

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Eldridge,

Complainant

against

Docket #FIC 2017-0244

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

April 11, 2018

The above-captioned matter was heard as a contested case on July 18, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The motion by the subject of the requested records, David Moore, to intervene as a party was granted.

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 May 4, 2017, the complainant appealed to the Commission, alleging that the respondents denied his request for certain public records.
3. It is found that the complainant made a March 24, 2017 request to the respondents for copies of the results of two polygraph examinations administered to the intervenor.
4. It is found that the respondents notified the intervenor of the request on April 10, 2017, and that the intervenor timely objected to the release of the documents on April 14, 2017.
5. It is found that the respondents denied the complainant's request on April 18, 2017.
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, ... 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:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, ... or (3) receive a copy of such records in accordance with section 1-212.

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

9. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. The respondents submitted the requested records for an in camera inspection.

11. The respondents claim that §1-210(b)(6), G.S., exempts the requested records from disclosure.

12. Section 1-210(b)(6), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of “[t]est questions, scoring keys and other examination data used to administer ... [an] examination for employment

13. It is found that the intervenor underwent two polygraph examinations nearly 20 years ago. The first occurred in 1997 during his employment application to the Milford Police Department. The second occurred in 1999 during his employment application to the Shelton Police Department, where he currently is a lieutenant.

14. It is found that the records requested by the complainant are summaries of these two examinations, and that the records recite the intervenor’s responses to the questions put to him during the examination.

15. It is found that advance knowledge of the questions that may be put to the subject of a polygraph examination makes it possible for the subject to prepare for the examination, control his reaction to questions, and employ “counter measures” to deceive the examiner.

16. After a careful examination of the in camera records, it is found that lines 6 through 47 of the 1997 examination recite the intervenor’s answers to the questions put to him, and that his answers reveal the questions he was asked.

17. After a careful examination of the in camera records, it is found that lines 7 through 75 of the 1999 examination recite the intervenor’s answers to the questions put to him, and that his answers reveal the questions he was asked.

18. It is therefore concluded that the portions of the in camera records described in paragraphs 16 and 17, above, are permissibly exempt from disclosure, and that the respondents did not violate the FOI Act by withholding them.

19. Section 1-217(a)(2), G.S., provides in relevant part:

No public agency may disclose, under the Freedom of information Act, from its personnel medical or similar files, the residential

address of any of the following persons employed by such agency:
... (2) [a] sworn member of a municipal police department

20. It is found that the requested records are a "personnel or similar file" within the meaning of §§1-217(a)(2) and 1-210(b)(2), G.S.

21. It is therefore concluded that the addresses in lines 2-3 of the two examinations are exempt from disclosure pursuant to §1-217(a)(2), G.S., and that the respondents did not violate the FOI Act by withholding them.

22. The respondents contended that the "Comments" section of each examination (lines 48-49 of the 1997 examination, and lines 76-77 of the 1999 examination) are permissibly exempt from disclosure pursuant to §1-210(b)(2), G.S., and moreover are not responsive to the complainant's request.

23. It is found that the "Comments" sections described in paragraph 22, above, are responsive to the complainant's request.

24. Section 1-210(b)(2), G.S., provides that disclosure is not required of "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

25. "When a claim for exemption is based upon §1-210(b)(2), the person claiming the exemption must meet a twofold burden of proof. First, the person claiming the exemption must establish that the files are personnel, medical or similar files. Second, the person claiming the exemption...must also prove that the disclosure of the files would constitute an invasion of personal privacy." Rocque v. Freedom of Information Comm'n, *supra*, at 661, citing Perkins v. Freedom of Information Comm'n, 228 Conn. 158 (1993). 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 disclosure of such information would be highly offensive to a reasonable person.

26. It is found that the respondents failed to prove the information contained in the "Comments" sections does not pertain to legitimate matters of public concern.

27. It is also found that the respondents failed to prove that disclosure of the information contained in the "Comments" sections would be highly offensive to a reasonable person.

28. It is therefore concluded that the respondents failed to prove that the information contained in the "Comments" sections is permissibly exempt from disclosure pursuant to §1-210(b)(2), G.S.

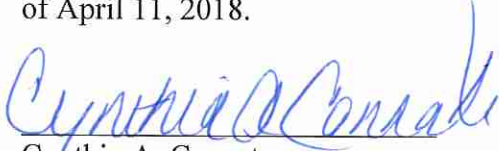
29. It is further concluded that the respondents violated the FOI Act by withholding the information contained in the "Comments" sections.

30. While the respondents withheld certain portions of the in camera records found here not to be exempt from disclosure (the "Comments" sections), and certain sections they did not claim were exempt (the un-numbered first five lines of each examination summary, and the signature line for the examiner), it is also found that, in light of the minimal information contained therein, the respondents were not unreasonable in withholding the entirety of the two records.

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 to the complainant the portions of the in camera records described in paragraph 29 of the findings, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 11, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

DAVID ELDRIDGE, 6 Manhasset Trail, Shelton, CT 06484

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Assistant Attorney General Stephen R. Finucane, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105

FOR THE INTERVENORS

To: Attorney John R. Williams, for the Intervenor(s) David Moore



Cynthia A. Cannata
Acting Clerk of the Commission