

**FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT**

In the Matter of a Complaint by

FINAL DECISION

Gerald L. Fanfarelli,

Complainant

against

Docket #FIC 2008-408

William Celentano, Chairman, Board of Fire Commissioners, City of New Haven; Boise Kimber, Member, Board of Fire Commissioners, City of New Haven; Wendy Mongillo, Member, Board of Fire Commissioners, City of New Haven; Board of Fire Commissioners, City of New Haven; Michael Grant, Chief, Fire Department, City of New Haven; Ronald Dumas, Assistant Fire Chief, Fire Department, City of New Haven; James Kottage, Chairman, Pension Board of the Policemen's and Firemen's Retirement Fund, City of New Haven; Wendy Mongillo, Member, Pension Board of the Policemen's and Firemen's Retirement Fund, City of New Haven; Jerome Sagnella, Payroll/Pension Administrator, Pension Board of the Policemen's and Firemen's Retirement Fund, City of New Haven; and Pension Board of the Policemen's and Firemen's Retirement Fund, City of New Haven,

Respondents

June 10, 2009

The above-captioned matter was heard as a contested case on October 23, 2008, December 9, 2008, and January 26, 2009, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Lengthy hearings conducted on December 9, 2008 and January 26, 2009 were held, at the direction of the hearing officer, for the sole purpose of giving notice and an opportunity to be heard to all individuals who might be subject to civil penalties, since no individuals had originally been named in the complaint. The case caption has been amended to reflect all named respondents.

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. By letter of complaint filed June 17, 2008 and supplemented by letter of complaint filed June 25,

2008, the complainant appealed to the Commission, alleging that both respondents violated the Freedom of Information (“FOI”) Act by denying prompt access to public records; that the Board of Fire Commissioners (the “Fire Commission”) violated the FOI Act by recommending his involuntary retirement at a meeting at which he was not on the agenda; and that the Policemen and Firemen’s Retirement Fund Board (the “Pension Board”) violated the FOI Act by meeting to discuss his involuntary retirement in executive session without notifying him. The complainant requested remedial FOI training; a declaration that actions taken at both meetings at issue are null and void; and the imposition of civil penalties against the respondents.

3. It is found that the complainant is a firefighter with 22 years of service who injured his back in the course of his duties with the New Haven Fire Department.

4. It is found that the respondent Fire Commission received periodic reports on the complainant, as well as other individuals on sickness or injury leave.

5. It is found that, as a result of his injuries, the complainant was at some point placed on light duty.

6. It is found that, by April of 2008, the complainant and at least one physician believed the complainant was ready to return to full duty. It is further found that the complainant was eager to return to work, and made that desire known to the New Haven Fire Chief, certain other employees, and certain members of the respondents, including the chairman of the Pension Board, James Kottage, and Fire Commissioner William Celentano. It is found that the complainant’s desire to return to full duty was well known in the Fire Department.

7. It is found that the respondent Fire Commission received conflicting medical reports about the complainant’s ability to return to full duty.

8. It is found that individuals in the respondent Fire Commission and the Fire Department were concerned that, if the complainant returned to full duty and re-injured his back, he would need to be returned to light duty and the Department would be short a man on full duty.

9. It is found that the Fire Commission held its regular monthly meeting on May 14, 2008, and voted, at the recommendation of the Fire Chief, to initiate the complainant’s involuntary retirement by the respondent Pension Board.

10. It is found that the complainant was not on the agenda of the May 14, 2008 meeting, was not added to the agenda, and did not know or receive any notice that his involuntary retirement would be discussed or recommended. In fact, the complainant had been told by the Chairman of the Pension Board that the Assistant Chief of the Fire Department would be “working with” the complainant about his return to full duty, and that the complainant was not on the agenda of the May 14, 2008 meeting.

11. It is found that the respondent Pension Board held its regular monthly meeting on May 15, 2008 to discuss the involuntary retirement of the complainant. It is further found that the Pension Board discussed this matter, including the complainant’s medical condition, in executive session.

12. It is found that the Pension Board added the matter of the complainant’s involuntary retirement to its agenda, but did not notify the complainant that he would be discussed in executive session. It is further found that the complainant did not know he would be discussed in executive session, or otherwise, at the Pension Board’s meeting.

13. It is found that the Pension board voted to obtain further medical testing of the complainant, and did not immediately act on the involuntary retirement.

