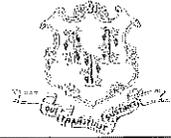


Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Socorro Barron,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-673

Property Manager, Ridgefield Housing  
Authority; and Ridgefield Housing Authority,  
Respondent(s)

June 25, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 24, 2013**. 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 July 12, 2013**. 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 July 12, 2013**. **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 July 12, 2013**, 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: Socorro Barron  
Andrew J. Buzzi, Jr., Esq.

6/25/13/FIC# 2012-673/Trans/wrbp/CAL/VDH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Socorro Barron,

Complainant

against

Docket # FIC 2012-673

Property Manager, Ridgefield Housing  
Authority; and Ridgefield Housing  
Authority,

Respondents

June 21, 2013

The above-captioned matter was consolidated for hearing with Docket # FIC 2013-020, Socorro Barron v. Rachel Spencer, Property Manager, Ridgefield Housing Authority; and Ridgefield Housing Authority. Both matters were scheduled to be heard as contested cases on June 5, 2013, at which time the complainant and the respondents appeared 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)(A), G.S.
2. It is found that by letters dated October 19, 2012 and November 9, 2012, the complainant made a request to the respondents for records: a) "that show the name of the tenant(s) who complained about posting signs on their door"; and b) "records from five years ago to the present of the rent payments for each of the six apartments in Building 'A' (the "requested records").
3. It is found that by letter dated November 13, 2012, the respondents acknowledged and denied the complainant's request for records, claiming an invasion of personal privacy pursuant to the federal Privacy Act.
4. It is found that, by letter dated November 26, 2012 and filed with the Commission on December 3, 2012, the complainant appealed to the Commission, alleging that the failure of the respondents to provide the requested records violated the Freedom of Information Act ("FOIA"). By letter dated January 6, 2013 and filed with the Commission on January 14, 2013, the complainant requested that the Commission assess a civil penalty of \$1,000 against the respondent Property Manager.

5. Section 1-200(5), G.S., provides:

“Public records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

7. Section 1-210(b), G.S., states in relevant parts:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

....

(2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;

8. It is concluded that the requested records, if any exist, are “public records” within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. Based on the credible sworn testimony of Lucille Reynolds, an Executive Property Manager at WinnResidential, which manages the relevant property for the respondent Authority, it is found that the respondents do not maintain any records “that show the name of the tenant(s) who complained about posting signs on their door.” All complaints of this nature were made verbally.

10. At the hearing, the complainant filed a motion requesting in writing a \$1,000 sanction against the respondents for seeking continuances and delaying the disclosure of records first requested on October 19, 2012. The complainant also stated that she had heard that some tenants may have political associations with persons who were influential in municipal government. Also at the hearing, the respondents pressed the claim first set forth in their November 13, 2012 acknowledgement letter that disclosure of the relevant rent payments would invade the personal privacy of tenants.

11. It is found that the respondents do maintain records which show the rent payments for each of the six apartments in Building 'A' for the past five years. It is also found that the rent is calculated based upon a publicly available formula which, if the amount of rent is known, allows the income of the relevant tenant to be readily calculated.

12. It is also found that, because there are only six apartments in the Building 'A' which the complainant referenced, the complainant would be able, with disclosure of the rent paid for each apartment, to determine the rent paid by specific individuals and therefore the annual income claimed by these individuals.

13. It is further found that the six apartments in Building 'A' are moderate rental housing maintained by the respondent housing authority pursuant to funding from the state Department of Economic and Community Development as provided by Title 8 of the Connecticut General Statutes. The relevant apartments are not Section 8 housing pursuant to funding from the state Department of Social Services as provided by Title 17b of the Connecticut General Statutes.

14. With regard to the Privacy Act claim (5 U.S.C. §552a et seq), the restrictions on disclosure apply to an "agency", which is defined as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency..." 5 U.S.C. §552a(a)(1)<sup>1</sup>.

15. It is found that the respondent housing authority is a department of the Town of Ridgefield, and not an authority of the United States government. It is therefore concluded that the respondent housing authority is not an "agency" within the meaning of 5 U.S.C. §552a(a)(1), and that the restrictions on disclosure contained in 5 U.S.C. §552a(b), do not apply to it.

