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Alexander Wood and the
Manchester Journal Inquirer,
Complainant(s)
against

Chairperson, State of Connecticut, Board of Pardons and Paroles; and State of Connecticut, Board of Pardons and Paroles,
Respondent(s)

Notice of Meeting

Docket #FIC 2013-082

December 19, 2013

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, January 22, 2014.** 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 January 10, 2014.*** 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 January 10, 2014.*** **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 **fourteen (14) copies** be filed ***ON OR BEFORE January 10, 2014,*** 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: Alexander Wood, Steven R. Strom, AAG
Kim I Hubbard
Graysonn Holmes, Moira Buckley

12/19/13/FIC# 2013-082/Trans/wrbp/LFS//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Alexander Wood and the
Manchester Journal Inquirer,

Complainants

against

Chairperson, State of Connecticut, Board of Pardons and Paroles; and State of Connecticut, Board of Pardons and Paroles,

Respondents

Report of Hearing Officer

Docket #FIC 2013-082

December 19, 2013

The above-captioned matter was heard as a contested case on August 6, 2013, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The hearing officer granted the request of Kim Hubbard to intervene. The hearing officer also granted the request of the Connecticut Criminal Defense Lawyers Association to intervene solely for the purposes of filing a brief.

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 on January 23, 2013, the complainants requested copies of:

    a. records containing certain statistics about pardons;

    b. all records that were considered by the pardon panel at its meeting of November 1, 2012, with respect to pardon applications by three named individuals;

    c. all records that were considered by the pardon panel at its meeting of November 14, 2012, with respect to pardon applications by four named individuals; and

    d. the written statements of reasons for denial of pardon applications by six named individuals.

3. With respect to the complainant's request, as described in paragraph 2.a, above, it is found that the respondents provided copies of all of the records they maintain that are responsive to the complainants' request.

4. It is found that the respondents did not provide any other records, and claim that the remaining responsive records are exempt from disclosure.

5. By letter filed February 17, 2013, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with copies of all of the records they requested.

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 ... (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 Connecticut Supreme Court has stated: "Ordinarily, the pardoning power resides in the executive...In Connecticut, the pardoning power is vested in the legislature ... which has delegated its exercise to the board of pardons." (Citations omitted.) McLaughlin v. Bronson, 206 Conn. 267, 271 (1988).

11. It is concluded that the Board has the authority to grant three types of pardon: absolute; conditional, which is a pardon to which the respondents have attached a condition (such as no pistol permit) that could result in the pardon's revocation if the subject fails to

comply with the condition; and provisional, which removes one or more enumerated barriers to employment or forfeiture of professional licenses. See §54-130a, G.S.[1]

12. It is found that in 2006, the legislature created the provisional pardon and assigned authority for granting such a pardon to the respondents. It is found that conditional and absolute pardons already existed at that time.

13. It is found that the respondents consider that the process for all types of pardon begins with an application submitted by the person seeking the pardon. It is found that the application is a 15-page document requesting information under the following headings:

a. Applicant information;
b. Family information;
c. Other names;
d. Previous application history;
e. Citizenship information;
f. Pistol permit restoration;
g. Educational background;
h. Military record;
i. Criminal history;
j. Employment history;
k. Substance abuse and treatment information;
l. Volunteer, charitable and community activities;
m. Purpose of application;
n. Background investigation authorization;
o. Three applicant reference forms; and
p. Request for criminal history.

14. It is found that the "Background Investigation Authorization" (see paragraph 13.n, above) requires the applicant to authorize the release of:

> any and all information, verbal and/or written, which includes but is not limited to, information related to current or previous employment, personnel records, criminal records, educational records, any investigative records, credit records, tax or bank records, correctional records, sealed records, confidential records or information previously agreed to be withheld, opinions of my character or conduct, and any and all information that a person or entity may have concerning me, and I agree to hold [*sic*] all entities and persons from any liability arising out of the furnishing of said information.

[1] Section 54-130a (b), G.S., grants to the respondents "authority to grant pardons, conditioned, provisional or absolute, for any offense against the state at any time after the imposition and before or after the service of any sentence."

> I understand that I may be required to complete an additional authorization form allowing the Board to obtain any relevant medical records or mental health records.

15. It is found that the Authorization contains the following statement to which the applicant must sign his or her assent in order to be considered for pardon: "I understand that information gathered may become public record if the subject application is brought for consideration at a meeting before the Pardons Board."

16. It is found that a pardon application consists of the 15-page document described in paragraphs 13-15, above, as well as additional supporting documentation. Henceforth, such records shall be described as the "application." It is found that the complainants requested the applications considered at the respondents' meetings of November 1, 2012 and November 14, 2012.

17. The respondents claim that the applications are exempt from disclosure.

18. It is found that once the application is complete, the next step for the applicant is the "pre-hearing" docket, essentially a screening process, where the respondents either deny the application without a "full hearing" or grant the applicant a "full hearing," at which the respondents decide whether to grant the pardon petition.

19. It is found that the respondents meet regularly to consider and act on dozens of applications by non-inmates (i.e., no longer in the custody of the Department of Correction) for pardon. It is found that no inmate applications were on the docket of either of the two meetings at which the respondents considered the applications that the complainants requested.

20. It is found that the Board's November 1, 2012 meeting was a "full hearing" docket; and its November 14, 2012 meeting was a "pre-hearing" docket.

21. It is found that the respondents hear testimony on each application in open session, usually consisting of a statement by, and questioning of, the applicant and sometimes also a family member, a victim, and/or the state's attorney.

22. It is found that the respondents and the applicant discuss in public a great deal of information contained in the application, including details of the applicant's conviction, rehabilitation, family history and support, and employment.

