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# FREEDOM OF INFORMATION



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Robert Salatto,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2011-631

Chief, Police Department, Town of East Haven;  
and Police Department, Town of East Haven,  
Respondent(s)

September 18, 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, October 10, 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 September 28, 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 September 28, 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 September 28, 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: Robert Salatto  
Joseph M. Merly, Esq.  
Frank J. Kolb, Jr., Esq.

9/18/2012/FIC# 2011-631/Trans/wrbp/VRP/VDH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Robert Salatto,

Complainant

against

Docket #FIC 2011-631

Chief, Police Department,  
Town of East Haven; and  
Police Department,  
Town of East Haven,

Respondents

September 18, 2012

The above-captioned matter was heard as a contested case on July 24, 2012, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.). This matter was consolidated for hearing with Docket #FIC 2011-631, Robert Salatto v. Chief, Police Department, Town of East Haven et al.

Because the respondents had not notified the individuals whose personnel files are a subject of this complaint of the July 24 hearing in this matter, as set forth in the Commission's Order to Show Cause, paragraph 5, the hearing officer ordered the respondents to rectify this failure by notifying those individuals that they had fourteen days to move to reopen the hearing and move to intervene in this matter. That notification was mailed to the individuals on July 27, 2012, and no motions from the individuals were received by the Commission as of the date of this report.

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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. By letter of complaint filed November 18, 2011, the complainant appealed to the Commission, alleging that the respondents denied his November 2, 2011 request for certain public records relating to a motor vehicle accident in which the complainant was

injured in connection with his arrest. The complainant requested the imposition of a civil penalty.

3. It is found that, by letter dated November 2, 2011, the complainant requested:

a. records indicating the aggregate number of motor-vehicle pursuits that occurred involving any East Hartford Police Department (“EHPD”) in 2003, 2004, 2005, 2006, 2007 and 2008, including any document that indicates whether each pursuit ended in arrest and if so, the EHPD case number of such arrests and the name of the officer involved in the pursuit;

b. records that evidence the training of al EHPD police officers, and the specific training requirements required by the Town of East Haven of any EHPD specifically with regard to motor vehicle pursuits;

c. with respect to EHPD officers Klarman, Wombolt and Zullo, a copy of their complete employment and personnel files, their complete Internal Affairs Division files, including one copy of each complaint filed against them;

d. any document that pertains to motor-vehicle pursuit involving Klarman, Wambolt or Zullo, including all arrest reports and corresponding affidavits; and;

e. all documents regarding the termination of former EHPD Police Chief Leonard Gallo’s employment at EHPD.

4. At the conclusion of the hearing, the hearing officer directed the respondents to submit the entire personnel files, including any disciplinary records, of officers Klarman, Wambolt and Zullo, for an in camera inspection.

5. At the hearing, the respondents agreed to provide the motor-vehicle pursuit records described in paragraph 3.a and 3.d, above, with redactions of individuals’ names for erased cases and cases involving juveniles, which redactions the complainant agreed to, on the condition that the case numbers were shown for the cases for which redactions of names had been made.

6. Also at the hearing, the complainant agreed to withdraw his request for the training records described in paragraph 3.b., based on the testimony at the hearing that those records were maintained by the Connecticut Police Officers Standards and Training Council.

7. With respect to the request “all documents in any manner regarding the termination of former EHPD Police Chief Leonard Gallo’s employment at EHPD,” the respondents contend that the request was overbroad. The complainant countered that he was interested in documents that relate to the indictment of officers in East Haven and Chief Gallo’s alleged participation in any wrongdoing, which the complainant believes was the cause of Chief Gallo’s retirement.

8. It is found that the complainant did not frame his request in such a way as to make it reasonable for the respondents to comply with the request, given the divergence between what the complainant asked for and what he seeks. It is also concluded that providing records responsive to the actual request would require research that is not required under the FOI Act.

9. The remaining records at issue in this case are the personnel files of the three EHPD officers.

10. 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.

11. 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, (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.

12. Section 1-212(a)(1), 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.”

13. It is found that the requested personnel files are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

14. Section 1-210(b)(2), G.S., provides that disclosure is not required of “[p]ersonnel 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. The Commission takes administrative notice of the multitude of court rulings, commission final decisions,<sup>1</sup> and instances of advice given by the Commission staff members,<sup>2</sup> which have relied upon the Perkins test, since its release in 1993.

