

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT
18-20 Trinity Street Hartford, CT 06106
Telephone: (860) 566-5682
Toll-free (CT only): (866) 374-3617
Fax: (860) 566-6474

Chris Powell,

Complainant(s)

Notice of Meeting

against

Docket #FIC 2007-498

Mayor, City of New Haven,

June 25, 2008

Respondent(s)

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 9, 2008**. 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 1, 2008*. 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.**

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By Order of the Freedom of Information Commission



W. Paradis, Acting Clerk of the Commission

Notice to:
Chris Powell
Kathleen M. Foster, Esq.
Steven R. Strom, Esq.
Debra M. Torres, Esq.
Michael M. Hethmon, Esq.
Dustin W. Gold
Louis Gold

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Chris Powell,

Complainant

against

Docket #FIC2007-498

Mayor, City of New Haven,

Respondent

and

Commissioner, State of Connecticut,
Department of Emergency Management
and Homeland Security; Association of
Cardholders of the Elm City Resident Card;
Unidad Latina en Accion; and
John and Jane Does,

Intervenors

June 25, 2008

The above-captioned matter was heard as a contested case on March 4, 2008; March 31, 2008; April 11, 2008; April 25, 2008; May 6, 2008; and May 19, 2008; at which time the complainant and the respondent¹ appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2007-605, Dustin Gold and the Community Watchdog Project v. Mayor, City of New Haven; and Community Services Administrator, City of New Haven. The Commissioner of the State of Connecticut, Department of Emergency Management and Homeland Security ("DEMHS"); the Association of Cardholders of the Elm City Resident Card; Unidad Latina en Accion; and John and Jane Does moved to intervene as party respondents. All were granted party status, having satisfied the requirements of §1-21j-30 of the Regulations of Connecticut State Agencies.²

¹ The respondent initially was represented by the Office of the Corporation Counsel of the City of New Haven and the Jerome N. Frank Legal Services Organization. During the course of the evidentiary hearing, the Jerome N. Frank Legal Services Organization withdrew as co-counsel.

² Eight John and Jane Does were allowed to intervene with pseudonyms in order to protect their names, which are the subject of the complainant's request for records in this matter. The John and Jane Does

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondent and DEMHS are public agencies within the meaning of §1-200(1), G.S.

2. It is found that on August 6, 2007, the complainant made a written request of the respondent ("City") for "access to any list maintained by the city of recipients of the Elm City Resident Card, including names, addresses, and photographs, as well as to documents collected by the city in support of issuance of such cards, including application forms and related materials."

3. It is found that on August 9, 2007, New Haven Mayor John DeStefano, Jr., wrote to the complainant, acknowledging receipt of his request for access to records and informing the complainant that the City's Community Services Administrator would respond to the complainant's request.

4. It is found that on September 10, 2007, the Community Services Administrator provided to the complainant copies of many of the records he requested, described in paragraph 2, above. It is found that the City claimed that other records that the complainant requested were exempt from mandatory disclosure pursuant to §§1-210(b)(2), 1-210(b)(3) and 1-210(b)(19), G.S. It is found that the City also claimed that disclosure of the withheld records would constitute an invasion of privacy under both state and federal common law.

5. It is found that by letter dated September 14, 2007 and filed September 17, 2007, the complainant appealed to this Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act by failing to provide access to copies of records "identifying the recipients of the Elm City Municipal Identification Card."

6. Section 1-200(5), G.S., defines "public records or files" as:

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 that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public

submitted for in camera review copies of some of the records requested by the complainant. It is found that such records include the names of the John and Jane Does and establish their standing to intervene.

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 . . . receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record.”

9. It is found that the records described in paragraph 2, above, including all records of the names, addresses, and photographs of applicants for the Elm City Identification Card, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. Section 1-210(b)(19), G.S., provides in relevant part:

(a) Nothing in the Freedom of Information Act shall be construed to require disclosure of ... (19) 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 Public Works, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Management and Homeland Security, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency ... As used in this section, “government-owned or leased institution or facility” includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and “chief executive officer” includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel;
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and
- (ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply;

11. It is found that the Elm City Identification Card ("ID Card") is a unique municipal program, launched July 24, 2007, in which any New Haven resident, regardless of citizenship status, can obtain an identification card. It is found that the application for the ID Card includes the applicant's name and home address, and that the City takes a photograph of each applicant for use on the ID Card, which also includes the applicant's name and home address.