23. It is found that the respondents notified the subject of the applications of the complainants' request and provided them with a form entitled "Notice of Objection" to disclosure that the applicants completed, signed, and returned to the respondents.

24. After the hearing in this matter, the respondents submitted unredacted copies of the seven applications at issue in this matter for in camera inspection. Such records shall hereinafter be referenced as IC-2013-082-A-1 through 47, IC-2013-082-B-1through 61, IC-2013-082-C-1

through 40, IC-2013-082-D-1through 59, IC-2013082-E-1 through 74, IC-2013-082-F-1 through 47, and IC-2013-082-G-1 through 45.[2]

25. The respondents also submitted for in camera review the Written Statement of Reasons for Denials requested by the complainants. Such records shall hereinafter be referenced as IC-2013-082-I-1 through I-7.[3]

26. In addition, the respondents submitted for in camera inspection the applicants' signed objections to disclosure. Such records shall hereinafter be referenced as I-2013-082-H-1 through H-17.

27. Section 1-21j-37(f)(1) of the Regulations of Connecticut State Agencies provides:

> Any party or intervenor may request an in camera inspection of the records claimed to be exempt from disclosure in a contested case; and the presiding officer or the commission may order such an inspection on request, on such presiding officer's or the commission's own initiative, or on remand by a court. (Emphasis added.)

28. It is found that applicants' statements of objection are not the records requested by the complainants and whose exemption from disclosure is in dispute, within the meaning of §1-21j-37(f)(1) of the Regulations of Conn. State Agencies. It is concluded, therefore, that §1-21j-37(f)(1) does not permit in camera review of such records. It is concluded that IC-2013-082-H-1 through H-17 were submitted and accepted in error. [4]

29. It is found that the respondents should have submitted an unredacted copy of the statements of objection as an after-filed exhibit, as the hearing officer requested, and should have provided a copy of such statements to the complainants. It is found that submitting unredacted copies would not have revealed previously unknown information. It is found that the identities of the applicants who objected to disclosure of their applications were known to the complainants and the public, as their names were listed on the respondents' meeting agendas and their applications were discussed in the respondents' public meetings. Moreover, it is found that the complainants asked for the applications by name of the applicant. It is found that four of the seven applicants sent their unredacted objections to the Commission instead of to the respondents; such objections are marked as Respondents' Exhibit 2.

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[2] The respondents also submitted for in camera inspection a duplicate set of records with proposed redactions. The redacted records have identical page numbers and are identical in every other way to the unredacted records.

[3] Although the complainant asked for statements of reasons for denial or pardon by six named individuals, it is found that there are seven statements because the Board considered the application of one person at two different meetings.

[4] Nevertheless, the in camera protections shall be preserved pursuant to §§1-21j-37(f)(12) and (13) of the Regulations of State Agencies.

30. Because proper procedure was not followed, the records referenced as IC-2013-082-H-1 through H-17 shall not be accepted as an exhibit in this matter.

31. The respondents claim that §1-210(b)(2), G.S., exempts per se the entire application, including the name of each applicant for a pardon.

32. Section 1-210(b)(2), G.S., exempts from mandatory disclosure "personnel or medical files and similar files the disclosure of which would constitute an invasion of privacy."

33. Section 1-210(b)(2), G.S., requires the respondents to prove that disclosure of the pardon application files would constitute an invasion of privacy according to the long-standing test articulated in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993), which test has been the standard for disclosure of records pursuant to that exemption since 1993. The Commission takes administrative notice of the multitude of court rulings, and Commission final decisions, as well as instances of advice given by Commission staff members, which have relied upon the Perkins test since its release in 1993.

34. Specifically, under the Perkins test, the claimant must first establish that the files 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 disclosure of such information is highly offensive to a reasonable person.

35. In Connecticut Alcohol and Drug Abuse Commission, et al, v. Freedom of Information Commission, et al. ("CADAC"), 233 Conn. 28, 41 (1995), the Supreme Court further expounded on the threshold test for the exemption contained in §1-210(b)(2), G.S:

> We conclude that such a determination requires a functional review of the documents at issue. Just as a "medical" file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual, a "personnel" file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. If a document or file contains material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is "similar" to a personnel file. Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered "similar" to a personnel file for the purposes of §1-[210](b)(2). (Emphasis added.)

36. The respondents argue that a decision of the Connecticut Appellate Court in 1989, Board of Pardons and Paroles v. FOI Commission ("Board of Pardons"), 19 Conn.App. 539 (1989) settled that applications for pardon are per se personnel or medical and similar files. It is concluded, however, that Board of Pardons does not specifically address this issue.

37. It is found that the respondents failed to prove, using CADAC's "functional review," that the application for pardon has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. Similarly, it is found that the respondents failed to prove that the application for pardon has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual. CADAC, supra, 233 Conn. 41. See State of Connecticut, Department of Public Safety v. FOI Commission, Town of Putnam and Putnam Board of Education, Superior Court, Docket No. CV08-4018164-S, Judicial District of New Britain, Memorandum of Decision dated March 3, 2009 (Schuman, J.), in which the Court ruled that medical information contained in a police report investigating a suicide is not a medical file within the meaning of §1-210(b)(2), G.S:

> While these pages do contain some medical and prescription information about a third party, the obvious function of that information is not to contribute to making a medical decision regarding the third party, but rather to explain the decedent's source of a means to commit suicide. Stated differently, it is apparent from reading the entire six pages that the third party, rather than providing information to a health care professional to assist in medical treatment, rendered the medical information to the police in order to assist in their investigation. The department can establish only that the file contains medical "information" but not that the file is a "medical file" under the prevailing definition. Accordingly, the commission reasonably concluded that the six pages do not constitute a medical file and therefore are not exempt from disclosure under the act.