16. It is found that disclosures 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.

17. The respondents maintain that specified sections of Officers Klarman’s, Wambolt’s and Zullo’s personnel files are exempt from disclosure:

- a. Applications for Employment, under §§1-210(b)(2) and (5)(B), G.S.;
- b. Polygraph Reports, under §§1-210(b)(2), (3) and (8), G.S.;
- c. Background Investigations, under §§1-210(b)(2), (3) and (8), G.S.;
- f. National Crime Information Center (“NCIC”) printouts, under §§1-210(b)(2), (3) and (5)(B), G.S.;
- e. National Comprehensive Reports, under §§1-210(b)(2), (3) and (5), G.S.;  
and
- f. school transcripts, under §§1-210(b)(17), G.S.

18. Section 1-210(b)(3), G.S., provides that disclosure is not required of:

Records 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 said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) signed statements of witnesses, (C) information to be used in a prospective law enforcement action if prejudicial to such action, (D) investigatory techniques not otherwise known to the general public, (E) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement

purposes, (F) 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, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (G) uncorroborated allegations subject to destruction pursuant to section 1-216 ....

19. Section 1-210(b)(5)(B), G.S., provides that disclosure is not required of: "Commercial or financial information given in confidence, not required by statute ...."

20. Section 1-210(b)(8), G.S., provides that disclosure is not required of:

Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish the applicant's personal qualification for the license, certificate or permit applied for ....

21. Section 1-210(b)(17), G.S., provides that disclosure is not required of: "Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g ...." "Education records" are defined at 20 U.S.C. §1232g(a)(4)(A) as those records, files, documents, and other materials which (i) contain information directly related to a student and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

22. With respect to the applications for employment referenced in paragraph 16.a, above, it is found that there is no information contained therein which, if disclosed, would be highly offensive to a reasonable person or that is not a legitimate matter of public interest, except for the applicants' social security numbers, motor vehicle operator's license numbers, and the street addresses and telephone numbers of personal references.

23. Also with respect to the applications for employment, it is found that there is no commercial or financial information contained therein, within the meaning of §1-210(b)(5)(B), G.S.

24. With respect to the polygraph reports referenced in paragraph 16.b., above, it is found that these are summaries of polygraph examinations administered as part of a selection process for a position as a police officer.

25. It is found that, with the exception of short descriptions of legal sexual conduct, the information contained therein is a legitimate matter of public concern, and that disclosure would not be highly offensive to a reasonable person, all within the meaning of §1-210(b)(2), G.S.

26. It is also found that the reports were not “compiled in connection with the detection or investigation of crime,” within the meaning of §1-210(b)(3), G.S. It is further found that the reports do not contain “statements of personal worth or personal financial data required by a licensing agency” within the meaning of §1-210(b)(8), G.S.

27. Although not specifically raised by the respondents as an exemption to disclosure of the polygraph reports, it is found that each contains a paragraph summarizing the applicant’s debt and debt history. Given the circumstances surrounding the conduct of a polygraph examination, it is found that this is financial information given in confidence, not required by statute, and that such paragraphs, captioned “Financial History,” are permissibly exempt from disclosure under §1-210(b)(5)(B), G.S.

28. With respect to the employment background investigation reports referenced in paragraph 16.c, above, it is found that there is no information contained therein which, if disclosed, would be highly offensive to a reasonable person or that is not a legitimate matter of public interest, except for the applicants’ social security numbers, the dates of birth of the applicant’s relatives and the street addresses of the individuals named as neighborhood references.

29. It is further found that the employment background investigation reports were not “compiled in connection with the detection or investigation of crime,” within the meaning of §1-210(b)(3), G.S. It is further found that the reports do not contain “statements of personal worth or personal financial data required by a licensing agency” within the meaning of §1-210(b)(8), G.S.

30. With respect to the NCIC printouts referenced in paragraph 16.d, above, it is found that these are printouts of the applicants’ criminal history inquiries, applicants’ vehicles inquiries, and applicants’ vehicle operator licenses inquiries.

31. It is found that the information contained in these printouts is a legitimate matter of public concern, and that disclosure would not be highly offensive to a reasonable person, all within the meaning of §1-210(b)(2), G.S. It is further found that the printouts were not “compiled in connection with the detection or investigation of crime,” within the meaning of §1-210(b)(3), G.S. It is further found that the printouts do not contain “statements of personal worth or personal financial data required by a licensing agency” within the meaning of §1-210(b)(8), G.S.