12. It is found that holders of the ID Card may use the card to obtain City services, such as entry to City parks and use of the library, to receive discounts at local business establishments, to serve as a debit card and as a secondary form of identification at a local bank, and, in general, to support proof of personal identification as needed.

13. It is found that the City's decision to make the ID Card available to all City residents, without regard to citizenship status, generated enormous controversy and considerable public debate from the time that the City first considered the program in May 2007 and implemented it in July 2007. It is further found that the City has issued more than 5,000 ID Cards. It is found that the City does not ask applicants their citizenship status and submitted no evidence as to how many illegal immigrants applied for and received a card. Nevertheless, it is found that the ID Card became known as a program to aid illegal immigrants.

14. It is found that the debate over the merits of the ID Card program was both local and national in scope. It is found that almost all of the controversy concerned the City's decision to provide the ID Card to illegal immigrants, so long as they could prove their identity and residence according to the list of acceptable supporting documents.

15. It is found that, consistent with many issues concerning the subject of illegal immigration in the United States today, the ID Card program unleashed a level of vitriol and venom aimed at City officials and illegal immigrants that was far beyond mere political disagreement or healthy civic engagement, according to testimony.

16. It is found that City officials received an unusually large number of e-mails, letters, and voice-mails between June 2007 and November 2007 concerning the ID Card program, and that several of the communications were extremely hostile and hateful towards immigrants.

17. It is found that the City received some communications that clearly incited violence against holders of the ID card and anyone associated with the ID card:

- a. "When they show up for an ID card shoot them dead or at least deport them immediately!" E-mail received by City official on July 26, 2007.
- b. A comment posted on-line in response to the New Haven Independent's story on the ID Card "vowed to 'hunt down' immigrants if [s/]he could identify them through the municipal ID program."
- c. "Perfect opportunity for drive-by shooting using a machine gun! I would laugh if a slew of patriots got in their cars, drove up to the New Haven Municipal Building with machine guns and ammunition, and opened fire on the lines of Illegal Aliens standing there...In my opinion, the illegal aliens deserve to be killed and so does the Mayor and and [sic] City Council of New Haven Connecticut for siding with the illegals."

Comments made by New Jersey talk show host Hal Turner on radio broadcast, July 27, 2007.

- d. To the City's Community Services Administrator, who spoke publicly in support of the ID Card program and was in charge of the program's development and implementation: "You need to be taken by the United States citizens and killed as the enemy combatant to this nation that you are." July 23, 2007 e-mail.
- e. "[I]lllegals should and will be put to death." July 24, 2007 e-mail to Junta for Progressive Action, Inc., a New Haven organization that advocated in favor of the ID Card.
- f. "I can't wait for the rioting breaks out [sic], I have my Automatic Rifle ready to go an[d] won't hesitate to use it to kill these Rodents." Undated letter to City's mayor, received July 31, 2007.

18. It is found that the City received comments such as those described in paragraph 17, above, in the local and national context of a recent pattern of pervasive hate speech and violence directed at illegal immigrants and Hispanics:

- a. "I advocate extreme violence against illegal aliens." Hal Turner comments on radio broadcast, May 15, 2005. "I plant the seeds verbally and the seeds grow in the minds of others." Hal Turner comments on radio broadcast, October 11, 2005. "Find out where the largest gathering of illegal aliens will be near you. Go to the area well in advance, scope out several places to position yourself and then do what has to be done." Hal Turner comments on radio broadcast, May 27, 2006.
- b. "Anti-immigrant propaganda and rhetoric, once the domain of hate groups, is now part of the lexicon used by anti-immigration advocacy organizations, politicians and media figures considered mainstream." Anti-Defamation League publication, 2007.
- c. "What we'll do is randomly pick one night – every week – where we will kill whoever crosses the border...I think that would be more fun...I'd be happy to sit there with my high-powered rifle and my night scope." Arizona radio talk show host Brian James, April 10, 2006.