38. It is also found that the application for pardon specifically excludes medical records from the customary release that all applicants are required to sign, and medical records are not a customary part of the application. See paragraph 14, above.

39. It is found that the respondents failed to prove that the application, taken as a whole, is provided to the respondents to assist in making employment or medical decisions.

40. It is found that the respondents failed to prove that applications for pardon are per se personnel or medical and similar files within the meaning of §1-210(b)(2), G.S.

41. The respondents also contend that each pardon application is categorically exempt from disclosure in its entirety because "the information in the file is not related to the conduct of the public's business," and instead contains "personal and private details" concerning the applicant.

42. It is found, however, that the respondents conduct the public's business, as delegated by the legislature, in deciding whether to grant an application for pardon; the records on which the respondents rely in reaching such decision, therefore, relate to the public's business.

43. It is found, therefore, that the information in the applications relates to legitimate matters of public concern.

44. It is also found that much of the information in each application submitted for in camera demonstrates the applicant's record of rehabilitation, accomplishment, and accolade. It is found that disclosure of such information, especially in the context of a convicted person's wholly voluntary petition to be pardoned for a crime for which he or she was duly convicted, would not be highly offensive to a reasonable person.

45. The respondents cite Judicial Watch, Inc. v. Department of Justice, 365 F.3d 1108 (D.C. Cir. 2004) in support of their claim that applications for pardon are "similar" to a personnel file and that disclosure of such files would constitute an invasion of privacy. In Judicial Watch, applications for pardon for federal crimes were found to be exempt under exemption (b)(6) of the federal FOI Act, 5 USC §552. Section (b)(6) of the federal act exempts "personal and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

46. Judicial Watch reasoned that because much of the Department of Justice's actions in advising on the pardon decision of a President is protected by the presidential communications privilege (the power to grant a federal pardon lies exclusively with the president), disclosure of personal information about an applicant would not shed light on the Department of Justice's conduct in assisting the President in his or her pardon decision-making.

47. In this case, however, the federal presidential communications privilege does not apply to records of a state agency in the exercise of a delegated legislative power (see paragraph 10, above). It is also found that the balancing test inherent in 5 USC §552 (b)(6) is not part of the analysis set forth in Perkins.

48. It is concluded that to follow Judicial Watch would be to disregard the holding of Perkins and CADAC and their progeny, as the respondents expressly recommend. The Commission, however, is bound by settled precedent in Connecticut, and declines to act in accordance with the respondents' recommendation.

49. It is concluded that §1-210(b)(2), G.S., does not categorically exempt all applications for pardon (including those not at issue in this matter) in their entirety.

50. Next, the respondents claim that §54-142a, G.S., exempts per se the entire application, including the name of each applicant for a pardon.

51. Section 54-142a, G.S., the erasure statute, provides:

> (d)(1) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction ... and the Superior Court or records center of the Judicial Department shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.
>
> (2) Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased.

52. The respondents contend that because some of the applications may be successful and result in the erasure of records, and it is not known at the time of the hearings which applications will end with absolute pardons, the respondents must treat all of the applications as confidential. The respondents also claim that they must treat all of the applications as confidential because an unsuccessful applicant may receive an absolute pardon in the future.

53. It is concluded, however, that the plain language of §54-142a(d), G.S., authorizes erasure "whenever [an] absolute pardon was received (emphasis added)." It is concluded that the erasure provisions of §54-142a(d), G.S., do not take effect until the subject of the records receives an absolute pardon, and any records that are open to the public must remain so until an absolute pardon is received.

54. It is concluded, therefore, that §54-142a(d), G.S., does not apply to any part of the application until an absolute pardon is received.

55. It is concluded that the erasure statute does not provide a per se exemption from disclosure for each pardon application, because it is a question of fact whether an application is subject to erasure at the time of the request for disclosure.

56. The respondents next claim that §54-130e(f), G.S., exempts per se the entire application from disclosure.

57. Section 54-130e, G.S., provides:

> (a) For the purposes of this section and sections 31-51i and 54-130a:
>
> (1) "Barrier" means a denial of employment or a license based on an eligible offender's conviction of a crime without due consideration of whether the nature of the crime bears a direct relationship to such employment or license;
>
> ...

(4) "Forfeiture" means a disqualification or ineligibility for employment or a license by reason of law based on an eligible offender's conviction of a crime;

(5) "License" means any license, permit, certificate or registration that is required to be issued by the state or any of its agencies to pursue, practice or engage in an occupation, trade, vocation, profession or business; and

(6) "Provisional pardon" means a form of relief from barriers or forfeitures to employment or the issuance of licenses granted to an eligible offender by the Board of Pardons and Paroles pursuant to subsections (b) to (i), inclusive, of this section.

(b) The Board of Pardons and Paroles may issue a provisional pardon to relieve an eligible offender of barriers or forfeitures by reason of such person's conviction of the crime or crimes specified in such provisional pardon. Such provisional pardon may be limited to one or more enumerated barriers or forfeitures or may relieve the eligible offender of all barriers and forfeitures. No provisional pardon shall apply or be construed to apply to the right of such person to retain or be eligible for public office.

(c) The Board of Pardons and Paroles may, in its discretion, issue a provisional pardon to an eligible offender upon verified application of such person. The board may issue a provisional pardon at any time after the sentencing of an eligible offender.

(d) The board shall not issue a provisional pardon unless the board is satisfied that:

(1) The person to whom the provisional pardon is to be issued is an eligible offender;

(2) The relief to be granted by the provisional pardon may promote the public policy of rehabilitation of ex-offenders through employment; and

(3) The relief to be granted by the provisional pardon is consistent with the public interest in public safety and the protection of property.