32. It is found that the National Comprehensive Reports referenced in paragraph 16.e, above, are printouts of information including the applicants’ drivers licenses, addresses, phone listings, property owners, vehicle registrations, watercraft, and professional licenses.

33. It is found that, with the exception of the drivers’ license numbers, the information contained in these National Comprehensive Report printouts is a legitimate matter of public concern, and that disclosure would not be highly offensive to a reasonable person, all within the meaning of §1-210(b)(2), G.S.. It is further found that

the printouts were not “compiled in connection with the detection or investigation of crime,” within the meaning of §1-210(b)(3), G.S. It is further found that the printouts do not contain “statements of personal worth or personal financial data required by a licensing agency” within the meaning of §1-210(b)(8), G.S.

34. With respect to the transcripts referenced in paragraph 16.f, above, it is found that those copies of transcripts are maintained by the respondents, not by an educational agency or institution or by a person acting for such agency or institution, and therefore are not exempt from disclosure pursuant to §1-210(b)(17), G.S.

35. Although not raised by the respondents, it is concluded that the officers’ residential addresses are exempt from disclosure pursuant to §1-217, G.S.

36. It is concluded that, with the exception of the specific discrete information described in the findings above concerning social security numbers, drivers license numbers, dates of birth, street addresses, legal sexual conduct, and financial information given in confidence, and the officers’ current residential addresses, the requested personnel files are not permissibly exempt from disclosure, and that the respondents violated §1-210, G.S., by withholding the files in their entireties.

37. The Commission takes administrative notice of its records and files in Docket #FIC 2011-559, Salatto v. East Haven Police Department et al., in which the Commission concluded that the respondents had failed to submit records of internal investigation of Officer Zullo for an in camera review.

38. It is found that the respondents submitted no records of internal investigations of Officers Wambolt or Klarman.

39. No evidence at the hearing was presented concerning the existence or non-existence of such records of internal investigation of Officers Wambolt or Klarman.

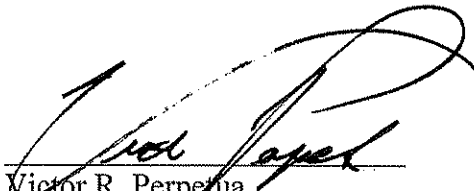
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall forthwith provide copies of the three requested personnel files to the complainant, free of charge. The respondents may redact the records consistently with the exemptions found to apply in this decision. The records shall be delivered to the complainant’s attorney, Katrena Engstrom, 51 Elm Street, Suite 409, New Haven CT 06510.

2. If they have not already done so, the respondents shall provide a copy of the records described in paragraph 5, of the findings, above, to the complainant, free of charge. The records shall be delivered to the complainant’s attorney, Katrena Engstrom, 51 Elm Street, Suite 409, New Haven CT 06510.



3. The respondents shall forthwith conduct a diligent search for any records of internal investigations of Officers Wambolt and Klarman. The respondents shall forthwith provide to the complainant, free of charge, copies of any such records. If no such records exist, the respondents shall prepare an affidavit to that effect. The records or affidavits, or both, shall be delivered to the complainant's attorney, Katrena Engstrom.



