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FREEDOM OF INFORMATION



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Don Stacom and the Hartford Courant,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-449

Personnel Director, City of New Britain; and
City of New Britain,
Respondent(s)

May 1, 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, May 23, 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 May 11, 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 May 11, 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 May 11, 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: Don Stacom
Joseph E. Skelly, Jr., Esq.

5/1/12/FIC# 2011-449/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Don Stacom and the Hartford Courant,

Complainants

against

Docket #FIC 2011-449

Personnel Director, City of New Britain;
and City of New Britain

Respondents

April 20, 2012

The above-captioned matter was heard as a contested case on January 27, 2012, 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, by letter dated May 2, 2011, the complainants made a request to the respondents for access to the following records:
 - a. All complaints from current or former police officers to the Personnel Department from 2007 forward including memos, reports, correspondence and associated documents; and
 - b. The unredacted personnel file of John Carlone, including any Internal Affairs reports, evaluations, memos from supervisors or civilians, or associated documents.
3. It is found that, by email dated May 11, 2011, the respondents acknowledged the complainants' request for access to records. It is further found that, in their acknowledgement, the respondents stated that the city would make the personnel file, referred to in paragraph 2.b, above, available for the complainants' review. It is further found that, in response to the request referred to in paragraph 2.a, above, the respondents informed the complainants that two such complaints existed. It is further found that the respondents stated that they would make one of the complaints available for the

complainants' review, but claimed that the second complaint, which dealt with allegations of sexual harassment, was exempt from disclosure.

4. It is found that, by letter dated May 23, 2011, the complainants corresponded with the respondents, suggesting that, with regard to the second complaint, referred to in paragraph 3, above, the respondents propose for the complainants' consideration some narrowly tailored redactions to the records.¹

5. It is found that, by email dated May 27, 2011, the respondents informed the complainants that the person who had filed the second complaint informed the city that he or she objected to the disclosure of the records.

6. It is found that, by letter dated August 11, 2011, the complainants renewed their request for the second complaint. It is further found that, at this time, other than the second complaint, the complainants had received access to the other records identified in paragraph 2, above.

7. By letter dated August 26, 2011 and filed August 30, 2011, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for access to the second complaint.

8. 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.

9. 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, (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.

¹ For purposes of clarity, in the May 23, 2011 correspondence, the complainants mention a separate request for access to records that they delivered to the respondents on May 12, 2011. At the contested case hearing, the parties agreed that the May 12, 2011 request is not at issue in this case.

10. 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.”

11. It is found that the respondents maintain the records described in paragraph 2.a, above, and it is therefore concluded that such records are “public records” within the meaning of §§1-210(a) and 1-212(a), G.S.

12. At the hearing on this matter, the respondents contended that the records comprising the second complaint are exempt from disclosure pursuant to §1-210(b)(2), G.S. The respondents raised Rocque v. FOIC, 255 Conn. 651 (2001) as further support that these records contain exempt information.

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

14. 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. The Commission takes administrative notice of the multitude of court rulings, Commission final decisions (Endnote 1), and instances of advice given by the Commission and staff members (Endnote 2), which have relied upon the Perkins test, since its release in 1993.

15. Section 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.

16. It is found that the second complaint deals with allegations of sexual harassment. It is found that the respondents timely notified both the individual who had filed the complaint and such individual's collective bargaining representative that these records had been requested. It is further found that the complainant filed an objection to the disclosure of the records, within the meaning of §1-214, G.S.

17. It is found that the records at issue constitute a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

18. At the contested case hearing, the complainants moved that the respondents be ordered to submit the records at issue to the Commission for an in camera review. The hearing officer granted the complainants' motion.

19. On February 2, 2012, the respondents submitted the records at issue to Commission for an in camera review (hereinafter the "in camera records"). The in camera records consist of 5 pages. The in camera records shall be identified at IC-2011-449-1 through IC-2011-449-5.

20. The respondents contended at the hearing that preserving the confidentiality of these records is necessary for maintaining the integrity of the respondents' investigative process with respect to sexual harassment complaints. The respondents further contended that the identity of the sexual harassment complainant is exempt from disclosure. In support of their position, the respondents raised Rocque v. FOIC, 255 Conn. 651 (2001) and submitted into evidence the city's policy and procedure with regard to sexual

harassment complaints.