(e) In accordance with the provisions of subsection (d) of this section, the board may limit the applicability of the provisional pardon to specified types of employment or licenses for which the eligible offender is otherwise qualified.

> (f) The board may, for the purpose of determining whether such provisional pardon should be issued, request its staff to conduct an investigation of the applicant and submit to the board a report of the investigation. Any written report submitted to the board pursuant to this subsection shall be confidential and not disclosed except where required or permitted by any provision of the general statutes or upon specific authorization of the board.
>
> ...
>
> (i) The application for a provisional pardon, the report of an investigation conducted pursuant to subsection (f) of this section, the provisional pardon and the revocation of a provisional pardon shall be in such form and contain such information as the Board of Pardons and Paroles shall prescribe.

(Emphasis added.)

58. The respondents claim that the entire application is a written report submitted to the board pursuant to §54-130e(f), G.S.

59. It is concluded, however, that §54-130e, G.S., distinguishes between application for provisional pardon and a written report of an investigation conducted pursuant to subsection (f): for example, subsection (c), refers to a "verified application;" subsection (f) refers to a written report of investigation; while subsection (i) refers to both as distinct parts of the pardon process: "*The application* for a provisional pardon, *the report of an investigation* conducted pursuant to subsection (f) of this section, the provisional pardon and the revocation of a provisional pardon shall be in such form and contain such information as the Board of Pardons and Paroles shall prescribe." (Emphasis added.)

60. It is concluded that §54-130a, G.S., does not use the term "application" to mean "written report of investigation," and the legislature did not intend the terms to be interchangeable.

61. It is concluded that a written report created pursuant to §54-130e(f), G.S., is not an application for pardon, and the confidentiality that attaches to a written report pursuant to subsection (f) does not automatically attach to the entire application.

62. It is also concluded, based on the statutory structure and language of §54-130e(f), G.S., that the written report of investigation is intended to apply *only* to applications for provisional pardons, not also to applications for absolute pardons.

63. It is found that the records submitted for in camera review are applications for pardon, not written reports submitted pursuant to §54-130e(f), G.S. Moreover, it is found that the applications do not address the removal of specific barriers and forfeitures that form the central concern of provisional pardons.

64. It is concluded that §54-130e(f), G.S., does not make an entire pardon application categorically exempt from disclosure.

65. In the alternative to their claims of per se exemptions, the respondents claim a plethora of statutory exemptions for portions of the applications and other records requested by the complainants. Such exemptions are highlighted and will be discussed below.

66. **Section 1-201, G.S.**, provides that "the Division of Criminal Justice shall not be deemed to be a public agency except in respect to its administrative functions."

67. It is found that the in camera records that the respondents claim on the indexes are exempt pursuant to §1-201, G.S., were created by the Division of Criminal Justice. By claiming §1-201, G.S., as an exemption on the in camera indexes, it appears that the respondents are claiming that the records are not public records of the respondents because they are records of the Division of Criminal Justice.

68. It is found, however, that the Division of Criminal Justice provided such records to the respondents for the respondents' use in assessing whether to grant a pardon application. It is found that such records relate to the conduct of the public's business and are used, received, retained and maintained by the respondents.

69. It is concluded, therefore, that such records are public records of the respondents, which are public agencies and whose records are subject to disclosure under the FOI Act.[5]

70. The respondents claim that each page of the in camera records is exempt pursuant to **§1-210(b)(2), G.S.** (See paragraphs 32-38, above.)

71. It is found that IC-2013-082-D-1 (described by respondents on the in camera index to Application D as name/contact information of psychiatrist), IC-2013-082-8, line 9 (described by respondents on the in camera index to Application D as mental health treatment information), I-2013-082-D-32, D-35 and D-36 (described by respondents on the in camera index to Application D as psychiatric information), are medical or similar files, within the meaning of §1-210(b)(2), G.S. It is found, moreover, that the information does not pertain to legitimate matters of public concern and disclosure of such information would be highly offensive to a reasonable person. It is concluded, therefore, that the respondents did not violate the FOI Act by withholding such records.

72. Without finding whether the remaining records that the respondents claim are exempt pursuant to §1-210(b)(2), G.S., are personnel, medical or similar files, it is found that none of the information in such records satisfies the two-prong Perkins standard. That is, it is found that the

[5] As noted by the respondents on the in camera indexes, parts of IC-2012-082-C-7 through C-9; IC-2012-082-D-21 through D-23; IC-2012-082-E-9 and E-10; and IC-2012-082-G-7 and G-8 are not responsive to the complainants' request, because they concern other applicants, and therefore may be redacted.

information pertains to a legitimate matter of public concern and a reasonable person would not find disclosure of such information to be highly offensive.

73. It is concluded that §1-210(b)(2), G.S., does not exempt from disclosure the records described in paragraph 72, above. It is concluded that the respondents violated the FOI Act by withholding such records.

74. **Section 1-210(b)(3), G.S.**, provides in relevant part that disclosure is not required of:

> Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E)investigatory techniques not otherwise known to the general public, (F)arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216[.]

75. Upon careful examination of the in camera records, it is found that the following are the records of law enforcement agencies not otherwise available to the public, that such records were compiled in connection with the detection or investigation of crime, and that disclosure would reveal the name and address of the victim of a sexual assault: IC-2013-082-D-39 (lines 14 (victim address), 16 and 17); IC-2013-082-D-40 (lines 9, 10, 12, 13 (victim address)); IC-2013-082-D-41(lines 5 and 10); IC-2013-082-D-42(line 4 (victim address)); and IC-2013-082-D-46(lines 3 and 4 (victim name and address)).

76. It is concluded that §1-210(b)(3)(G), G.S., exempts from disclosure the records referenced in paragraph 75, above. It is concluded that the respondents did not violate the FOI Act by withholding such records.