Victor R. Perpetua  
as Hearing Officer

FIC2011-631/HOR/VRP/09182012

## 1. ENDNOTES

Court cases

Payne v. City of Danbury, 267 Conn. 669 (2004); Director, Retirement & Benefits Services Div. v. FOIC, 256 Conn. 764 (2001); Rocque v. FOIC, 255 Conn. 651 (2001); Dept. of Public Safety v FOIC, 242 Conn. 79 (1997); Conn. Alcohol & Drug Abuse Commission v. FOIC, 233 Conn.28 (1995); Kurecza v. FOIC, 228 Conn. 271 (1994); First Selectman v. FOIC, 60 Conn. App. 64 (2000); Dept. of Children & Families v. FOIC, 48 Conn. App. 467 (1998); Almeida v. FOIC, 39 Conn. App. 154 (1995); Town of Enfield v. Freedom of Information Commission, Super Ct JD NB CV 06 4012219 S (Cohn, J. 2007); Chairman, Board of Ethics, Town of Greenwich and Board of Ethics, Town of Greenwich v. Freedom of Information Commission and Michael Aurelia, Super Ct JD NB CV 05 400 7004 S (Owens, J. 2006); Dept. of Transportation v. FOIC, Super Ct JD NB CV 01-0508810 (Schuman, J. 2001); City Treasurer, City of Hartford v. FOIC, Super Ct JD NB CV 99 0496222 (Cohn, J. 2000); Rocque, Commissioner of Environmental Protection v. FOIC, Super Ct JD NB CV 98 0492734 (Hartmere, J. 1999); Director, Retirement & Benefits Services Div. v. FOIC, Super Ct JD NB CV 98 0492692 (Hartmere, J. 1999); First Selectman, Town of Ridgefield v. FOIC, Super Ct JD NB CV 99-0493041 (McWeeny, J. 1999); Chairman, Bd. of Education Town of Darien v. FOIC, Super Ct JD Htfd NB CV 97 0575674 (McWeeny, J. 1998); Waters, Commissioner of State of Conn. Dept. of Administrative Services v. FOIC, Super Ct JD Htfd/NB CV 96 0565853 (McWeeny, J. 1997); Armstrong, Commissioner of State of Conn. Dept. Of Correction v. FOIC, Super Ct JD Htfd/NB CV 96 0563608 (McWeeny, J. 1997); Dept. of Children & Families v. FOIC, Super Ct JD Htfd NB CV 96 0562546 (McWeeny, J. 1997); State of Conn. Office of Protection and Advocacy for Persons with Disabilities v. FOIC, Super Ct JD Htfd/NB CV 95 0554467 (McWeeny, J. 1997); Youngquist v. FOIC, Super Ct JD Htfd/NB, CV 95 0554601 (McWeeny, J. 1996 and 1997); Cracco v. FOIC, Super Ct JD Htfd/NB, CV 94 0705371 (Dunnell, J. 1995); Cracco v. FOIC, Super Ct JD Htfd NB, CV 93 0705370, (Dunnell, J. 1995); Cracco v. FOIC, Super Ct JD Htfd NB, CV 94 0705369, (Dunnell, J. 1995); Simonds v. FOIC, Super Ct JD Htfd/NB, CV 93 070 41 39 (Maloney, J. 1994); Gallagher v. FOIC, Super Ct JD Htfd/NB, CV 93 0531514 (Maloney, J. 1994).

FOIC Decisions

Docket #FIC 2007-580; Town of Putnam and Putnam Board of Education v. Commissioner, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety (May 28, 2008); Docket #FIC 2007-447; Daniel Mathena v. Chief, Police Department, Town of Simsbury (April 23, 2008); Docket #FIC 2007-560; Kenneth D. Goldberg v. Executive Director, Greater Hartford Transit District; and Greater Hartford Transit District (April 9, 2008); Docket #FIC 2007-513; Elizabeth Benton and the New Haven Register v. Chairman, Board of Commissioners, Housing Authority, Town of Derby (April 9, 2008); Docket #FIC 2007-317; James Baker v. Warden, State of Connecticut, Department of Correction, Osborn

Correctional Institution (April 9, 2008); Docket #FIC 2007-221; Jon Lender and The Hartford Courant v. Executive Director, State of Connecticut, Office of State Ethics; General Counsel, State of Connecticut Office of State Ethics; Citizen's Ethics Advisory Board, State of Connecticut, Office of State Ethics; and State of Connecticut, Office of State Ethics (March 26, 2008); Docket #FIC 2007-469; Lawrence C. Sherman v. Board of Education, West Hartford Public Schools (March 12, 2008); Docket #FIC 2007-315; Dawne Westbrook v. Commissioner, State of Connecticut, Department of Correction (January 23, 2008); Docket #FIC 2007-298; Josh Kovner and the Hartford Courant v. Chief, Police Department, City of Middletown (November 14, 2007); Docket #FIC 2007-416; Junta for Progressive Action, Inc.; Unidad Latina en Accion; and The Jerome N. Frank Legal Services Organization v. John A. Danaher III, Commissioner, State of Connecticut, Department of Public Safety (November 8, 2007); Docket #FIC 2006-502; David P. Taylor v. Commissioner, State of Connecticut, Department of Correction (September 12, 2007); Docket #FIC 2007-123; Jessica Crowley and Isabella O'Malley v. Commissioner, State of Connecticut, Department of Public Health (August 8, 2007);