16. It is also concluded that the records which show the rent payments for each of the six apartments in Building 'A' for the past five years are not records that "contain information that would ordinarily be considered in making personnel decisions", Connecticut Alcohol and Drug Abuse Commission v. FOIC, 233 Conn. 28, 42 (1995), and therefore are not "personnel or medical files and similar files" within the meaning of

---

<sup>1</sup> 5 U.S.C. §552a(a)(1) defines "agency" as that term is defined in 5 U.S.C. §552(e), which in turn, defines "agency" as that term is defined in 5 U.S.C. §551(1).

§1-210(b)(2), G.S. Accordingly, there is no exemption from mandatory disclosure based upon an invasion of personal privacy as set forth at the state level by the FOIA.

17. The Commission has had varying precedents concerning the disclosure of the rent paid by tenants in publicly subsidized housing, depending on the statutes applicable to a given housing program. In Tegeler v. Fairfield Housing Authority, Docket #FIC 93-336, the Commission ordered disclosure of the original applications for all participants, including “income and asset information for determination of eligibility.” Similarly, in Lombardo v. Newington Housing Authority, Docket #FIC 93-5, the tenants’ names, monthly rental fee, and annual income were ordered disclosed. In Reilly v. Norwalk Fair Rent Commission, Docket FIC# 95-222, an executive session was held to be illegal despite discussion of the income of tenants. However, pursuant to §17b-90, G.S., which requires that the “names of, and any information concerning, persons applying for or receiving assistance from the Department of Social Services or persons participating in a program administered by said department...” not be disclosed, the rental payments of named individuals, the apartment and unit numbers associated with a given subsidy, and the names and phone numbers of persons living in Section 8 housing have been ruled exempt from mandatory disclosure. Findley v. Director, Housing Authority, Town of Mansfield, Docket #FIC 2011-615; Schultz v. Commissioner Department of Social Services, Docket #FIC 96-555; and Hathway v. Department of Human Resources, Docket #FIC 90-277. In sum, the Commission’s case law has required the disclosure of the amount of rent paid by tenants in publicly subsidized housing unless, for a given housing program, there is a specific statute to the contrary.

18. The general presumption concerning public records is, of course, in favor of disclosure, and the burden of establishing the applicability of an exemption rests upon the party claiming the exemption. Superintendent of Police v. FOIC, 222 Conn. 621, 626 (1992); Chairman v. FOIC, 217 Conn. 193, 196 (1991); New Haven v. FOIC, 205 Conn. 767, 775 (1988); Maher v. FOIC, 192 Conn. 310, 315 (1984); Wilson v. FOIC, 181 Conn. 324, 328 (1980).

19. It is concluded that the respondents failed to prove any statutory exemption from disclosure for the rent paid by tenants in moderate rental housing maintained by the respondent housing authority pursuant to funding from the state Department of Economic and Community Development, as provided by Title 8 of the Connecticut General Statutes.

20. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide copies of records showing the rent payments for each of the six apartments in Building ‘A’ for the five years prior to the request. This legal conclusion is supported by the policy argument that disclosure will encourage compliance with the income eligibility requirements for participation in the moderate rental housing program.

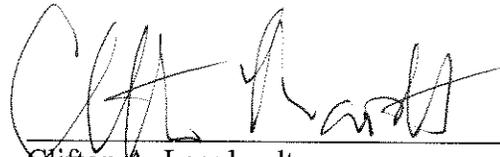
21. With respect to the complainant’s requests for the imposition of a civil penalty, §1-206(b)(2), G.S., provides, in relevant part:

...upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds... the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

22. It is found that, given the varying precedents concerning the disclosure of the rent paid by tenants in publicly subsidized housing, the denial of the FOIA right herein was not without reasonable grounds and there is no legal basis for the assessment of a civil penalty.

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

1. The respondents shall provide to the complainant forthwith records showing the rent payments for each of the six apartments in Building 'A' for the five years prior to the request.



Clifton A. Leonhardt  
as Hearing Officer