

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by )  
Karlynn Carrington; and the ) Report of Hearing Officer  
Hartford Courant, Complainants )  
 ) Docket #FIC77-202  
 )  
 ) November 16, 1977  
 )  
Town of Bloomfield; Police )  
Department of the Town of )  
Bloomfield; and the Chief of )  
Police of the Town of )  
Bloomfield, Respondents )

The above captioned matter was heard as a contested case on November 2, 1977, 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:

1. The respondents are public agencies as defined by §1-18a(a), G.S.
2. By letter dated October 6, 1977, the Hartford Courant, through its reporter Karlynn Carrington, requested the names of six Bloomfield policemen who were disciplined by the respondent department as a result of their activities at an August 12, 1977 stag party. The name of a seventh policeman who submitted his resignation as a result, matters relating to the stag party was also requested.
3. By letter dated October 7, 1977, the respondent chief denied the complainants' request on the basis that the requested identities were a part of the personnel records of the individuals involved and, as such, were exempt from disclosure under §1-19(b)(2), G.S.
4. By letter filed with the Commission on October 11, 1977, the complainants have appealed such denial.
5. The disciplinary action in question involved the off duty activities of members of the respondent department at a stag party held in the town of Windsor on August 12, 1977.
6. Some time after the party, the Hartford Courant raised allegations, in a series of articles, that members of the respondent department had conducted a raffle for a massage to be given by a masseuse attending the party.

7. The respondent chief directed a non-criminal internal affairs investigation into the events of that evening and, as a result of such investigation, some form of disciplinary action was taken against six men. A seventh man resigned because of matters relating thereto.

8. No law enforcement action was taken by officials of the town of Windsor and no action in the courts is now pending.

9. All records concerning the identity of the six men disciplined and the seventh man who resigned as a result of the above incident and investigation have been placed in the personnel files of the men involved.

10. Accordingly, it is found that such records are exempt from disclosure under §1-19(b)(2), G.S. as personnel or similar files the disclosure of which would constitute an invasion of personal privacy of the men involved.

11. It is further found that such records shall not be deemed public records for purposes of sections 1-15 and 1-19, G.S.

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

1. The complaint is hereby dismissed.

  
\_\_\_\_\_  
Commissioner Judith A. Lahey

Denied by order of the Freedom of Information Commission on  
December 19, 1977.

  
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Charlene C. Arnold  
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by	)	
Karlynn Carrington and the	)	Proposed Decision
Hartford Courant, Complainants	)	
	)	Docket #FIC77-202
against	)	
	)	December 2, 1977
Town of Bloomfield; Police	)	
Department of the Town of	)	
Bloomfield; and the Chief of	)	
Police of the Town of Bloomfield,	)	
Respondents	)	
	)	
Police Union of the Town of	)	
Bloomfield, International	)	
Brotherhood of Police Officers,	)	
Intervenor	)	
	)	

The above captioned matter was heard as a contested case on November 2, 1977, at which time the complainants and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. By order of the hearing officer at the aforesaid proceeding, the Police Union of the Town of Bloomfield, International Brotherhood of Police Officers was granted the status of intervenor to the extent that it is permitted to present oral argument and written briefs in this matter.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies as defined by §1-18a(a), G.S.
2. By letter dated October 6, 1977, the Hartford Courant, through its reporter Karlynn Carrington, requested the names of six Bloomfield police officers who were disciplined by the respondent department as a result of their activities at an August 12, 1977 stag party. The complainants also requested the name of a seventh police officer who submitted his resignation as a result of matters relating to the stag party.
3. By letter dated October 7, 1977, the deputy chief of the respondent department denied the complainants' request on the basis that the requested identities were a part of the personnel records of the individuals involved and, as such, were exempt from disclosure under §1-19(b)(2), G.S.
4. By letter filed with the Commission on October 11, 1977, the complainants have appealed such denial.

5. The disciplinary actions in question involved the off-duty activities of members of the respondent department in a town other than the respondent town.

6. No criminal prosecutions were brought and no court actions are pending as a result of the aforesaid activities.

7. The respondent chief, however, directed a non-criminal, internal affairs investigation into such activities and, as a result of this investigation, some disciplinary actions were taken against six police officers. A seventh officer resigned because of matters relating thereto.