Docket #FIC 2006-467; Charlie Santiago Zapata v. Commissioner, State of Connecticut, Department of Correction (August 8, 2007); Docket #FIC 2006-374; Burton Weinstein v. Commissioner, State of Connecticut, Department of Public Safety (July 11, 2007); Docket # 2006-343; Stephanie Reitz and the Associated Press v. Commissioner, State of Connecticut, Department of Correction (June 27, 2007); Docket #FIC 2006-098; Louis J. Russo v. Director, State of Connecticut, University of Connecticut Health Center, Office of Health Affairs Policy Planning; and Dr. Jacob Zamstein (February 28, 2007); Docket #FIC 2006-258; John Orr v. First Selectman, Town of Essex (January 24, 2007); Docket #FIC 2006-242; Ismael Hernandez III v. Director of Labor Relations, Labor Relations Office, City of Bridgeport (January 24, 2007); Docket #FIC 2006-292; Mary Ellen Fillo and The Hartford Courant v. Chief, Volunteer Fire Department, Town of Newington (January 10, 2007); Docket #FIC 2006-121; John Bolton v. Personnel Director, Civil Service Commission, City of Bridgeport; and Civil Service Commission, City of Bridgeport (December 13, 2006); Docket #FIC 2005-571; Alexander Wood and the Manchester Journal Inquirer v. Director, Human Resources Department, Town of Windsor (October 25, 2006); Docket #FIC 2005-535; Alexander Wood and The Manchester Journal-Inquirer v. Director of Human Resources, Town of Windsor (October 25, 2006); Docket #FIC 2005-511; Don Stacom and the Hartford Courant v. John Divenere, Chief, Police Department, City of Bristol (October 11, 2006); Docket #FIC 2005-508; Connecticut State Conference of NAACP Branches v. Chief, Police Department, City of Bristol (October 11, 2006); Docket #FIC 2005-478; Doreen Guarino and the Manchester Journal-Inquirer v. Chief, Police Department, Town of Enfield (September 13, 2006); Docket #FIC 2005-473; Alexander Wood, Heather Nann Collins, and the Manchester; Journal-Inquirer v. Executive Director, State of Connecticut, Board of Education; and Services for the Blind (September 13, 2006); Docket #FIC 2005-448; Susan Raff and WFSB TV v. Mayor, City of Middletown (September 13, 2006); Docket #FIC 2005-615; James E. Simpson v. Chief, Police Department, Town of Seymour (August 23, 2006); Docket #FIC 2005-436; Suzanne Risley and the Waterbury Republican-American v. Chief, Police Department, City of Torrington (August 23, 2006); Docket #FIC 2005-242; Michelle Tuccitto and The New Haven Register v. Chief, Police Department, City of New Haven (May 10, 2006); Docket #FIC 2005-096; Richard

