainants specifically declined to address the scope of the respondents' search. However, following the hearing in this matter, and based on a string of emails marked as complainants' after-filed exhibit C, the complainants challenged the scope of the respondents' search for responsive emails and now claim that more emails exist than were provided originally.

38. Because this issue was not addressed at the hearing in this matter, the Commission declines to address it herein; however, see the Commission's order, below.

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

1. Within fourteen days of the notice of final decision in this matter, the respondents shall provide the complainants with a copy of the application packages, redacted only as described in paragraph 34.

1. Within fourteen days of the notice of final decision in this matter, the respondents shall search for responsive emails, particularly as outlined in the complainants' email of July 12, 2015 to the respondents' town manager (see complainants' after-filed exhibit C). The respondents shall inform the complainants, in writing, as to the details of the scope of the search, such as whose emails were searched and how the search was conducted. If any responsive emails are discovered that have not previously been provided to the complainants, the respondents shall promptly provide such records to the complainants, free of charge.

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

Lisa Fein Siegel
as Hearing Officer

FIC2015-095/HOR/LFS/09142015