8. All records concerning the identity of the officers whose names were requested were placed in their respective personnel files.

9. The respondents contend that the requested names should not be disclosed because no list containing that information was prepared in the course of the investigation in question and therefore no record exists that is disclosable under the Freedom of Information Act.

10. It is found that the requested information does exist in written form and can be abstracted from records retained by the respondent department.

11. The respondents also contend that the information requested is part and parcel of the personnel files of the officers concerned, and such files are exempt from disclosure under §1-19(b)(2), G.S. They further contend that disclosure would constitute an invasion of the officers' personal privacy in a situation where such privacy outweighs the public's interest in disclosure.

12. It is found that the requested names are not in and of themselves personnel files, but are portions of files to which exemption from disclosure is claimed.

13. The question is therefore whether the requested names fall within the exemption provided by §1-19(b)(2), G.S.

14. While the record discloses that the requested names do not exist apart from personnel files, they serve at least two independent functions.

15. One function is properly a personnel matter for which the exemption created by §1-19(b)(2), G.S., applies - i.e., personnel records of disciplinary action taken against individual officers, including such items, if applicable, as demotion, loss of pay and reference for seniority or promotion purposes.

16. The second function concerns the disposition of a non-criminal, police internal affairs investigation. In this regard, the requested names have a function distinct from the recording of data for personnel purposes.

17. It is found that this second function relates directly to the conduct of the public's business and such records are therefore public records within the meaning of §1-18a(d), G.S., and even though maintained solely in files designated "personnel," are not exempt from disclosure under §1-19(b)(2), G.S.

18. To find otherwise with reference to paragraphs 16 and 17, above, would be to ignore the obvious legislative intent in enacting the Freedom of Information Act. That intent is to foster open government. If the respondents' position were sustained, that aspect of the public's business concerning their public servants' activities could be hidden under the broad cloak of "personnel files." Then form would prevail over substance and even Watergate-type misconduct by public officers would be kept from public scrutiny.

19. Since the question posed in paragraph 13, above, is answered in the negative, there is no need to determine whether disclosure would constitute an invasion of the officers' personal privacy and, if so, whether their interest in such privacy outweighs the public's interest in disclosure. Such privacy considerations would apply, if at all, only if the requested records are found to be personnel files within the meaning of §1-19(b)(2), G.S.

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

1. The respondent shall forthwith provide the complainants with access to inspect or copy the names of the police officers and former police officer, as more particularly described in paragraph 2 of the findings, above.

2. Compliance with paragraph 1 of this order may be provided by a process of abstracting the requested names from any other information in the records wherein they are maintained in such a manner as to conceal or withhold information exempt from disclosure.

3. The Commission notes that much of the difficulty with this particular case stems from the fact that police officers are held generally to a higher standard of personal conduct, including their off-duty activities, than are civilians. This is also true of other public officials. While the Commission is mindful of the potential embarrassment to these officers and their families by the publication of their names in connection with the activities in question, it would be improper for this Commission to presume or consider what is newsworthy or what should be published. The central problem posed by this case is what is or is not in the realm of the public's business. When a public agency determines that the off-duty conduct of some of its members affects their public offices to such an extent that a non-criminal, internal investigation is warranted, then that decision to investigate elevates the off-duty conduct into a matter of public concern. This Commission is most reluctant to second-guess that decision. The Commission therefore recommends that in light of this decision, the respondents may want to reconsider whatever policies or codes they may have in determining when to institute internal investigations in cases where alleged off-duty activities, if not constituting a criminal

offense as determined through normal criminal investigations and procedures, would imply only a questionable sense of morality. The Commission believes that if such discretion is reasonably applied, difficult cases such as this might well be avoided with less unnecessary embarrassment to all parties concerned.

The Freedom of Information Commission

By: Helen M. Loy  
Helen M. Loy  
Chairman

Approved by order of the Freedom of Information Commission on  
December 19, 1977.

Charlene G. Arnold  
Charlene G. Arnold  
Clerk of the Commission