14. It is found that the complainant, to his surprise, heard from his colleagues sometime after the May 14 and 15 meetings that “he had been retired.” It is also found that the complainant reasonably had difficulty believing this to be true.

15. It is found that the complainant, soon thereafter, attempted to obtain the minutes of the meetings in question to determine whether the respondents had, contrary to his expectations, actually discussed his retirement at their May 14 and 15 meetings.

16. It is found that the respondents did not provide the minutes of the meetings until the following month.

17. The complainant alleged in his complaint, and the respondents did not dispute at the hearing on this matter or at any time thereafter, that the Chief called the complainant into his office on the afternoon of May 19 and told him some version of what had happened.

18. It is therefore found, based on the agreement of the parties, that the complainant was in fact notified by the Chief on May 19, 2008 that the Fire Commission had taken action to initiate his involuntary retirement.

19. It is further found that, by letter dated May 21, 2008, the Chief notified the complainant that the Fire Commissioners had unanimously voted at their May 14, 2008 meeting to initiate an application for involuntary retirement based on medical cause, and that he anticipated that the complainant’s case would be heard by the Pension Board on June 19, 2008, “at which time a date for retirement will be set.”

20. It is additionally found that, by letter also dated May 21, 2008, the Pension Board notified the complainant that they had voted to table the request from the Fire Commissioners, directed him to arrange for an independent medical examination (“IME”) at the Yale Occupational Medical Clinic, and informed him that the Pension Board would discuss the matter at its next meeting on June 19, 2008.

21. It is found that, by letter dated May 27, 2008, the Pension Board informed the complainant that it had scheduled him for a Functional Capacity Evaluation (“FCE”) at Temple Physical Therapy. This letter made no mention of the IME that the complainant had been directed to arrange in the Pension Board’s May 21 letter.

22. It is found that the complainant, in late May or early June, requested that the Pension Board defer its consideration of his involuntary retirement until its July meeting in order to afford the complainant more time to prepare for the meeting. That request was denied on or about June 5, 2008.

23. It is found that the complainant, by letter dated June 9, 2008 to Jerome Sagnella, the payroll/pension administrator for the City of New Haven, requested any records documenting the “customary standards and practices” authorizing the Pension Board to ask for an IME, as it had done in its May 21, 2008 letter; and any minutes of any Pension Board meeting, or other records, that would document the Pension Board’s decision to require the complainant to instead, or additionally, take a FCE.

24. It is found that the complainant also made a more extensive request dated June 11, 2008 to the Pension Board, through Mr. Sagnella, for:

- a. The 2008 schedule of the regular meetings of the Pension Board and the names and addresses of current members of the Fire Commission^[1];
- b. For the May 15, 2008 Pension Board meeting:
 - i. The agenda or agendas published;
 - ii. The date and method of publication of the agenda/agendas;
 - iii. The location of the publication of the agenda/agendas;
 - iv. The person who published the agenda/agendas;
 - v. Copies of any documents and emails sent from the Fire Chief and/or Fire Commission to the Pension Board, and to the Fire Chief and/or Fire Commission from the Pension Board, on the matter of his employment or retirement for or following the May 15, 2008 meeting;
 - vi. Copies of any documents and emails sent to Local 825, IAFF, by the Pension Board, and from Local 825, IAFF, to the Pension Board, on the matter of his employment or retirement for or following the May 15, 2008 meeting;
 - vii. Copies of any documents and emails sent to James Kottage by the Pension Board and its staff, and from the Pension Board and its staff to James Kottage, on the matter of his employment or retirement for or following the May 15, 2008 meeting;
 - viii. The minutes of the May 15, 2008 Fire Commission's meeting^[2];
 - ix. Any documents, including medical data/reports or review policies/standards, referenced, discussed, relied upon or used at any time, including at the May 15, 2008 meeting, by the Pension Board to determine his eligibility for retirement; and
 - x. Any documents, including medical data/reports or review policies/standards, referenced, discussed, relied upon or used at any time, including at the May 15, 2008 meeting, by the Pension Board to table the request from the Fire Commission that the decision regarding his retirement was pending an examination at Yale Occupational and Environmental Medicine;
- c. The agenda for the upcoming June 19, 2008 Pension Board meeting;
- d. The amount of time I will have at the June 19, 2008 Pension Board meeting to make a presentation to the Pension Board on the matter of his employment and retirement; and
- e. From September 1, 2007 to June 11, 2008, any agenda/agendas and minutes for any other meetings of the Pension Board not referenced above in which the matter of his employment, grievance against the city under the IAFF labor contract or retirement was raised, addressed or discussed.