- d. "Anecdotal examples of 'hate crimes' reported by the Southern Poverty Law Center ... are circumstances where individuals have been subject to criminal attacks based on physical or linguistic characteristics, typically race or language, not immigration status." Affidavit of Jessica Vaughn, Senior Policy Analyst, Center for Immigration Studies, March 25, 2008.
- e. "Some of the robberies in Fair Haven targeting immigrants have resulted in grave injury to the victims and even death. For example, in the Spring of 2005, there was a rash of vandalism and assaults in Fair Haven where immigrants were the sole victims...Six months ago, a Mexican immigrant was smashed on the head with a bottle on Blatchley Avenue after the perpetrator hurled racial and ethnic epithets at him." Affidavit of New Haven Police Lieutenant Luiz Casanova.

19. At the time of the complainant's request for copies of records, §1-210(d), G.S., provided, in relevant part:

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 Public Works of such request, in the manner prescribed by such commissioner, 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 agency, ... 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...
[Emphasis added.]

20. It is found that on October 27, 2007, the City first contacted the Department of Public Works ("DPW") concerning the complainant's August 6, 2007, request for records. Contrary to the claim of the complainant in this matter's companion case, Docket #FIC2007-605, the City was not required to consult with DPW before denying the complainant's request. By the express terms of §1-210(d), G.S., the City was required to promptly notify DPW "before complying with the request." It is found that the City notified DPW before complying with the complainant's request; however, it did not do so promptly, within the meaning of §1-210(d), G.S.

21. It is concluded, therefore, that the City violated the FOI Act by failing to notify DPW promptly of the complainant's request for copies of those records that the City claimed were exempt from mandatory disclosure pursuant to §1-210(b)(19), G.S.

22. October 1, 2007, was the effective date of P.A. 07-202, which requires municipal agencies to consult with the Commissioner of DEMHS, not DPW, to determine whether there are "reasonable grounds to believe disclosure may result in a safety risk."

23. It is found that by early November 2007, the City became aware of the changes to §1-210(b)(19), G.S., described in paragraph 22, above. It is found that by letter dated November 2, 2007, the City requested review by the Commissioner of DEMHS, as set forth in P.A. 07-202.

24. It is found that the Commissioner and his legal advisor met with City officials twice and that the City gave the Commissioner several pages of documents to aid his review. Such documents are entered into the record in this matter as DEMHS Exhibit 1.

25. DEMHS Exhibit 1 consists of 482 pages, divided into 15 sections. Included in the exhibit are the communications and excerpts described in paragraphs 17 and 18, above (with the exception of paragraph 18.d). DEMHS Exhibit 1 also includes, inter alia, affidavits from several City officials who were involved in the ID Card program, as well as affidavits of the City's Chief of Police and a police lieutenant whose duties include supervising the patrol of Fair Haven, where a large population of the City's Latino and immigrant populations reside.

26. It is found that the Commissioner of DEMHS consulted with representatives of the City's mayor, who is the chief executive officer of the City, within the meaning of §§1-210(b)(19) and 1-210(d), G.S. It is further found that, pursuant to his obligation under §§1-210(b)(19) and 1-210(d), G.S., the Commissioner reviewed the 482-page exhibit that the mayor's representatives gave him.

27. It is found that on February 15, 2008, the Commissioner of DEMHS informed the City's mayor in writing that disclosure of the records requested by the complainant "may result in a safety risk to one or more persons under Conn. Gen. Stat. §1-210(b)(19) ... by creating a direct safety risk to the individuals whose information would be revealed." It is found that in reaching this conclusion, the Commissioner relied on witness accounts of events and communications provided by the City that "demonstrate a potentially lethal hostility towards the ID program and its applicants." It is found that several of the examples relied on by the Commissioner in concluding that there are "reasonable grounds to believe that disclosure may result in a safety risk" are cited in paragraphs 17 and 18, above.

28. The complainant refers to the enumerated list in §1-210(b)(19)(i) through (ix), G.S., to support his claim that the exemption applies only to records of government

and utility facilities and their occupants. The plain language of the statute, however, does not include such a restriction. Section 1-210(b)(19), G.S., expressly states that the list of exempt records is not exclusive. Moreover, by its terms, §1-210(b)(19), G.S., permits exemption of any type of record the disclosure of which may cause a safety risk to any person.