77. It is concluded that §1-210(b)(3), G.S., does not apply to any of the other in camera records.

78. **Section 1-210(b)(18), G.S.**, exempts:

> Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction or Whiting Forensic Division facilities…

79. It is found that the respondents failed to provide any evidence that the Commissioner of Correction has reasonable grounds to believe that disclosure of any of the in camera records may result in a safety risk. It is found that the applicants for pardon whose records are at issue in this matter have been discharged from the custody of the Department of Correction for many years.

80. It is concluded that §1-210(b)(18), G.S., does not exempt from disclosure any of the in camera records.

81. **Section 1-210(b)(19), G.S.**, exempts:

> Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; …[.]

82. Section 1-210(d), G.S., provides:

> Whenever a public agency …receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services … before complying with the request as required by the Freedom of Information Act … If the commissioner, after consultation with the chief executive officer of the applicable …believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for

> denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency [.]

83. It is found that the respondents submitted no evidence that the Commissioner of Administrative Services has reasonable grounds to believe that disclosure of the information in the in camera records may result in a safety risk.

84. It is concluded, therefore, that §1-210(b)(19), G.S., does not exempt any of the proposed redactions from disclosure.

85. **Section 29-164f, G.S.**, and **28 USC §534** prohibit the disclosure under the FOI Act of data from the files of the National Crime Information Center ("NCIC"). Commissioner of Public Safety v. FOI Commission, 144 Conn.App. 821, 833 (2013).

86. Upon careful examination of the in camera records, it is found that the following records are NCIC records: IC-2012-082-A-14, A-15, A-19 through A-21, A-38; IC-2012-082-B-9, B-22 through B-24, B-34 and B-35; IC-2012-082-C-4, C-5, C-12, C-28, C-31, C-32, C-39 and C-40; IC-2012-082-D-15 through D-16, D-34; IC-2012-082-E-4, E-13, E-59 through E-63; IC-2012-082-F-3, F-9 through F-11, F-36 through F-41; IC-2012-082-G-4, G-29 through G-31.

87. It is concluded that the NCIC records described in paragraph 86, above, are exempt from disclosure. It is concluded that the respondents did not violate the FOI Act by withholding such records from the complainants.

88. **Sections 46a-13c, 46a-13d, 46a-13e(a), and 54-228(c), G.S:**

89. Section 46a-13c, G.S., provides:

> The Victim Advocate may, within available appropriations:
> (1) Evaluate the delivery of services to victims by state agencies and those entities that provide services to victims, including the delivery of services to families of victims by the Office of the Chief Medical Examiner;
> (2) Coordinate and cooperate with other private and public agencies concerned with the implementation, monitoring and enforcement of the constitutional rights of victims and enter into cooperative agreements with public or private agencies for the furtherance of the constitutional rights of victims;
> (3) Review the procedures established by any state agency or other entity providing services to victims with respect to the constitutional rights of victims;
> (4) Receive and review complaints of persons concerning the actions of any state or other entity providing services to victims and

investigate those where it appears that a victim or family of a victim may be in need of assistance from the Victim Advocate;
(5) File a limited special appearance in any court proceeding for the purpose of advocating for any right guaranteed to a crime victim by the Constitution of the state or any right provided to a crime victim by any provision of the general statutes;
(6) Ensure a centralized location for victim services information;
(7) Recommend changes in state policies concerning victims, including changes in the system of providing victim services;
(8) Conduct programs of public education, undertake legislative advocacy, and make proposals for systemic reform;
(9) Monitor the provision of protective services to witnesses by the Chief State's Attorney pursuant to section 54-82t; and
(10) Take appropriate steps to advise the public of the services of the Office of the Victim Advocate, the purpose of the office and procedures to contact the office.

90. Section 42a-13d, G.S., provides in pertinent part:

(a) All state, local and private agencies shall have a duty to cooperate with any investigation conducted by the Office of the Victim Advocate. Consistent with the provisions of the general statutes concerning the confidentiality of records and information, the Victim Advocate shall have access to, including the right to inspect and copy, any records necessary to carry out the responsibilities of the Victim Advocate as provided in section 46a-13c. Nothing contained in this subsection shall be construed to waive a victim's right to confidentiality of communications or records as protected by any provision of the general statutes or common law.
(b) In the performance of his responsibilities under section 46a-13c, the Victim Advocate may communicate privately with any victim or person who has received, is receiving or should have received services from the state. Such communications shall be confidential and not be subject to disclosure except as provided in subsection (a) of section 46a-13e.
The Victim Advocate may apply for and accept grants, gifts and bequests of funds from other states, federal and interstate agencies and independent authorities and private firms, individuals and foundations, for the purpose of carrying out his responsibilities.

91. Section 46a-13e(a), G.S., provides:

The name, address and other personally identifiable information of a person who makes a complaint to the Victim Advocate as provided in section 46a-13c, all information obtained or generated by the office in the course of an investigation, the identity and

> location of any person receiving or considered for the receipt of protective services under section 54-82t and all information obtained or generated by the office in the course of monitoring the provision of protective services under section 54-82t, and all confidential records obtained by the Victim Advocate or his designee shall be confidential and shall not be subject to disclosure under the Freedom of Information Act or otherwise, except that such information and records, other than confidential information concerning a pending law enforcement investigation or a pending prosecution, may be disclosed if the Victim Advocate determines that disclosure is (1) in the general public interest, or (2) necessary to enable the Victim Advocate to perform his responsibilities under section 46a-13c, provided in no event shall the name, address or other personally identifiable information of a person be disclosed without the consent of such person.

92. It is concluded that §§46a-13c and 46a-13d, and 46a-13e(a), G.S., respectively, establish the Office of the Victim Advocate, protect a victim's right to confidentiality where required by state law and remove certain of the Victim Advocate's records from disclosure under the FOI Act.

