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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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Raymond Reynolds
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0884

Commissioner, State of Connecticut, Department of
Children and Families; and State of Connecticut,
Department of Children and Families
Respondent(s)

October 5, 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, October 25, 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 October 13, 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 October 13, 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 October 13, 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: Raymond Reynolds
Attorney Thomas DeMatteo

FIC# 2016-0884/ITRA/VDH/TAH/WRBP/2017-10-5

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Raymond Reynolds,

Complainant

against

Docket #FIC 2016-0884

Commissioner, State of Connecticut,
Department of Children and Families;
and State of Connecticut, Department of
Children and Families,

Respondents

October 4, 2017

The above-captioned matter was heard as a contested case on March 17, 2017, at which time the complainant 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 November 18, 2016, the complainant requested that the respondents provide him with copies of the following:

public/private records that contain information on any and all complaints, reports, statements, logs, incidents, from a complaint that I made on March 12, 2015 via the DCF hotline, in regards to abuse of my daughter....

3. It is found that, by letter dated December 16, 2016, the respondents acknowledged the request, indicating that they were unable to locate any responsive records.

4. By letter dated December 27, 2016 and filed December 28, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with a copy of the records described in paragraph 2, above.

5. 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.

6. 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.

7. 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.”

8. 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.

9. At the hearing, the respondents contended that they were no longer in the possession of the requested records, as the respondents’ system automatically expunges records of calls to their “Careline” within sixty days if such calls are not accepted for investigation (and the complainant’s call was not accepted for investigation). The respondents further contended that, even if they did continue to maintain the records, such records would be records of child protection activities that are exempt from disclosure pursuant to §17a-28, G.S.

10. It is found that, at the time the request was made, the respondents were no longer in possession of the specific records requested by the complainant. However, it is found that the respondents did provide the complainant with some records they continued to maintain. It is found that the records which were disclosed to the complainant pertained to the complainant’s child. It is further found that the respondents provided these records to the complainant because of his status as the child’s parent, and not because the complainant, as a member of the public, made a public records request for them.

11. Section 17a-101k, G.S., provides, in relevant part:

(a) The Commissioner of Children and Families shall maintain a registry of the commissioner's findings of abuse or neglect of children pursuant to section 17a-101g. . . . The regulations adopted pursuant to subsection (i) of this section shall provide for the use of the registry on a twenty-four-hour daily basis to prevent or discover abuse of children and the establishment of a hearing process for any appeal by a person of the commissioner's determination that such person is responsible for the abuse or neglect of a child pursuant to subsection (b) of section 17a-101g. The information contained in the registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of federal law or regulations. Any violation of this section or the regulations adopted by the commissioner under this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year. (Emphasis added).

12. In Groton Police Department v. Freedom of Information Commission, 104 Conn. App. 150 (2007), the appellate court ruled that §17a-101k, "falls within the opening sentence of §1-210(a), which 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. . . shall be public records. . .,'" and, "because §17a-101k, mandates confidentiality of information regarding child abuse, records of child abuse, wherever located, are exempted from the general rule of disclosure."

13. In Groton, the requestor, like the complainant in the present case, was the parent of an alleged child abuse victim. The Commission concluded in Groton, that, because of the requestor's status as the parent of the alleged child abuse victim, she implicitly waived the confidentiality provision in §17a-101k, G.S., by requesting the records under the FOI Act. The Commission thus ordered the records disclosed, with certain redactions.

14. The police department appealed to the superior court, which sustained the appeal, concluding that the confidentiality requirements in §17a-101k, G.S., may not be implicitly waived. The appellate court upheld the superior court's decision. According to the appellate court, the requestor's status as a parent of an alleged victim was immaterial to the request for records under the FOI Act, because, by invoking the FOI Act, a requestor is not seeking the records as a parent, but as member of the general public. "[A] decision by the commission recognizing waiver would be, in effect, allowing a member of the general public to waive the protection of §17a-101k, which would be a bizarre result." Citing to the Supreme Court's decision in Chief of Police v. Freedom of Information Commission,

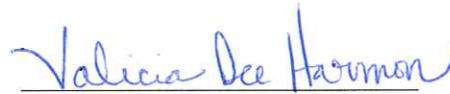
252 Conn. 377, 387 (2000), the Groton court reiterated that “[t]he issue of whether a record is disclosable under the [A]ct ‘does not depend in any way on the status or motive of the [requestor], because the [A]ct vindicates the public’s right to know, rather than the rights of any individual.’”

14. In this case, it is found that the respondents have no additional responsive records. Furthermore, it is found that, based on the nature of the request, even if the respondents did have additional responsive records, such records would be not be available to the complainant pursuant to the FOI Act.

15. It is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is dismissed.



Valicia Dee Harmon
as Hearing Officer