29. It is concluded that, although §1-210(b)(19), G.S., broadly defines the type of physical danger that the exemption is designed to avoid, the statute requires that the exemption must be based on specific and objective evidence. It is concluded that “reasonable grounds” means objective and specific evidence of a credible and imminent threat of physical violence caused by disclosure of the requested information. It is further concluded that the Commissioner must establish a “nexus between his [or her] opinion and the conclusion that the release of the data would pose a safety risk...[The Commissioner must] prove a correlation between criminal or terrorist activity and the disclosure of [the requested] data.” Director, Department of Information Technology of the Town of Greenwich v. FOI Commission, 274 Conn. 179, 193 (2005) (Municipality failed to present any evidence to demonstrate how disclosure of the requested records may cause a risk of harm).

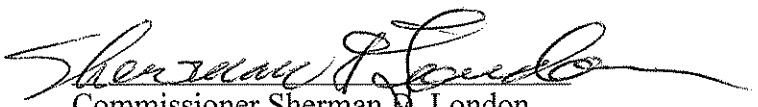
30. It is found that the Commissioner of DEMHS relied on specific, credible, and imminent threats of violence in determining that disclosure of the names, addresses and photographs of the ID Card applicants may cause a risk of physical harm to the applicants. It is concluded that this case is distinguishable from Director, supra, on that basis.

31. It is found that under the extraordinary facts and circumstances of this case, the respondent City has met its burden of proof that the records requested by the complainant are permissively exempt from mandatory disclosure. Accordingly, it is concluded that neither the City nor DEMHS violated the disclosure provisions of the FOI Act by refusing to disclose such records.

32. Based on the findings and conclusions in this Final Decision, the Commission declines to reach the merits of the other exemptions claimed by the respondent and intervenors.

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

1. The respondent City shall henceforth strictly comply with the prompt notice requirements of §§1-210(b)(19) and 1-210(d), G.S.


Commissioner Sherman D. London
as Hearing Officer

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OF THE STATE OF CONNECTICUT
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Dustin Gold and the
Community Watchdog Project,

Complainant(s)

against

Mayor, City of New Haven; and Community
Services Administrator, City of New Haven,

Respondent(s)

Notice of Meeting

Docket #FIC 2007-605

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Transmittal of Proposed Final Decision

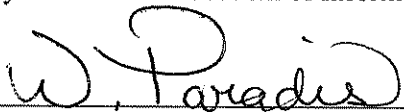
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This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 9, 2008**. 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 1, 2008*. 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.**

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FREEDOM OF INFORMATION COMMISSION
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In the Matter of a Complaint by

Report of Hearing Officer

Dustin Gold and the
Community Watchdog Project,

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Mayor, City of New Haven; and
Community Services Administrator,
City of New Haven,

Respondents

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Commissioner, State of Connecticut,
Department of Emergency Management
and Homeland Security; Association of
Cardholders of the Elm City Resident Card;
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June 25, 2008

The above-captioned matter was heard as a contested case on March 4, 2008; March 31, 2008; April 11, 2008; April 25, 2008; May 6, 2008; and May 19, 2008; at which time the complainants¹ and the respondents² appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2007-498; Chris Powell v. Mayor, City of New Haven. The Commissioner of the State of Connecticut, Department of Emergency Management and Homeland Security ("DEMHS"); the Association of

¹ Pursuant to §1-21j-32 of the Regulations of Connecticut State Agencies, the complainants filed written notice of authorized representation by Michael Hethmon and Carla Maresca, both of whom withdrew during the course of the evidentiary hearing. The complainants subsequently filed written notice of authorized representation by Louis Gold.

² The respondents initially were represented by the Office of the Corporation Counsel of the City of New Haven and the Jerome N. Frank Legal Services Organization. During the course of the evidentiary hearing, the Jerome N. Frank Legal Services Organization withdrew as co-counsel.