95. It is concluded that §§46a-13c and 46a-13d, and 46a-13e(a), G.S., do not apply to the records at issue in this matter and, therefore, do not exempt any of the respondents' records from disclosure.

96. Section 54-228, G.S., provides in pertinent part:

> (a) Any victim of a crime or any member of an inmate's immediate family who desires to be notified whenever an inmate makes an application to the Board of Pardons and Paroles, Department of Correction, sentencing court or judge or review division as provided in section 54-227… may complete and file a request for notification with the Office of Victim Services or the Victim Services Unit within the Department of Correction.
>
> …
>
> (c) A request for notification filed pursuant to this section shall be in such form and content as the Office of the Chief Court Administrator may prescribe. Such request for notification shall be confidential and shall remain confidential while in the custody of the Office of Victim Services and the Department of Correction and shall not be disclosed. It shall be the responsibility of the victim to notify the Office of Victim Services and the Victim Services Unit within the Department of Correction of his or her current mailing address and telephone number, which shall be kept confidential and shall not be disclosed by the Office of Victim Services and the Department of Correction. Nothing in this section shall be construed

> to prohibit the Office of Victim Services, the Board of Pardons and Paroles and the Victim Services Unit within the Department of Correction from communicating with each other for the purpose of facilitating notification to a victim and disclosing to each other the name, mailing address and telephone number of the victim, provided such information shall not be further disclosed. (Emphasis added.)

97. It is concluded that §54-228, G.S., pertains to requests for notification filed by crime victims with the Office of Victim Services ("OVS") or the Department of Correction ("DOC"). It is further concluded that OVS and DOC may not disclose such notifications, except that they may disclose a victim's name, current mailing address and telephone number to the respondent Board in order to facilitate notification of an application for pardon. It is concluded that the Board may not "further disclose" such information received from OVS or DOC.

98. It is found that the following in camera records contain a crime victim's name, current mailing address and/or phone number in a written communication between the respondents and OVS to facilitate notification of a victim: IC-2013-082-A-4, A-41, A-42, A-46, A-47; IC-2013-082-D-19 and D-20, D-24, D-25, D-33, D-37; IC-2013-082-E-53; IC-2013-082-F-27.

99. It is concluded that §52-228(c), G.S., prohibits disclosure of the victim's name, current mailing address and phone number in the records referenced in paragraph 98, above, and the respondents may redact such information. It is concluded that the respondents did not violate the FOI Act by withholding such information.

100. With respect to other in camera records that contain the victim's name, address, and a phone number, it is found that such records are not the result of communication among DOC, OVS and the Board for the purpose of facilitating notification to a victim. It is concluded that §52-228, G.S., applies only to records of request for notification and records derived from such requests for notification. It is concluded that the same information in a different record (such a police incident report) is not be subject to the statute's prohibition of disclosure.

101. **Section 51-5c, G.S.**, prohibits public access to protective orders maintained in an automated registry of protective orders. Although the respondents did not claim §51-5c, G.S., as an exemption, it is found that IC-2012-082-D-17 and D-18 are records from such registry. It is concluded that the respondents are prohibited from disclosing such records, and the respondents did not violate the FOI Act by withholding such records.

102. **Section 54-130e (f), G.S.** See paragraphs 57-64, above.

103. It is found that the respondents provided no evidence that any portion of the applications submitted for in camera review is a written report of investigation pertaining to a provisional pardon within the meaning of §54-130e (f), G.S.

104. **Section 54-63d, G.S.**, provides:

> (e) Except as provided in subsections (f) and (g) of this section, all information provided to the Court Support Services Division shall be for the sole purpose of determining and recommending the conditions of release, and shall otherwise be confidential and retained in the files of the Court Support Services Division, and not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.
>
> (f) The Court Support Services Division shall establish written procedures for the release of information contained in reports and files of the Court Support Services Division, such procedures to be approved by the executive committee of the judges of the Superior Court. Such procedures shall allow access to (1) nonidentifying information by qualified persons for purposes of research related to the administration of criminal justice; (2) all information provided to the Court Support Services Division by probation officers for the purposes of compiling presentence reports; and (3) all information provided to the Court Support Services Division concerning any person convicted of a crime and held in custody by the Department of Correction.
>
> (g) Any files and reports held by the Court Support Services Division may be accessed and disclosed by employees of the division in accordance with policies and procedures adopted by the Chief Court Administrator. (Emphasis added.)

105. It is concluded that §54-63d, G.S., by its terms applies only to information "provided to" Court Support Services."

106. Upon review of the in camera records that the respondents claimed are exempt pursuant to §54-63d, G.S., it is found that the following records contain information "provided to" CSSD: IC-2013-082-A-18; IC-2013-082-D-4, D-9 (handwritten notes only). It is concluded that the respondents did not violate the FOI Act by withholding such records.

107. With respect to the remainder of the in camera records that the respondents claim are exempt pursuant to §54-63d, G.S., it is found that the respondents did not prove that such records contain information provided to CSSD.

108. **Sections 54-142g, 54-142r, and 54-142s, G.S.**

109. Section 54-142g(a), G.S., provides in relevant part:

> "Criminal history record information" means court records and information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments,

informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases …

110. Section 54-142q, G.S., provides in relevant part:

(a) As used in this section, … "offender-based tracking system" means an information system that enables … criminal justice agencies… to share criminal history record information, as defined in subsection (a) of section 54-142g, and to access electronically maintained offender and case data involving felonies, misdemeanors, violations, motor vehicle violations, motor vehicle offenses for which a sentence to a term of imprisonment may be imposed, and infractions, and (3) "criminal justice information systems" means the offender-based tracking system and information systems among criminal justice agencies.