Fontana, Jr. v. Board of Fire Commissioners, West Shore Fire District (February 8, 2006); Docket #FIC 2005-058; Glenn C. Morron and William Hertler, Jr. v. J. Edward Brymer, Chief, Police Department, City of Middletown; Phillip Pessina, Deputy Chief, Police Department, City of Middletown; and Lyn Baldoni, Deputy Chief, Police Department, City of Middletown (January 25, 2006); Docket #FIC 2005-081; Megan Bard and the New London Day v. Superintendent of Schools, Canterbury Public Schools; and Board of Education, Canterbury Public Schools (October 26, 2005); Docket #FIC 2004-289; Lisa A. Coleman v. Chief, Police Department, Town of New Milford (June 22, 2005); Docket #FIC 2004-408; Michael Aurelia v. Chairman, Board of Ethics, Town of Greenwich; and Board of Ethics, Town of Greenwich (May 11, 2005); Docket #FIC 2004-197; Maria McKeon v. Town Manager, Town of Hebron (March 23, 2005); Docket #FIC 2004-159; Jason L. McCoy v. Town Manager, Town of Rocky Hill (March 23, 2005); Docket #FIC 2004-119; Dawne Westbrook v. Chief, Police Department, Town of Rocky Hill; and Robert Catania (February 9, 2005); Docket #FIC 2004-092; Dan Levine v. Public Information Officer, Police Department, City of Hartford (February 9, 2005); Docket #FIC 2004-005; Ralph W. Williams Jr. and The Manchester Journal Inquirer v. State Connecticut, Office of the Governor (Oct. 13, 2004); Docket #FIC 2003-456; Thomas O'Brien v. Chief, Police Department, Town of Waterford (Oct. 13, 2004); Docket #FIC 2003-454; Michael C. Bingham and Business New Haven v. Commissioner, State of Connecticut, Department of Banking (Sept. 22, 2004); Docket #FIC 2003-382; Michael J. McMullen v. Town Administrator, Town of Vernon (Sep. 22, 2004); Docket #FIC 2004-100; Jerry Romaniello and the Greenwich Firefighters Association v. First Selectman, Town of Greenwich (Sept. 8, 2004); Docket #FIC 2003-348; Alexander Wood and the Journal Inquirer, v. Town Manager, Town of South Windsor (Sep. 8, 2004); Docket #FIC 2003-386; Mathew L. Brown and the Willimantic Chronicle, v. President and Chief Executive Officer, Windham Mills Development Corp. (Aug. 11, 2004); Docket #FIC 2003-285; Frank C. Violissi, Jr. v. First Selectman, Town of Chester (May 26, 2004); Docket #FIC 2003-074; Heather M. Henderson v. State of Connecticut, Department of Public Safety, Legal Affairs Department (Dec. 10, 2003); Docket #FIC 2003-020; Hugh Curran v. Mayor, City of Waterbury (Sept. 10, 2003); Docket #FIC 2002-580; Ken Byron and The Hartford Courant v. First Selectman, Town of Westbrook (Sept. 10, 2003); Docket #FIC 2003-038 Chris Dehnel and The Journal Inquirer v. First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2002-531 Chris Dehnel and Journal Inquirer First Selectman, Town of Ellington (Aug. 27, 2003); Docket #FIC 2003-055; Robert Mack v. Director, State of Connecticut, Department of Correction, Labor Relations (July 23, 2003); Docket #FIC 2002-345; Josh Kovner, Chris Keating, and The Hartford Courant v. Chief, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-338; Amy L. Zitka and The Middletown Press v. Chief, Police Department, City of Middletown; and Professional Standards Unit Supervisor, Police Department, City of Middletown (July 23, 2003); Docket #FIC 2002-465; Fred Radford v. Chairman, Police Commission, Town of Trumbull; and Chief, Police Department, Town of Trumbull (July 9, 2003); Docket #FIC 2002-118; Kimberly W. Moy and the Hartford Courant v. Superintendent of Schools, Southington Public Schools (Feb. 26, 2003); Docket #FIC 2002-020; Maurice Timothy Reidy and The Hartford Courant v. Chief, Police Department, Town of Newington and Brendan Fitzgerald (Oct. 23, 2002); Docket #FIC 2001-489 Jonathan Kellogg, Trip Jennings and Waterbury Republican-

American Chief, Police Department, Borough of Naugatuck and Rick Smolicz (Sept. 25, 2002); Docket #FIC 2002-173; Carrie J. Campion v. Director, Department of Human Resources, Town of Fairfield (Aug. 28, 2002); Docket #FIC 2001-425 Joseph Mincewicz, Commissioner, State of Connecticut, Department of Public Safety, Division of State Police; and State of Connecticut, Department of Public Safety, Division of State Police (Aug. 28, 2002); Docket #FIC 2001-421 Jean M. Morningstar and University Health Professionals Local 3837, AFT-CFEPE, AFL-CIO v. Executive Vice President for Health Affairs, State of Connecticut, University of Connecticut Health Center; and State of Connecticut, University of Connecticut Health Center; and Justin Radolf, M.D., Director, Center for Microbial Pathogenesis, School of Medicine, University of Connecticut Health Center (Aug. 28, 2002); Docket #FIC 2002-093 Sean P. Turpin v. Director, Department of Human Resources, Town of Greenwich and Steve Demetri (July 24, 2002); Docket #FIC 2002-034; MariAn Gail Brown, Michael P. Mayko and Connecticut Post Michael Lupkas, Comptroller, City of Bridgeport; Christopher Duby, Chief of Staff, City of Bridgeport; Mark Anastasi, City Attorney, City of Bridgeport; and Gregory Conte, Deputy Chief of Staff, City of Bridgeport (June 26, 2002); Docket #FIC 2001-364; Karen Guzman and The Hartford Courant v. City of New Britain Docket (June 26, 2002); Docket #FIC 2001-180 James H. Smith and The Record Journal Publishing Company v. Commissioner, State of Connecticut, Department of Public Safety, Division of State Police; and State of Connecticut, Department of Public Safety, Division of State Police (Feb. 13, 2002); Docket #FIC 2001-129; Kimberly W. Moy and The Hartford Courant v. Police Commission, Town of Southington (Feb. 13, 2002); Docket #FIC 2001-251 Fred Radford v. Chief, Police Department, Town of Trumbull (Jan. 23, 2002); Docket #FIC 2000-624; Eric Gustavson v. Board of Education, Brookfield Public Schools (June 13, 2001); Docket #FIC 2000-557; Wendy John v. Richard Blumenthal, Attorney General, State of Connecticut, Office of the Attorney General; Wil Gundling, William McCullough, Phillip Schulz, Margaret Chapple, Assistant Attorneys General, State of Connecticut, Office of the Attorney General; and State of Connecticut, Office of the Attorney General (June 13, 2001); Docket #FIC 2000-268; Michael Costanza and The Day v. Director of Utilities, Utilities Department, City of Groton; and Mayor, City of Groton (April 25, 2001); Docket #FIC 2000-198; William J. Stone v. Personnel Administrator, State of Connecticut, Department of Transportation, Bureau of Finance and Administration; and State of Connecticut, Department of Transportation (April 20, 2001); Docket #FIC 2000-537; James Leonard, Jr. v. Chief, Police Department, City of New Britain (March 28, 2001); Docket #FIC 2000-348; Bradshaw Smith v. Office of the Vice Chancellor for Information Services, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut (February 28, 2001); Docket #FIC 2000-474; Robert H. Boone and Journal Inquirer v. Chief, Police Department, Town of Windsor Locks (Jan. 24, 2001); Docket #FIC 2000-265; Lisa Goldberg and The Hartford Courant v. Superintendent of Schools, Vernon Public Schools (Jan. 24, 2001); Docket #FIC 2000-569; Mary Hyde v. Chief, Police Department, Town of Seymour (Dec. 13, 2000); Docket #FIC 2000-049; Nicholas B. Wynn v. Board of Directors, Ansonia Public Library, Town of Ansonia (Dec. 13, 2000); Docket #FIC 2000-136; Thomas E. Lee v. Board of Education, Trumbull Public Schools; and Superintendent of Schools, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC 2000-135; Thomas E. Lee v. Board of Education, Trumbull Public Schools; and Superintendent of Schools,