Cardholders of the Elm City Resident Card; Unidad Latina en Accion; and John and Jane Does moved to intervene as party respondents. All were granted party status, having satisfied the requirements of §1-21j-30 of the Regulations of Connecticut State Agencies.³

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents and DEMHS are public agencies within the meaning of §1-200(1), G.S.

2. It is found that on September 10, 2007, the complainants made a written request of the respondents ("City") for "any and all documents or records maintained or kept on file that have applicants' names and addresses gathered from July 23, 2007 – July 31, 2007, seeking to secure an ELM CITY MUNICIPAL IDENTIFICATION CARD [sic], including but not limited to, all information collected by the City, pertaining to applicants for this ID card."

3. It is found that the complainants sent two additional letters on September 10, 2007, requesting the same copies of records, but for the dates of August 1, 2007 through August 31, 2007 and for September 1, 2007 through September 17, 2007.

4. It is found that on October 12, 2007, the respondent Community Services Administrator denied the complainants' requests, described in paragraphs 2 and 3, above. It is found that the City claimed that the records requested by the complainants were exempt from mandatory disclosure pursuant to §§1-210(b)(2), 1-210(b)(3) and 1-210(b)(19), G.S. It is found that the City also claimed that disclosure of the withheld records would constitute an invasion of privacy under both state and federal common law.

5. It is found that by letter dated October 15, 2007 and filed November 7, 2007, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the records they requested, described in paragraphs 2 and 3, above.

6. Section 1-200(5), G.S., defines "public records or files" as:

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,

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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 . . . receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record.”

9. It is found that the records described in paragraphs 2 and 3, above, including all records of the names, addresses, and photographs of applicants for the Elm City Identification Card, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. Section 1-210(b)(19), G.S., provides in relevant part:

(a) Nothing in the Freedom of Information Act shall be construed to require disclosure of ... (19) 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 Public Works, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Management and Homeland Security, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency ... As used in this section, “government-owned or leased institution or facility” includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in

section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

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11. It is found that the Elm City Identification Card ("ID Card") is a unique municipal program, launched July 24, 2007, in which any New Haven resident, regardless of citizenship status, can obtain an identification card. It is found that the application for the ID Card includes the applicant's name and home address, and that the

City takes a photograph of each applicant for use on the ID Card, which also includes the applicant's name and home address.

12. It is found that holders of the ID Card may use the card to obtain City services, such as entry to City parks and use of the library, to receive discounts at local business establishments, to serve as a debit card and as a secondary form of identification at a local bank, and, in general, to support proof of personal identification as needed.

13. It is found that the City's decision to make the ID Card available to all City residents, without regard to citizenship status, generated enormous controversy and considerable public debate from the time that the City first considered the program in May 2007 and implemented it in July 2007. It is further found that the City has issued more than 5,000 ID Cards. It is found that the City does not ask applicants their citizenship status and submitted no evidence as to how many illegal immigrants applied for and received a card. Nevertheless, it is found that the ID Card became known as a program to aid illegal immigrants.

14. It is found that the debate over the merits of the ID Card program was both local and national in scope. It is found that almost all of the controversy concerned the City's decision to provide the ID Card to illegal immigrants, so long as they could prove their identity and residence according to the list of acceptable supporting documents.

15. It is found that, consistent with many issues concerning the subject of illegal immigration in the United States today, the ID Card program unleashed a level of vitriol and venom aimed at City officials and illegal immigrants that was far beyond mere political disagreement or healthy civic engagement, according to testimony.

16. It is found that City officials received an unusually large number of e-mails, letters, and voice-mails between June 2007 and November 2007 concerning the ID Card program, and that several of the communications were extremely hostile and hateful towards immigrants.

17. It is found that the City received some communications that clearly incited violence against holders of the ID card and anyone associated with the ID card:

- a. "When they show up for an ID card shoot them dead or at least deport them immediately!" E-mail received by City official on July 26, 2007.
- b. A comment posted on-line in response to the New Haven Independent's story on the ID Card "vowed to 'hunt down' immigrants if [s/]he could identify them through the municipal ID program."
- c. "Perfect opportunity for drive-by shooting using a machine gun! I would laugh if a slew of patriots got in their cars,

drove up to the New Haven Municipal Building with machine guns and ammunition, and opened fire on the lines of Illegal Aliens standing there...In my opinion, the illegal aliens deserve to be killed and so does the Mayor and and [sic] City Council of New Haven Connecticut for siding with the illegals.” Comments made by New Jersey talk show host Hal Turner on radio broadcast, July 27, 2007.

