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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Susan Red

Complainant(s)

against

Chief, Police Department, City of West Haven;
Police Department, City of West Haven; and
City of West Haven

Respondent(s)

Notice of Meeting

Docket #FIC 2016-0665

August 3, 2017

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 **2:00 p.m. on Wednesday, August 23, 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 August 11, 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 August 11, 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 August 11, 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Attorney Glenn Conway
Attorney Henry C. Szadkowski

FIC# 2016-0665/ITRA/TCB//PSP/WRBP/2017-08-3

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Susan Red,

Complainant

against

Docket #FIC 2016-0665

Chief, Police Department, City of
West Haven; Police Department,
City of West Haven; and City of
West Haven,

Respondents

August 1, 2017

The above-captioned matter was heard as a contested case on November 29, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Officer Christopher Stratton IV, who is the subject of one of the requested records, was granted intervenor status in these proceedings.

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 September 7, 2016, the complainant made a request to the respondents for a copy of the personnel files of Officers Jared R. Zdru and Christopher Stratton IV. The complainant also requested a copy of the West Haven Police Department's duty manual and/or Standard Operating Procedures Manual; and all written policies, guidelines and internal memoranda relating to the West Haven Police Department's "Use of Force" procedures.
3. By letter dated September 14, 2016, and filed on September 16, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her access to the requested records, "prompt or otherwise." She requested immediate access to the records and any other relief the Commission deemed appropriate.
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, 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.

5. 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.

6. 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.”

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

8. With respect to the personnel files, the respondents submitted the requested records for in camera inspection, which records shall be referenced as IC-2016-0665-001 through IC-2016-0665-023.

9. At the hearing on this matter, the respondents claimed that, at the time of the request, they believed that disclosure of the records would constitute an invasion of the officers' personal privacy within the meaning of §1-210(b)(2), G.S., and that, pursuant to §1-214, G.S., they withheld the records after receiving written objections from the officers.

10. Section 1-210(b)(2), G.S., provides: “Nothing in the [FOI] Act shall be construed to require disclosure of ... [p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.”

11. In Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993) (“Perkins”), the Supreme Court set forth the test for an invasion of personal privacy, necessary to establish the exemption at §1-210(b)(2), G.S. The claimant must

first establish that the records 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, and instances of advice given by the Commission and staff members, which have relied upon the Perkins test, since its release in 1993.

12. In addition, §1-214, G.S., provides, in relevant part, as follows:

(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 ...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... 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.

13. It is found that the requested records are “personnel or medical and similar files” within the meaning of §1-210(b)(2), G.S.

14. It is found that, on September 21, 2016, the respondents notified both officers of the request, pursuant to the requirements of §1-214, G.S. It is found that, originally, both officers objected to the disclosure of their personnel file, however, Officer Jared R. Zdru withdrew his objection.

15. Officer Christopher Stratton IV, who maintained his objection to the disclosure of his personnel file, testified at the contested case hearing in this matter that he believed disclosure of his files would constitute an invasion of his personal privacy.

16. It is found, however, that Officer Stratton did not offer any evidence to prove that the information in his personnel file did not pertain to legitimate matters of public concern and that disclosure of the information in the records would be highly offensive to a reasonable person.¹

17. At the hearing on this matter, the respondents offered no evidence to prove the applicability of the exemption.

18. In addition, it is found that, upon careful review of the in camera records, the records are not sufficient on their face to establish that the exemption was applicable because: the information contained in the records pertain to official police business and therefore, does pertain to legitimate matters of public concern; there are no unsubstantiated allegations contained in the records; and finally, while Officer Stratton may be justified in his belief that the information contained in the records may result in his performance as an officer being questioned, the disclosure of such information would not be highly offensive to a reasonable person within the meaning of Perkins.²

19. Consequently, it is found that both the respondents and the intervenor failed to prove disclosure of the information contained in Officer Stratton's personnel file would be an invasion of his personal privacy within the meaning of §1-210(b)(2), G.S.

20. It is concluded, therefore, that §1-210(b)(2), G.S., does not exempt such records from mandatory disclosure.

21. It is further concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to disclose the personnel file of Officer Stratton.

22. In addition, it is found that the respondents failed to disclose a copy of the West Haven Police Department's duty manual and/or Standard Operating Procedures

¹ "[U]nsupported conclusory allegations of counsel are not evidence and are insufficient for the application of an exemption from disclosure." New Haven v. Freedom of Information Commission, 205 Conn. 767, 776, 535 A.2d 1297 (1988). "The burden of establishing the applicability of an exemption ... requires the claimant ... to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." (Citations omitted.) *Id.*, at 775-76, 535 A.2d 1297; Superintendent of Police v. Freedom of Information Commission, 222 Conn. 621, 627, 609 A.2d 998 (1992); Hartford v. Freedom of Information Commission, 201 Conn. 421, 434-35, 518 A.2d 49 (1986).

²The courts have established that disclosure of reports of internal investigations of police misconduct does not constitute an invasion of personal privacy, except in the rare case where the misconduct does not relate to official business, and the misconduct is unsubstantiated by the investigation. *See e.g., Department of Public Safety v. FOI Commission*, 242 Conn. 79, 85 (1997) (report of even unsubstantiated claim of use of excessive force by state trooper not exempt from disclosure).

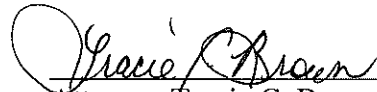
Manual; the written policies, guidelines and internal memoranda relating to the West Haven Police Department "Use of Force" procedures; and the personnel file of Officer Zdru. At the hearing on this matter, the respondents stated they would provide those records to the complainant and stated that their failure to do so was an oversight from being focused on the request for, and the objections to, the disclosure of the personnel files.

23. Nevertheless, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to disclose those 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 the complainant with a copy of all of the records described in paragraph 2 of the findings, above, free of charge.

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



Attorney Tracie C. Brown
as Hearing Officer