



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Eric Cotton and the Meriden Record Journal,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0604

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

Respondent(s)

May 3, 2017

Transmittal of Proposed Final Decision Dated April 20, 2017

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 dated April 20, 2017, 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 24, 2017**. 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 12, 2017*. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed *on or before May 12, 2017*. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed *on or before May 12, 2017* 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 and the Meriden Record Journal
Attorney John H. Gorman

FIC# 2016-0604/Trans/wrbp/LFS/TAH/2017-05-03

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 2016-0604

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

Respondents

April 20, 2017

The above-captioned matter was heard as a contested case on March 28, 2017, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2016-0824, Ilis Cortes v. Chief, Police Department, City of Meriden; Police Department, City of Meriden; and City of Meriden.

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 in response to the complainants' request for a copy of the report on the Internal Affairs investigation by the respondents concerning the death of Erica Moreno, the respondents provided a redacted version on August 2, 2016.
3. By letter filed August 24, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the records they requested in a prompt manner and by improperly redacting the records.

4. 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.

5. 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.

6. 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.

7. It is found 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.

8. The respondents claim that the redactions are exempt pursuant to §1-210(b)(4), G.S., which provides that disclosure is not required of records “pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled.”

9. It is found that Erica Moreno died by hanging herself while in the custody of the respondents on January 19, 2016. It is found that on January 28, 2016, an attorney for Ms. Moreno’s estate filed a Notice of Claim against the City of Meriden, the Meriden Police Department, and/or one or more of its officers.

10. It is found that on the date of the request there existed a pending claim against the respondents, and it is found that such claim had not been finally adjudicated or otherwise settled as of the date of the hearing in this matter.

11. The respondents submitted the records they claimed were exempt from disclosure for in camera inspection.

12. It is found that the respondents redacted portions of the report of an Internal Affairs Bureau investigation into “Possible Policy Violations,” by Sgt. McKay, who was assigned to the respondents’ Internal Affairs Bureau.¹

13. It is found that Sgt. McKay was assigned to conduct his investigation as part of his normal job duties on January 19, 2016, when he reported for work at his scheduled hours a few hours after Ms. Moreno was found unresponsive in her cell.

¹ The respondents construed the complainants’ request for records of the Internal Affairs investigation to comprise only the report of Sgt. McKay. In the consolidated case, in which the complainant sought “all police reports,” the respondents construed the request to be for both McKay’s report and a report by Detective S. Burstein.

14. It is found that Sgt. McKay's assignment was to investigate whether there was any wrongdoing by police personnel. As indicated in the records that the respondents disclosed, it is found that his report contains his observations about the surveillance video, the actions of police personnel, relevant interviews, and analysis of possible violations of General Order 72.5, "Custody Searches at time of Booking."

15. It is found, from the Index to Records Submitted for In Camera Inspection, that the redactions are both of what Sgt. McKay observed in the surveillance video and also his and others' interpretation or opinion about those observations.

16. In support of their position, the respondents cite Stamford v. FOI Commission, 241 Conn. 310 (1997), in which the Supreme Court concluded that an investigative report prepared for the city of Stamford was exempt from disclosure under §1-210(b)(4), G.S., where the report evaluated the merits of a pending law suit brought by the city to recover excess sums paid under a contract, assess the city's prospects for recovery, and evaluate settlement opportunities.

17. The Supreme Court in Stamford v. FOIC, above, at 318, cited with approval the definitions in Webster's Third New International Dictionary of the words "strategy" and "negotiations" within the meaning of §1-210(b)(3), G.S:

Strategy is defined as 'the art of devising or *employing plans or stratagems.*' [Emphasis in original.] Negotiation is defined as 'the action or process of negotiating,' and negotiate is variously defined as: 'to communicate or confer with another so as to arrive at the settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise about something;' 'to arrange for or bring about through conference and discussion: work out or arrive at or settle upon by meeting or agreements or compromises;' and 'to influence successfully in a desired way by discussions and agreements or compromises.'

18. After review in camera of the unredacted McKay report, it is found that, unlike the report in Stamford, the redacted information does not reveal a plan or strategem to be employed in the pending claim.

19. Moreover, it is found the investigation was authorized and begun before the respondents received notice of the intent to sue. It is found that the report serves a different purpose than a record that contains strategy or negotiation with respect to a pending claim or pending litigation.

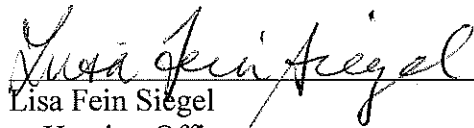
20. It is found that the redacted information does not pertain to strategy or negotiations with respect to a pending claim within the meaning of §1-210(b)(4), G.S.

21. It is concluded that §1-210(b)(4), G.S., does not exempt the redacted records from disclosure.

22. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the redacted records from the McKay report.

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 to the complainant, free of charge, unredacted copies of the McKay report.
2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.



Lisa Fein Siegel
as Hearing Officer