- d. To the City’s Community Services Administrator, who spoke publicly in support of the ID Card program and was in charge of the program’s development and implementation: “You need to be taken by the United States citizens and killed as the enemy combatant to this nation that you are.” July 23, 2007 e-mail.
- e. “[I]llegals should and will be put to death.” July 24, 2007 e-mail to Junta for Progressive Action, Inc., a New Haven organization that advocated in favor of the ID Card.
- f. “I can’t wait for the rioting breaks out [sic], I have my Automatic Rifle ready to go an[d] won’t hesitate to use it to kill these Rodents.” Undated letter to City’s mayor, received July 31, 2007.

18. It is found that the City received comments such as those described in paragraph 17, above, in the local and national context of a recent pattern of pervasive hate speech and violence directed at illegal immigrants and Hispanics:

- a. “I advocate extreme violence against illegal aliens.” Hal Turner comments on radio broadcast, May 15, 2005. “I plant the seeds verbally and the seeds grow in the minds of others.” Hal Turner comments on radio broadcast, October 11, 2005. “Find out where the largest gathering of illegal aliens will be near you. Go to the area well in advance, scope out several places to position yourself and then do what has to be done.” Hal Turner comments on radio broadcast, May 27, 2006.
- b. “Anti-immigrant propaganda and rhetoric, once the domain of hate groups, is now part of the lexicon used by anti-immigration advocacy organizations, politicians and media figures considered mainstream.” Anti-Defamation League publication, 2007.
- c. “What we’ll do is randomly pick one night – every week – where we will kill whoever crosses the

border...I think that would be more fun...I'd be happy to sit there with my high-powered rifle and my night scope." Arizona radio talk show host Brian James, April 10, 2006.

- d. "Anecdotal examples of 'hate crimes' reported by the Southern Poverty Law Center ... are circumstances where individuals have been subject to criminal attacks based on physical or linguistic characteristics, typically race or language, not immigration status." Affidavit of Jessica Vaughn, Senior Policy Analyst, Center for Immigration Studies, March 25, 2008.
- e. "Some of the robberies in Fair Haven targeting immigrants have resulted in grave injury to the victims and even death. For example, in the Spring of 2005, there was a rash of vandalism and assaults in Fair Haven where immigrants were the sole victims...Six months ago, a Mexican immigrant was smashed on the head with a bottle on Blatchley Avenue after the perpetrator hurled racial and ethnic epithets at him." Affidavit of New Haven Police Lieutenant Luiz Casanova.

19. At the time of the complainants' request for copies of records, §1-210(d), G.S., provided, in relevant part:

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 Public Works of such request, in the manner prescribed by such commissioner, 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 agency, ... 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... [Emphasis added.]

20. It is found that on October 27, 2007 the City first contacted the Department of Public Works ("DPW") concerning the complainants' September 10, 2007, request for records. Contrary to complainants' claim in their brief, the City was not required to consult with DPW before denying the complainant's request. By the express terms of §1-

210(d), G.S., the City was required to promptly notify DPW “before complying with the request.” It is found that the City notified DPW before complying with the complainant’s request; however, it did not do so promptly, within the meaning of §1-210(d), G.S.

21. It is concluded, therefore, that the City violated the FOI Act by failing to notify the DPW promptly of the complainants’ request for copies of those records that the City claimed were exempt from mandatory disclosure pursuant to §1-210(b)(19), G.S.

22. October 1, 2007, was the effective date of P.A. 07-202, which requires municipal agencies to consult with the Commissioner of DEMHS, not DPW, to determine whether there are “reasonable grounds to believe disclosure may result in a safety risk.”

23. It is found that by early November 2007, the City became aware of the changes to §1-210(b)(19), G.S., described in paragraph 22, above. It is found that by letter dated November 2, 2007, the City requested review by the Commissioner of DEMHS, as set forth in P.A. 07-202.