111. Section 54-142r, G.S., provides:

(a) Any data in the offender-based tracking system, as defined in section 54-142q, shall be available to the Commissioner of Administrative Services and the executive director of a division of or unit within the Judicial Department that oversees information technology, or to such persons' designees, for the purpose of maintaining and administering said system.

(b) Any data in said system from an information system of a criminal justice agency, as defined in subsection (b) of section 54-142g, that is available to the public under the provisions of the Freedom of Information Act, as defined in section 1-200, shall be obtained from the agency from which such data originated. The Secretary of the Office of Policy and Management shall provide to any person who submits a request for such data to the Criminal Justice Information System Governing Board, pursuant to said act, the name and address of the agency from which such data originated.

112. Section 54-142s, G.S., provides in relevant part:

(a) The Criminal Justice Information System Governing Board shall design and implement a comprehensive, state-wide information technology system to facilitate the immediate, seamless and comprehensive sharing of information between all state agencies, departments, boards and commissions having any cognizance over matters relating to law enforcement and criminal

> justice, and organized local police departments and law enforcement officials.
> ...
> (f) Such information technology system shall be developed with state-of-the-art relational database technology and other appropriate software applications and hardware, and shall be:
> (1) Completely accessible by any authorized criminal justice official through the Internet;
> (2) Completely integrated with the state police, organized local police departments, law enforcement agencies and such other agencies and organizations as the governing board deems necessary and appropriate, and their information systems and database applications;
> ...
> (5) Secure and protected by high-level security and controls;
> (6) Accessible to the public subject to appropriate privacy protections and controls; and
> (7) Monitored and administered by the Criminal Justice Information Systems Governing Board, with the assistance of the Department of Administrative Services, provided major software and hardware needs may be provided and serviced by private, third-party vendors.

113. It is found that the respondents failed to submit evidence to prove that §§54-142g, 54-142r, and 54-142s, G.S., apply to the application records referenced in the in camera indexes.

115. It is concluded, therefore, that such records are not exempt from disclosure.

116. **18 USC §2721** provides in relevant part:

> (a) In General.— A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:
> (1) personal information, as defined in 18 U.S.C. 2725 (3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; ...
> ...
> (b) Permissible Uses.— Personal information referred to in subsection (a)... may be disclosed as follows:
> (1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.
> (2) For use in connection with matters of motor vehicle or driver safety and theft...

> (3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors ...
> (4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body...
> (5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
> (6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.
> (7) For use in providing notice to the owners of towed or impounded vehicles.
> (8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.
> (9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license ...
> (10) For use in connection with the operation of private toll transportation facilities.
> (11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.
> (12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.
> (13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.
> (14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.
>
> (c) Resale or Redisclosure.— An authorized recipient of personal information ... may resell or redisclose the information only for a use permitted under subsection (b) [.]
>
> (Emphasis added.)

117. It is concluded that 18 USC §2721 applies to "personal information" disclosed or made available by a state department of motor vehicles. It is concluded subsection (c) prohibits the authorized recipient of such information from redisclosing such information.

118. Upon review of the in camera records that the respondents claim on the indexes are exempt pursuant to 18 USC §2721, it is found that the following is a record disclosed or made

available by a state department of motor vehicles: IC-2013-082-F-25. It is concluded that the respondents are authorized recipients.

119. With respect to the other in camera records that the respondents claim are exempt pursuant to 18 USC §2721, it is found that the respondents failed to prove that such records were disclosed or made available by a state department of motor vehicles. It is concluded, therefore, that 18 USC §2721 does not exempt such records from disclosure. Nevertheless, the respondents may redact any social security numbers and driver license identification numbers contained in such records, as described in paragraph 130, below.

120. With respect to IC-2013-082-F-25, "personal information" is defined in 18 USC §2725(3) as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status."

121. Upon careful examination of IC-2013-082-F-25, it is found that such record includes a name and a driver identification number (line 10, words 2, 3, 4, and 7). It is found that such information is "personal information" within the meaning of 18 USC §2725.

122. It is concluded that 18 USC §2721(c) prohibits the respondents from disclosing such personal information to the complainants. It is concluded, therefore, that the respondents did not violate the FOI Act by withholding the name and driver identification number contained in IC-2013-082-F-25.

123. It is found that the remainder of IC-2013-082-F-25 does not contain personal information within the meaning of 18 USC §2721. It is concluded that 18 USC §2721 does not exempt such information from disclosure.

124. **42 USC §290dd-2** provides in relevant part:

> Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall …be confidential…

125. It is concluded that 42 USC §290dd-2 applies only to records maintained in connection with a substance abuse program or activity that is conducted, regulated, or assisted by a federal agency.

126. It is found that the respondents failed to prove that any of the in camera records are records maintained in connection with a substance abuse program or activity conducted, regulated, or assisted by the federal government.

127. **Conn. Prac. Book §4-7** requires redaction of personal identifying information from documents filed with the court. The rule specifically excludes a person's name from the definition of personal identifying information.

128. **Conn. Prac. Book §11-210A** permits a judicial authority to seal records filed with the court in connection with a court proceeding, provided certain conditions are met.

129. It is found that §§4-7 and 11-210A of the Connecticut Practice Book are rules of court. It is concluded that such rules of court are not state statutes and, therefore, do not provide an exception to the mandate of disclosure in §1-210(a), G.S.

130. The Commission, in its discretion, however, has declined to order the disclosure of social security numbers and other similar identifiers in prior cases. The Commission hereby follows such practice here, too, and permits the respondents not to disclose a person's social security number and driver's license number.

