



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Evan Simko-Bednarski and the  
Stamford Advocate,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-271

Executive Director, Human Resources, Stamford Public  
Schools; and Stamford Public Schools,  
Respondent(s)

November 20, 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, December 16, 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 December 4, 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 December 4, 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 December 4, 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: Diego Ibarquen, Esq.  
Amy J. LiVolsi, Esq.  
William B. Wescott, Esq.

2015-11-20/FIC# 2015-271/Trans/wrbp/MES/VB/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Evan Simko-Bednarski and the  
Stamford Advocate,

Complainants

against

Docket #FIC 2015-271

Executive Director, Human Resources,  
Stamford Public Schools; and Stamford  
Public Schools,

Respondents

October 15, 2015

The above-captioned matter was heard as a contested case on September 1, 2015, at which time the complainants and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. At the September 1<sup>st</sup> hearing, the hearing officer granted the request of Attorney William B. Westcott to intervene on behalf of Lee Teich, who is the subject of the requested record at issue in this matter.

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 e-mail dated March 2, 2015, the complainants requested that the respondents provide them with a copy of "the suspension letter sent by Stamford Public Schools to Lee Teich," who is a teacher at Stamford Public High School.
3. It is found that upon receipt of the complainants' request, the respondents identified a responsive record, and after making a determination that disclosure of such record would violate the personal privacy of Mr. Teich, the respondents notified Mr. Teich and his collective bargaining representative of the request.
4. It is found that on March 17, 2015, Mr. Teich objected in writing to the disclosure of the responsive record and indicated that disclosure of the record would constitute an invasion of

his personal privacy.<sup>1</sup> On that same date, it is found that the respondents then informed the complainants of Mr. Teich's objection to the disclosure of the responsive record and consequently refused to disclose that record, in accordance with §1-214(c), G.S.

5. By letter filed on April 15, 2015, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information Act by denying their request for the record.

6. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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 . . . (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 found that the record identified in paragraph 2, above, is a public record within the meaning of §§1-200(5) and 1-210(a), G.S., and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless it is exempt from disclosure.

10. At the hearing on this matter, the respondents and the intervenor contended that the responsive record is exempt from mandatory disclosure pursuant to §1-210(b)(2), G.S., and claimed that disclosure of the record would constitute an invasion of Mr. Teich's personal privacy.

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

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<sup>1</sup>The Commission notes that a Union representative with the Stamford Education Association also made a written objection to the disclosure of the responsive record.

12. 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 such information is highly offensive to a reasonable person.

13. It is found that records relating to the employees of public agencies are presumptively legitimate matters of public concern. Perkins, above, at 174. “[W]hen a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person’s reasonable expectation of privacy is diminished . . . .” Id., at 177. “The public has a right to know not only who their employees are, but also when their public employees are and are not performing their duties.” Id.

14. Furthermore, §1-214, G.S., provides, in relevant part, that:

(b) 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, 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. 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.

(c) 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 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.

15. It is found that, as described in paragraphs 3 and 4, above, after making a determination that disclosure of the requested record would violate the personal privacy of Mr. Teich, the respondents notified Mr. Teich, who objected to disclosure, and the respondents consequently refused to disclose the requested record, in accordance with §1-214(c), G.S.

16. It is found that the respondents' determination that disclosure of the responsive record would legally constitute an invasion of Mr. Teich's personal privacy was made by a human resource professional. It is further found that the determination was based, in part, on an internal investigation by the City of Stamford into the Stamford Board of Education with respect to the alleged failure of its "staff, teachers and administrators to respond appropriately and report allegations" concerning an inappropriate relationship between a teacher and two (2) students, which investigation was being conducted at the time of the complainants' record request. The respondents asserted that due to the nature of the investigation and public attention to that investigation, that releasing the responsive record would have constituted an invasion of Mr. Teich's personal privacy. However, it is also found that Mr. Teich was neither the subject of that investigation nor was he interviewed at any point in conjunction with that investigation.

17. The intervenor asserted that disclosure of the responsive record would constitute an invasion of the personal privacy of Mr. Teich. However, it is found that the intervenor offered no evidence in support of that assertion and only provided conclusory language and generalized allegations.<sup>2</sup>

18. The respondents submitted the responsive record described in paragraph 2, above, to the Commission for an in camera inspection (hereinafter referred to as the "in camera record"). The in camera record is a one-page letter, which shall be identified as IC-2015-271-01.

19. It is found that the in camera record constitutes a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

20. Based on the in camera inspection, it is found that the in camera record relates to an investigation of a public employee and pertains to a legitimate matter of public concern, within the meaning of Perkins, since such record would disclose the manner in which the respondents responded to a matter involving one of its employees. It is found that nothing in the contents of the in camera record is highly offensive to a reasonable person. It is further found, therefore, that disclosure of the in camera record at the time of the complainants' request would not have constituted an invasion of Mr. Teich's personal privacy, within the meaning of §1-210(b)(2), G.S.

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<sup>2</sup>The intervenor's assertion that the complainants incorrectly characterized the contents of the responsive record to reflect a disciplinary action warrants little discussion, as it is a distinction without a difference in the present matter. Regardless of whether the contents of the record are considered to be disciplinary in nature does not impact the Perkins analysis in this instant appeal.


21. It is therefore concluded that the in camera record pertains to a legitimate matter of public concern, and that disclosure of the in camera record would not constitute an invasion of Mr. Teich's personal privacy and, therefore, such record is not exempt from disclosure pursuant to §1-210(b)(2), G.S.

22. The Commission recognizes that the respondents attempted to act in accordance with §1-214, G.S. However, it is found that it was not reasonable, within the meaning of §1-214(b), G.S., for the respondents to believe, at the time of the complainants' request, that disclosure of the in camera record would constitute an invasion of Mr. Teich's personal privacy.

23. Accordingly, it is concluded that the respondents violated the disclosure and promptness requirements of §§1-210(a), 1-212(a) and 1-214(b), G.S., by refusing to provide a copy of the in camera record requested by the complainants.

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

1. Forthwith the respondents shall provide the complainants with a copy of the in camera record.
2. Henceforth, the respondents shall strictly adhere to the disclosure and promptness requirements of §§1-210(a), 1-212(a) and 1-214(b), G.S.

  
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Mary E. Schwind  
as Hearing Officer