24. It is found that the Commissioner and his legal advisor met with City officials twice and that the City gave the Commissioner several pages of documents to aid his review. Such documents are entered into the record in this matter as DEMHS Exhibit 1.

25. It is found that DEMHS Exhibit 1 consists of 482 pages, divided into 15 sections. Included in the exhibit are the communications and excerpts described in paragraphs 17 and 18, above (with the exception of paragraph 18.d). It is found that DEMHS Exhibit 1 also includes, inter alia, affidavits from several City officials who were involved in the ID Card program, as well as affidavits of the City’s Chief of Police and a police lieutenant whose duties include supervising the patrol of Fair Haven, where a large population of the City’s Latino and immigrant populations reside.

26. It is found that the Commissioner of DEMHS consulted with representatives of the City’s mayor, who is the chief executive officer of the City, within the meaning of §§1-210(b)(19) and 1-210(d), G.S. It is further found that, pursuant to his obligation under §§1-210(b)(19) and 1-210(d), G.S., the Commissioner reviewed the 482-page exhibit that the mayor’s representatives gave him.

27. It is found that on February 15, 2008, the Commissioner of DEMHS informed the City’s mayor in writing that disclosure of the records requested by the complainant “may result in a safety risk to one or more persons under Conn. Gen. Stat. §1-210(b)(19) ... by creating a direct safety risk to the individuals whose information would be revealed.” It is found that in reaching this conclusion, the Commissioner relied on witness accounts of events and communications provided by the City that “demonstrate a potentially lethal hostility towards the ID program and its applicants.” It is found that several of the examples relied on by the Commissioner in concluding that there are “reasonable grounds to believe that disclosure may result in a safety risk” are cited in paragraphs 17 and 18, above.

28. The complainants refer to the enumerated list in §1-210(b)(19)(i) through (ix), G.S., to support their claim that the exemption applies only to records of government and utility facilities and their occupants. The plain language of the statute, however, does not include such a restriction. Section 1-210(b)(19), G.S., expressly states that the list of exempt records is not exclusive. Moreover, by its terms, §1-210(b)(19), G.S., permits exemption of any type of record whose disclosure may cause a safety risk to any person.

29. It is concluded that, although §1-210(b)(19), G.S., broadly defines the type of physical danger that the exemption is designed to avoid, the statute requires that the exemption must be based on specific and objective evidence. It is concluded that “reasonable grounds” means objective and specific evidence of a credible and imminent threat of physical violence caused by disclosure of the requested information. It is further concluded that the Commissioner must establish a “nexus between his [or her] opinion and the conclusion that the release of the data would pose a safety risk...[The Commissioner must] prove a correlation between criminal or terrorist activity and the disclosure of [the requested] data.” Director, Department of Information Technology of the Town of Greenwich v. FOI Commission, 274 Conn. 179, 193 (2005) (Municipality failed to present any evidence to demonstrate how disclosure of the requested records may cause a risk of harm).

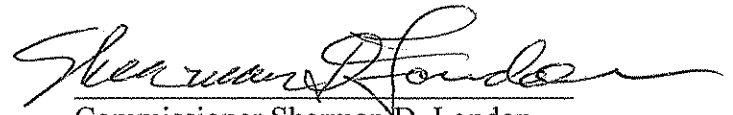
30. It is found that the Commissioner of DEMHS relied on specific, credible, and imminent threats of violence in determining that disclosure of the names, addresses and photographs of the ID Card applicants may cause a risk of physical harm to the applicants. It is concluded that this case is distinguishable from Director, supra, on that basis.

31. It is found that under the extraordinary facts and circumstances of this case, the respondent City has met its burden of proof that the records requested by the complainants are exempt from mandatory disclosure. Accordingly, it is concluded that neither the City nor DEMHS violated the disclosure provisions of the FOI Act by refusing to disclose such records.

32. Based on the findings and conclusions in this Final Decision, the Commission declines to reach the merits of the other exemptions claimed by the respondents and intervenors.

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

1. The respondent City shall henceforth strictly comply with the prompt notice requirements of §§1-210(b)(19) and 1-210(d), G.S.



Commissioner Sherman D. London
as Hearing Officer

FIC#2007-605/HOR/lfs/06252008