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Brian Phipps, and Howard Tinney as members of the Ansonia Board of Police Commissioners (Sept. 25, 1996); Docket #FIC1995-358; Lyn Bixby and The Hartford Courant v. State of Connecticut, Department of Administrative Services (Sept. 25, 1996); Docket #FIC 1996-056; Francine Cimino v. Chief of Police, Glastonbury Police Department; Town Manager, Town of Glastonbury; and Town of Glastonbury (Sept. 25, 1996); Docket #FIC 1995-343; John J. Woodcock, III v. Town Manager, Town of South Windsor (July 24, 1996); Docket #FIC 1995-324; John J. Woodcock, III and Kathryn A. Hale v. Dana Whitman, Jr., Acting Town Manager, Town of South Windsor (July 24, 1996); Docket #FIC 95-251; Lyn Bixby & The Hartford Courant v. Commissioner, State of Connecticut, Department of Correction (July 10, 1996); Docket #FIC 1995-252; Valerie Finholm and The Hartford Courant v. Commissioner, State of Connecticut, Department of Children and Families (May 22, 1996); Docket #FIC 1995-193; Terence P. Sexton v. Chief of Police, Hartford Police Department (May 8, 1996); Docket #FIC 1995-125; Chris Powell and Journal Inquirer v. Commissioner, State of Connecticut, Department of Social Services (March 13, 1996); Docket #FIC 1995-081; Bruce Bellm, Kendres Lally, Philip Cater, Peter Hughes, Carol Northrop, Brad Pellissier, Todd Higgins and Bruce Garrison v. State of Connecticut, Office of Protection and Advocacy for Persons with Disabilities, Sharon Story and Marlene Fein (March 13, 1996); Docket #FIC 1995-074; Jeffrey C. Cole and WFSB/TV 3 v. James Strillacci, Chief of Police, West Hartford Police Department (Jan. 24, 1996); Docket #FIC 1995-026; Curtis R. Wood v. Director of Affirmative Action, State of Connecticut, Department of Correction (Jan. 24, 1996); Docket #FIC 1995-132; Michael A. Ingrassia v. Warden, Walker Special Management Unit, State of Connecticut Department of Correction (Dec. 27, 1995); Docket #FIC 1995-048; Jane Holfelder v. Canton Police Department (June 14, 1995); Docket #FIC 1994-351; Edward A. Peruta v. O. Paul Shew, Rocky Hill Town Manager and Director of Public Safety; Donald Unwin, Mayor of Rocky Hill, William Pacelia, Deputy Mayor of Rocky Hill; and Curt Roggi, Rocky Hill Town Attorney (May 28, 1995); Docket #FIC 1994-160; John Springer and The Bristol Press v. Chief of Police, Bristol Police Department (April 5, 1995); Docket #FIC 1994-077; Kathryn Kranhold and The Hartford Courant v. Director, New Haven Health Department (Feb. 8, 1995); Docket #FIC 1994-099; Frank Faraci, Jr. v. Middletown Police Department, Mayor of Middletown, and Middletown City Attorney (Feb. 2, 1995); Docket #FIC 1994-011; Robert Grabar, Edward Frede and The News-Times v. Superintendent of Schools, Brookfield Public Schools and Brookfield Board of Education (Aug. 24, 1994); Docket #FIC 1993-279; Jay Lewin v. New Milford Director of Finance (March 23, 1994).