25. It is found that the complainant also made a similar request dated June 11, 2008 to the Fire Commission, through Chief Grant, for:

- a. The 2008 schedule of the regular meetings of the Fire Commission and the names and addresses of current members of the Fire Commission;

- b. For the May 14 and June 2, 2008 Fire Commission meetings:
 - i. The agenda or agendas published;
 - ii. The date and method of publication of the agenda/agendas;
 - iii. The location of the publication of the agenda/agendas;
 - iv. The person who published the agenda/agendas;
 - v. Copies of any documents and emails sent to the Fire Commission by the Fire Chief, or from the Fire Commission to the Fire Chief, on the matter of his employment or retirement for or following the two meetings;
 - vi. Copies of any documents and emails sent to the Pension Board by the Fire Chief and/or Fire Commission, or from the Pension Board to the Fire Chief/Fire Commission, on the matter of his employment or retirement for or following the two meetings;
 - vii. Copies of any documents and emails sent to Local 825, IAFF by the Fire Chief and/or Fire Commission, or from Local 825, IAFF to the Fire Chief/Fire Commission, on the matter of his employment or retirement for or following the two meetings;
 - viii. Copies of any documents or emails sent to James Kottage by the Fire Chief and/or Fire Commission, or from James Kottage to the Fire Chief and/or Fire Commission, on the matter of his employment, grievance against the city under the IAFF labor contract or retirement for or following the two meetings;
 - ix. The minutes of the two Fire Commission meetings; and
 - x. Any documents, including medical data/reports or review policies/standards, referenced, discussed, relied upon or used at any time, including at the two meetings, by the Fire Chief and/or Fire Commission to initiate an application for his retirement for medical cause;
- c. From September 1, 2007 to June 11, 2008, any agenda/agendas and minutes for any other meetings of the Fire Commission not referenced above in which the matter of his employment, grievance against the city under the IAFF labor contract or retirement was raised, addressed or discussed.

26. It is found that, by letter dated June 17, 2008, the respondent Pension Board replied to the complainant's June 11, 2008 request by providing "documents from your personal pension file to date as you have designated." In addition, the Pension Board provided information about the date and method of publication of its agendas and minutes; the location of the publication of its agendas; the person who publishes the agendas; and the amount of time the complainant would be given at the June 19, 2008 Pension Board meeting to make a presentation.

27. It is found that certain other records requested on June 9 and June 11, 2008, from both respondents were provided over time to the complainant.

28. It is found that the minutes of the Pension Board's May 15 meeting were not provided until the respective Pension Board met the following month and approved its minutes, because the clerk of the Pension Board believed that approval of the minutes was required before they could be disclosed.

29. At the October 23, 2008 hearing on this matter, the complainant and the respondents entered into

multiple stipulations concerning which of the requested records had been provided, which of the requested records the complainant was satisfied did not exist, which of the requested records the respondents pledged to provide to the complainant, which of the records requests the complainant agreed to withdraw, and which of the records had not been provided and were still at issue. At that time, the only records that remained at issue were those referenced in paragraphs 24(b)(ix) and 24(b)(x), above, consisting of records, including medical records, that the Pension Board used to make a determination of the complainant's eligibility for retirement, and to table the request from the Fire Commission regarding his retirement pending an examination at Yale Occupational and Environmental Medicine.

30. It is found that the respondent Pension Board met on July 10, 2008 and determined not to involuntarily retire the complainant for medical cause, and that the complainant was returned to full active duty to the Fire Department, but not to his former job as a driver, for reasons not relevant to this case.

31. 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.

32. 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 (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.

33. 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.”

34. It is concluded that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

35. The complainant maintains that the provision of records to him was not prompt, and was incomplete. The complainant further maintains that the provision to him of his personal pension file was not responsive to any of his requests. Finally the complainant contends that he was never provided the records described in paragraphs 24(b)(ix) and (x), that is, the records that the pension board used to make its decisions about his retirement.

36. With respect to the general question of promptness, the meaning of the word “promptly” is a particularly fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the

word “promptly” as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

37. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

38. It is found that a substantial number of documents were requested.

39. It is found that the requested records were important to the complainant in order to prepare to oppose his involuntary retirement at an upcoming meeting of the Pension Board that the Pension Board at least initially refused to postpone.