131. It is found that the respondents submitted for in camera review certificates of pardon and related correspondence to the applicants. It is found that such records are not within the complainant's request, because the respondents did not rely on such records in deciding whether to grant the pardon applications.

132. It is concluded that the respondents need not disclose such records in complying with the complainants' request in this matter.

133. With respect to IC-2013-082-I-1 through I-7, the statements of reasons for denial of pardon, §54-124a(j)(3)-1 of the Regulations of Conn. State Agencies provides:

> Any pardons panel of the Board of Pardons and Paroles that denies an application for a pardon shall provide a written statement of reasons the application was denied.

134. Upon review of IC-2013-082-I-1 through I-7, it is found that each statement of reasons is a letter to the unsuccessful applicant informing him or her of the respondents' decision. It is found that the brief letter includes two or three bulleted sentences as reasons for the denial of pardon.

135. The respondents claim that the applicant's name and address in IC-2013-082-I-1 through I-7 are exempt from disclosure.

136. It is concluded, however, that the records are not exempt from disclosure pursuant to any of the respondents' claimed exemptions, as described in the preceding paragraphs.

137. It is found that at the time of the complainants' request on January 23, 2013, the respondents had voted to deny some of the requested applications, to grant an unconditional absolute pardon to some of the requested applications, and to grant a conditioned absolute

pardon to others. It is found that the respondents did not vote whether to grant any pardon applicant a provisional pardon.

138. It is concluded that at the time of the complainants' request, the applications that had been *denied* were subject to disclosure, because the applicant had not received an absolute pardon at that time, so the erasure statute did not apply. See paragraphs 51-55, above.

139. With respect to the applications for which the respondents voted to grant an unconditional or a conditional absolute pardon, it is found that such pardons did not become effective until the certificate of pardon issued, which for all the applications at issue in this matter, occurred after the complainants' request. It is concluded that at the time of the complainants' request, therefore, the pardons had not been received within the meaning of §54-142a(d)(2), G.S., and the erasure statute did not yet apply to prohibit disclosure of such applications.

140. It is found that by the time of the hearing in this matter certificates of pardon had issued in the appropriate cases and any pardon that the respondents voted to grant had been received.

141. With respect to applications that received an unconditional absolute pardon, it is concluded that such pardons are absolute within the meaning of subsection (d)(2) of §54-142a, G.S.

142. With respect to the scope of the records made confidential pursuant to the erasure statute, it is concluded that §54-142a(a) specifies: "all police and court records and records of any state's attorney pertaining to such charge shall be erased…"

143. Section 54-142a(e)(1), G.S., states: "[a]ny law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, … information pertaining to any charge erased under any provision of this section[.]"

144. It is found that the respondents are not a law enforcement agency. It is concluded, therefore, that §54-142a(e)(1), G.S., does not prohibit the respondents from disclosing any of the applications for which an unconditional absolute pardon was received.

145. However, §54-142c, G.S., provides in relevant part:

> [A]ny criminal justice agency having information contained in … erased records shall not disclose to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part[.]

146. Section 54-142g(b), G.S., states in relevant part: "Criminal justice agency" means … the Board of Pardons and Paroles[.]

147. It is found that, of the records not exempt pursuant to other exemptions, the following records contain information pertaining to any charge deemed to be erased. Accordingly, it is concluded that the respondents are prohibited from disclosing:

> IC-2013-082-C-9, C-11, C-15, C-16 (line 9), C-22 (question #3 and answer), C-23 (question #3 and answer), C-24 (question #3 and answer);
>
> IC-2013-082-E-5, E-8, E-9, E-10, E-11, E-15 (section #9, 8 digit number), E-16, E-17 (line 6), E-20 (question #3 and answer), E-21 (question #3 and answer, question #4 lines 1 and 12), E-22 (question #3 and answer), E-23 through E-28, E-54 through E-57, E-68, E-69, E-72 (lines 5-7), E-73 (lines 7-9), E-74 (lines 8-10);
>
> IC-2013-082-F-5, F-14, F-18 (question #3 and answer), F-19 (line 21), F-20 (question #3 and answer), F-22 (question #3 and answer), F-23 (lines 16-21), F-28, F-42 (question #4 and answer, question #5 and answer), F-43 (line 3), F-45 (lines 6 and 7), F-46 (lines 7 and 8), F-47 (lines 5 and 6); and
>
> IC-2013-082- G-7, G-8, G-10, G-15, G-16 (lines 4 and 7), G-20 (lines 6, 7, 8, 11, 14, 19), G-21 (lines 7-9), G-23 (lines 5-7), G-35, G-38, G-39.

148. With respect to applications that received an "absolute pardon subject to condition" (as described in the respondents' in camera index), it is concluded that a pardon that is absolute cannot also be conditional.[6] It is concluded, therefore, that a conditioned absolute pardon is, in fact, a conditioned pardon within the meaning of §54-13a, G.S. (See footnote 1, above.) It is further concluded that the erasure statute does not apply to conditioned pardons.

149. Accordingly, it concluded that such records must be disclosed except where exempt from disclosure as described in the findings of fact and conclusions of law, above.

150. It is concluded that the respondents violated §§1-210(a) and 1-212 (a), G.S., by failing to disclose the requested records, except where such records are exempt from disclosure as described in the findings of fact and conclusions of law, above.

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

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[6] By definition, something that is absolute is "free from any restriction or condition." absolute. Dictionary.com. *Dictionary.com Unabridged.* Random House, Inc.http://dictionary.reference.com/browse/absolute (accessed: November 20, 2013).

1. Forthwith, the respondents shall provide copies of the records requested by the complainants, unless they are exempt from disclosure as described in the findings of fact and conclusions of law, above.

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

Lisa Fein Siegel
as Hearing Officer

FIC2013-082/HOR/LFS/12162013