## 2. ENDNOTES

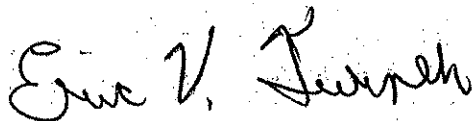
### AFFIDAVIT OF ERIC V. TURNER

Eric V. Turner, having been duly sworn, does hereby depose as follows:

1. I am over the age of eighteen (18) years and understand the obligation of an affirmation.
2. I am a member of the Connecticut Bar and am currently employed as Director of Public Education for the Connecticut Freedom of Information Commission, having first been employed by said commission in 1996.
3. I am providing this affidavit in light of the Supreme Court decision in *Director, Retirement & Benefits Services Division v. Freedom of Information Commission*, 256 Conn. 764 (2001), in which the court apparently invites a reconsideration of *Perkins v. Freedom of Information Commission*, 228 Conn. 158 (1993). See, *Director*, supra at 782, fn 13, 785 (Zarella, J. concurring).
4. As part of my responsibilities as Director of Public Education for said commission, I have developed, organized and scheduled speaking engagements, seminars and programs explaining the duties and rights established under the Connecticut Freedom of Information Act.
5. Since I assumed my current position in 1996, there have been approximately 290 such speaking engagements, seminars and programs in Connecticut and I have personally lectured in approximately 80 such speaking engagements, seminars and programs.
6. As part of the presentation I have prepared for such speaking engagements, seminars and programs, the subject of the Connecticut General Statutes Section 1-210(b)(2) exemption for personnel, medical and similar files the disclosure of which would constitute an invasion of personal privacy is stressed because of the great interest in that exemption and the confusion generated by a series of inconsistent and contradictory court decisions prior to *Perkins*, supra. See, e.g., *Chairman v. Freedom of Information Commission*, 217 Conn. 193 (1991) (establishing “reasonable expectation of privacy” test; query whether subjectively or objectively applied) and *Board of Education v. Freedom of Information Commission*, 210 Conn. 590 (1989) (confirming a “balancing” test), which was overruled by the *Chairman* case.
7. Since the Supreme Court ruling in *Perkins*, supra, all Freedom of Information Commission staff members who conduct such speaking engagements, seminars and programs discuss in detail the rulings in that case and its progeny.
8. As part of my responsibilities as Director of Public Education, I also answer telephone and other inquiries from public officials and the public. Since my employment with said

commission, I have answered thousands of such inquiries, including hundreds of inquiries concerning the Connecticut General Statutes Section 1-210(b)(2) exemption. In responding to such inquiries I discuss in detail the *Perkins* case and its progeny.

9. Based on the foregoing experiences, it is my opinion that the *Perkins* decision, and its progeny, have had a beneficial effect on public officials and the public itself because they can rely on a now long-standing and clear test with respect to the Connecticut General Statutes Section 1-210(b)(2) exemption, which helps them determine whether that exemption is applicable to the practical problems they encounter with respect to personnel, medical and similar information. Indeed, the many court and Freedom of Information Commission decisions applying the *Perkins* test have given public officials and the public a now consistent body of law concerning that statutory exemption.



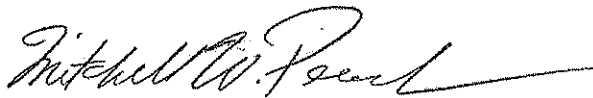
Eric V. Turner

**COUNTY OF HARTFORD**

**ss: Hartford**

**STATE OF CONNECTICUT**

Subscribed and attested to before me this 9th day of January, 2002.



Mitchell W. Pearlman  
Commissioner of the Superior Court