40. It is found that the respondents were under some other time constraints to complete other work before providing the copies, but that those time constraints were not unusually stringent.

41. It is found that the month delay in providing the minutes of the Pension Board’s May 15, 2008 minutes while waiting for their approval by the board was not justified by the FOI Act.

42. It is found that the provision of many of the requested records stretched until the weeks following the October 23, 2008 hearing on this matter.

43. It is concluded that, on balance, many of the requested records were not provided promptly, and that the respondents thereby violated §1-210(a), G.S.

44. With regard to the completeness of the records provided to the complainant, the respondents either provided or pledged to provide all the records that the complainant continued to seek as of October 23, 2008, except for the records described in paragraphs 24(b)(ix) and (x), above, relating to the records that the Pension Board relied upon in deciding the issue of the complainant’s involuntary medical retirement.

45. It is found that determining which records the individual members of the Pension Board relied upon in their discussion of the complainant’s retirement would require an inquiry directed to each Board member, and a discretionary determination of what constituted reliance on particular records.

46. It is therefore concluded that providing the records described in paragraphs 24(b)(ix) and (x)

would require research not required by the FOI Act.

47. It is therefore concluded that the respondent Pension Board did not violate the FOI Act by declining to conduct research in order to provide the requested records described in paragraphs 24(b)(ix) and (x), above.

48. It is also found that the complainant's personal pension file, which contains the medical records submitted to the Pension Board, must include at least some, if not all, of the records described in paragraphs 24(b)(ix) and (x).

49. It is therefore concluded that the provision to the complainant of his personal pension file was at least partially, if not substantially, responsive to his request for the records described in paragraphs 24(b)(ix) and (x).

50. With respect to the allegations concerning the Pension Board's May 15, 2008 meeting, the respondent Pension Board contends that the complaint was not timely filed because the complainant failed to prove that he filed his complaint within 30 days of his notice in fact of the May 15, 2008 executive session.

51. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held.

52. It is found that the portions of the May 14 and May 15 meetings concerning the complainant were secret or unnoticed, because he was not on the agenda of either meeting, he was specifically informed that he was not on the agenda, and he was not notified of the fact that his retirement would be discussed even though members of both boards knew of his desire to return to work.

53. It is also found that the complainant's merely "hearing through the grapevine" that "he had been retired," gave him the duty to inquire as to whether that rumor was factually true, and whether the respondents had met at some point and conducted such business, a duty that the complainant undertook by requesting minutes that he didn't receive for a month. But that rumor did not itself constitute notice in fact that the respondents had met to discuss and act on his retirement on May 14 and May 15. The Commission notes in this regard that the information in the rumor regarding the complainant's retirement was minimal and not in fact entirely true—he had not "been retired." Rather one board had recommended involuntary retirement, and another board had tabled a decision.

54. It is therefore concluded that the complainant had notice in fact of the respondents' secret or unnoticed meetings no earlier than May 19, 2008, and that therefore his June 17, 2008 complaint is timely for purposes of §1-206(b)(1), G.S.

55. It is therefore concluded that the complainant had actual notice of the meetings of the respondents concerning his retirement no earlier than May 19, 2008, and that the complaint was therefore timely filed on June 17, 2008.

56. With respect to the complainant's allegation that the respondents violated the FOI Act by meeting on May 14 and 15 and acting to involuntarily retire him without giving any prior notice of that intention, the relevant statutes provide as follows.

57. Section 1-225(a), G.S., provides in relevant part: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."

58. Section 1-200(6), G.S., provides in relevant part:

"Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, *provided that such individual may require that discussion be held at an open meeting* ...; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.
[Emphasis added]

59. Section 1-225(c), G.S., provides in relevant part:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

60. It is found that the respondent Fire Commission took up the matter of recommending that the Pension Board initiate the complainant's involuntary medical retirement at its May 14, 2008 regular meeting without that matter being on the agenda, and without adding the matter to the agenda.

61. It is concluded that the respondent Fire Commission violated §1-225(c), G.S.

62. It is found that the respondent Pension Board did not provide notice to the complainant that his retirement and his medical condition and records would be discussed in executive session at its May 15, 2008 regular meeting.