21. In Rocque, the Supreme Court identified two categories of records. The first category consisted of records revealing the identity of a sexual harassment complainant. Rocque, 255 Conn. 664. The second category consisted of records revealing the manner in which a public agency conducts an investigation into allegations of harassment. Id. With regard to the first category, the court held the identity of a sexual harassment complainant was not a legitimate matter of public concern because the disclosure of such information would do nothing to assist in the public's understanding or evaluation of a public agency's investigative process. Id. at 664. With regard to the second category of records, the court found that such records were a matter of legitimate public interest because they facilitated the public's understanding and evaluation the public agency's investigative process. Id. at 664-65. Within this second category of records, the court found that sexually explicit or descriptive detail of the harassment contained within the investigative records in that case was not a legitimate matter of public concern. Id. at 664-65.

22. It is found that the in camera records do contain the name of the sexual harassment complainant in several places. It is further found that IC-2011-249-4 reveals the complainant's home address. It is found that neither the name nor the address of the complainant pertains to legitimate matters of public concern. It is further found that the disclosure of this information would be highly offensive to a reasonable person. It is found that, in this case, the complainant's confidentiality is preserved by the redaction of such individual's name and other identifying information from the in camera records.

23. In addition, after a careful review of the in camera records, it is found that no portion of the in camera records can be categorized as "sexually explicit or descriptive information, such as allegations of sexual contact [or] sexual improprieties, [or] details of intimate personal relationships." Rocque, 255 Conn. at 655 (citation omitted). In fact, with regard to the allegations of sexual harassment, the in camera records contain only general allegations, which in no way implicate the concern for salacious detail expressed by the Rocque court.

24. It is found that, other than the name and the address of the complainant, the remainder of the records contains the information which formed the basis for the complaint and reveals the manner in which the public agency dealt with this matter. It is found that such records are necessary to and facilitate the public's understanding and evaluation of the respondent city's investigative process, decision-making and overall handling of an important matter involving a public employee. Accordingly, it is found that such records pertain to legitimate matters of public concern. It is further found that the disclosure of such information would not be highly offensive to a reasonable person.

25. It is found that the disclosure of the in camera records, other than the name and the address of the complainant, would not constitute an invasion of personal privacy, within the meaning of §1-210(b)(2), G.S. It is therefore concluded that such records are not exempt from disclosure by virtue of said provision.

26. With regard to the records in this case, the respondents did not provide any evidence from which it could be determined that the disclosure of these records would compromise the respondents' process of investigating sexual harassment complaints filed by police officers. Moreover, it is found that, while the respondent city's policy with regard to investigating allegations of sexual harassment states that "[i]nformation concerning any complaint will only be shared or released on a need-to-know basis", such a representation is not state statute which provides the clear, affirmative statement of confidentiality required to shield the records at issue from public disclosure under the FOI Act. See, e.g., Chief of Police v. FOIC, 252 Conn. 377, 399 (stating that the "except as otherwise provided by any federal law or state statute" language of §1-210(a) of the FOI Act was "intended to refer to other federal and state laws that by their terms shield specific information from disclosure").

27. Based on the foregoing, with the exception of the name and the address complainant, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by denying the complainants' request for access to the records pertaining to the second complaint.

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 the complainants with a copy of the records at issue, free of charge. In complying with this order, the respondents may redact from the in camera records the name and the address of the sexual harassment complainant.

2. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a), 1-212(a) and 1-214(b), G.S.



Valicia Dee Harmon
as Hearing Officer

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. Champion 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, Trumbull Public Schools (Nov. 29, 2000); Docket #FIC2000-086; Mitchell D. Poudrier v. Superintendent of Schools, Killingly Public Schools (Sept. 13, 2000); Docket #FIC 2000-173; Robert H. Boone and the Journal Inquirer v. Anthony Milano, District Manager, Metropolitan District

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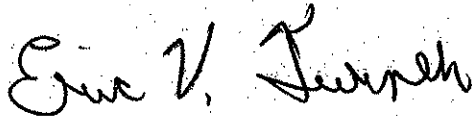
2. ENDNOTES

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.



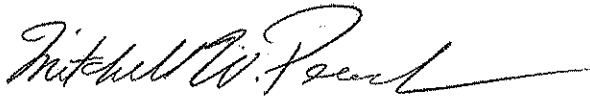
Eric V. Turner

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