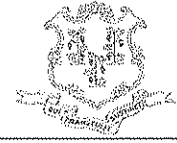


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FREEDOM OF INFORMATION



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Adam Wittenburg and the
Meriden Record Journal,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-648

Personnel Director, City of Meriden; and
Chief, Police Department, City of Meriden
Respondent(s)

June 21, 2012

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, July 11, 2012**. 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 June 29, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**. 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 **fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**, 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: Eric Cotton
John H. Gorman, Esq.
Adam Wittenburg

6/21/12/FIC# 2011-648/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Eric Cotton and the
Meriden Record Journal,

Complainants

against

Docket #FIC 2011-648

Personnel Director, City of Meriden;
and Chief, Police Department,
City of Meriden

Respondents

March 22, 2012

The above-captioned matter was heard as a contested case on March 6, 2012, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. By letter dated February 16, 2012, the Commission received a request to substitute Eric Cotton for Adam Wittenberg as the lead complainant in this matter. Without objection from the respondents, such request is hereby granted and the case-caption has been amended accordingly.

1. The respondents are public agencies, within the meaning of §1-200(1), G.S.
2. It is found that, by emails dated November 21, 2011, the complainants requested from the respondents access to the personnel files of Officers Donald Huston and Brian Sullivan, including all records related to hiring, promotions, disciplinary action/investigations and salary history. It is found that the complainants indicated in their requests that they were not seeking "restricted personal information such as...social security number[s]."
3. It is found that, by email dated November 29, 2011, the respondents informed the complainants that "Brian Sullivan objected to the release of all records pertaining to his DWI arrest and discipline [and] Donald Huston objected to the release of all personnel records." It is found that the respondents provided the complainants with signed copies of the officers' written objections to the disclosure of their records, and that such objections were based on the ground that such disclosure would constitute an invasion of their personal privacy.
4. By letter of complaint, dated and filed November 30, 2011, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records described in paragraph 2, above.

5. 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.

6. 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.

7. 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.”

8. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a). G.S.

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

10. 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 . . . 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.

11. 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 ... 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 ... 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.

12. It is found that counsel for the respondents provided notice to Officers Huston and Sullivan, on two separate occasions, that he would not be representing their interests at the hearing in this matter, and that they should attend the hearing if they wished to be heard. It is further found, however, that neither officer moved to intervene in this matter and that neither appeared at the hearing to offer evidence as to why the disclosure of the records, described in paragraph 2, above, would legally constitute an invasion of their privacy.

13. Accordingly, it is found that the respondents failed to prove that the records, described in paragraph 2, above, are exempt from disclosure, pursuant to §1-210(b)(2), G.S. In addition, it is found that the respondents offered no evidence at the hearing that they reviewed the records, described in paragraph 2, above, to determine that they reasonably believed that disclosure of such records would constitute an invasion of the officers' privacy, prior to notifying the officers of the request for such records, as required by §1-214(b), G.S.

14. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a), 1-212(a), and 1-214(b), G.S.

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 complainant with a copy of the records, described in paragraph 2, above, free of charge. The respondents may redact the

home addresses, social security numbers, and any tax return information that may be contained in such records.

A handwritten signature in cursive script, reading "Kathleen K. Ross", written over a horizontal line.

Kathleen K. Ross
as Hearing Officer

FIC 2011-648/hor/kkr/03222012