

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Mario Boone and WTNH News 8,

Complainants

against

Docket #FIC 2018-0580

Human Resources Director,  
City of New Haven; and  
City of New Haven,

Respondents

July 10, 2019

The above-captioned matter was heard as a contested case on December 12, 2018, at which time the complainants 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 email dated August 20, 2018, the complainants requested that the respondents provide them with copies of the following records:
  - a. Disciplinary file for Duanne Blake, including any/all records regarding her suspension and dismissal;
  - b. Copy of any/all complaints filed by Blake against Shemaia Mitchell;
  - c. Copy of any/all complaints filed by Blake while in the fire academy;
  - d. Copy of any/all records from Shemaia Mitchell's file regarding his resignation from the fire academy;
  - e. Copy of any/all summaries/findings/conclusions of any/all complaints filed by Blake;
  - f. Copy of any/all investigative summaries/findings/conclusions of any/all complaints filed against Mitchell;
  - g. Copy of love letter/inappropriate correspondence by Mitchell to Blake;

- h. Any/all payroll records showing when Blake was placed on leave and when she was removed from the city payroll; and
- i. Any/all payroll records showing when Mitchell was placed on leave and when he was removed from the city payroll.

3. It is found that, by email dated August 20, 2018, the respondents acknowledged the request, and informed the complainants that they had a copy of Duanne Blake's personnel file and could provide them with copies of the records in the file or set up a time for them to inspect the file. The respondents further informed the complainants that such file contained approximately 100 pages, and that the cost for copies would be approximately \$50.00.

4. It is found that, by email dated October 16, 2018, the respondents informed the complainants that they had a copy of Shemaia Mitchell's personnel file and could provide them with copies of the records in that file or set up a time for them to inspect the file. However, with respect to a card that Mr. Mitchell sent Ms. Blake and the complaint that Ms. Blake filed against Mr. Mitchell, the respondents informed the complainants that their request was denied.

5. By letter dated October 16, 2018 and filed October 17, 2018, the complainants appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide them with all of the requested records.

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, 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.

7. 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.

8. 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.”

9. It is found that the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

10. At the start of the contested case hearing, the complainants informed the hearing officer that the requests set forth in paragraphs 2.a, and 2.d, above, were no longer at issue.

11. In addition, it is found that the respondents provided the complainants with the opportunity to either obtain copies of or review the records contained in Ms. Blake’s personnel file. It is found that no records concerning Ms. Blake were withheld from the complainants. See ¶ 3, above. Accordingly, the only requests for records that remain at issue in this case are the requests concerning Mr. Mitchell, which are set forth in paragraphs 2.f, 2.g, and 2.i, above.

12. At the hearing, the complainants explained that the outstanding records concern Mr. Mitchell while he was a cadet in training at the New Haven Fire Department. The complainants further explained that, when Mr. Mitchell was a cadet, a fellow cadet filed a complaint against him. Mr. Mitchell subsequently terminated his cadet training without becoming a fire fighter. The complainants contend that they have a right to review all of the records related to the underlying incident, the investigation and Mr. Mitchell’s departure from the training academy.

13. The respondents contend that, while the majority of the requested records pertaining to Mr. Mitchell have been made available to the complainants, Mr. Mitchell objected to the disclosure of 28 pages of records.

14. Fire Chief John Alston appeared and provided testimony at the contested case hearing on behalf of the respondents. Mr. Mitchell also appeared and provided testimony with regard to his objection.

15. After the hearing, the respondents submitted the records at issue to the Commission for an in camera inspection. The in camera records shall be referred to as IC-2018-0580-1 through IC-2018-0580-28.

16. Mr. Mitchell contends that IC-2018-0580-1 through IC-2018-0580-28 are exempt in their entirety pursuant to §1-210(b)(2), G.S., because disclosure of the records would constitute an invasion of his personal privacy.

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

18. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. FOI Comm’n, 228 Conn. 158, 175 (1993). 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 such information is highly offensive to a reasonable person.

19. Section 1-214, G.S., provides in relevant part that:

(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, provided such notice shall not be required to be in writing where impractical due to the large number of employees 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. . . . 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.

20. It is found that the respondents timely notified Mr. Mitchell of the request in this case, and that Mr. Mitchell timely objected, within the meaning of §1-214, G.S.

21. It is further found that the records at issue constitute a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

22. After a careful review of the in camera records, it is found that the records concern Mr. Mitchell's general behavior while he was in training to become a fire fighter, an allegation about his behavior, and how the respondents investigated this matter.

23. It is found that the public has a legitimate interest in how the respondents responded to, investigated and ultimately resolved this matter. It is further found that the

disclosure of these records, with the exception of those portions of the records specifically referred to in paragraph 25, below, would not be highly offensive to a reasonable person.

24. The Connecticut Supreme Court has further stated that the name of a sexual harassment complainant and sexually salacious information are “not of legitimate public concern” and, by implication, disclosure of such information would be highly offensive to a reasonable person. Rocque, 255 Conn. at 664.

25. Accordingly, it is found that the name of the female cadet (wherever located in the in camera records), and the information contained in IC-2018-0580-1, Line 12 (all words up to, and including, the question mark), are exempt from disclosure pursuant to §1-210(b)(2), G.S.

26. It is found that the remainder of the in camera records contain the information which formed the basis for and which triggered an investigation by the respondents. It is found that these records are necessary to facilitate the public’s understanding and evaluation of the respondents’ investigative process, decision-making and overall handling of an important matter involving a cadet in training.

27. Accordingly, it is concluded that, other than the specific information referred to in paragraph 25, above, the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they refused to provide the complainants with copies of such 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 to the complainants a copy of the requested records. In complying with this order, the respondents may redact from the records the information referred to in paragraph 25, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 10, 2019.



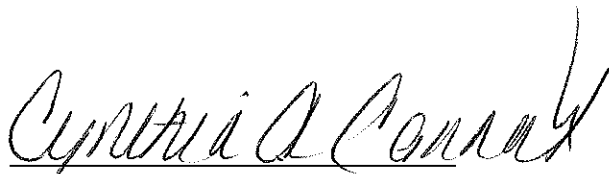
Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**MARIO BOONE AND WTNH NEWS 8**, 8 Elm Street, New Haven, CT 06510

**HUMAN RESOURCES DIRECTOR, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN**, c/o Attorney Kathleen Foster, City of New Haven, 165 Church Street, New Haven, CT 06510

A handwritten signature in cursive script, reading "Cynthia A. Cannata". The signature is written in black ink and is positioned above the printed name and title.

Cynthia A. Cannata  
Acting Clerk of the Commission