63. The respondent contends that the notice required by §1-200(6)(A), G.S., was not required in this case because the executive session was convened pursuant to §1-200(6)(E), not (A), and because it believed that the complainant would not want his medical records discussed publicly, because no other employee had ever wanted their retirement and medical records discussed publicly.

64. It is found that the minutes of the Pension Board's May 15 meeting do not reflect that the Pension Board entered into executive session pursuant to §1-200(6)(E), G.S., or, indeed, for any specified

purpose.

65. It is found, however, that the respondent Pension Board did not discuss the complainant's medical records in a vacuum, but solely for the purpose of discussing his health and determining whether he would be involuntarily retired by them.

66. It is concluded that discussing the health of a public employee and deciding whether to initiate his involuntary retirement—in effect, terminating his employment—constitutes “[d]iscussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee” within the meaning of §1-200(6)(A), G.S.

67. It is therefore concluded that the respondent Pension Board violated §1-200(6)(A), G.S., when it failed to give the complainant notice that his involuntary medical retirement would be discussed in executive session.

68. With respect to the complainant's request for the imposition of civil penalties, §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 and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, 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.

69. Contrary to the respondents' arguments, a finding that a violation was “without reasonable grounds” does not depend on the offender's having previously been warned by the Commission, or having violated an order of the Commission.

70. Rather, as the respondent Fire Commission acknowledges, the standard for when a violation is “without reasonable grounds” is analogous to the legal standard “without any substantial justification.” Connecticut Department of Public Safety v. FOIC, et al., 1997 WL 537117 (Conn. Super.), affirmed, 247 Conn. 341 (1998). Similarly, the phrase “without reasonable justification” has been construed to mean “entirely unreasonable or without any basis in law or fact.” Id., quoting Bursinkas v. Department of Social Services, 240 Conn. 141, 155 (1997).

71. The Fire Commission contends that its action was based on a “genuine misunderstanding,” and that therefore its actions were not without reasonable grounds.

72. It is found that the Fire Commission's decision to proceed with a recommendation to initiate the complainant's involuntary retirement without any notice to him was not based on any factual misunderstanding. Rather, the Fire Chief and at least some members of the Fire Commission were very aware of the complainant's interest in, and opposition to, his retirement, and nonetheless proceeded without any notice to him.

73. It is therefore found that the Fire Commission's decision to act without notice to the complainant was without any reasonable factual justification.

74. It is also found that the Fire Commission's decision to proceed with a recommendation to initiate the complainant's involuntary retirement without any notice to him was not based on any legal misunderstanding. The Fire Commission did not advance any colorable construction of the relevant statutes that would obviate the need for an agenda that included the business of the complainant's involuntary retirement, but simply claimed that they either didn't know he should have been on the agenda, or didn't know they had to add him to the agenda. But ignorance of the relevant statutes does not constitute legal justification.

75. It is therefore found that the Fire Commission's decision to proceed with a recommendation to initiate the complainant's involuntary retirement without any notice to him was without any legal justification.

76. The Pension Board also contends that its action was not without reasonable grounds, because it had always discussed medical records in closed session, no one had ever requested that their medical records be discussed in an open meeting, they believed an executive session was permissible for the discussion of medical records, and it was unaware of any requirement that pension applicants be given notice and an opportunity to request that their applications be discussed in open session.

77. It is found, however, that the fact that the Pension Board had always conducted similar deliberations in executive session—almost all of which were *voluntary* retirements—was not a factual justification for depriving the complainant of notice and an opportunity to require an open session where he clearly opposed his involuntary retirement.

78. It is therefore found that the Pension Board's decision to convene in executive session to discuss the complainant's retirement and his medical condition and records without notice to him was without any reasonable factual justification.

79. It is also found that the Pension Board's decision to convene in executive session to discuss the complainant's retirement and his medical condition and records without notice to the complainant was not based on any legal misunderstanding. The Pension Board's argument that they thought they were just discussing exempt medical records, not the complainant's employment, medical history, and retirement, is not credible. Further, as with the Fire Commission, the Pension Board's claim that they were ignorant of the relevant statutes does not constitute legal justification.

80. It is therefore found that the Pension Board's decision to convene in executive session to discuss the complainant's retirement and his medical condition and records without notice to the complainant was without any legal justification.

81. However, even where a violation is without reasonable grounds and the officials directly responsible for the violation have been given an opportunity to be heard, it is still discretionary whether the Commission determines to impose a civil penalty. The Commission in its discretion declines to impose a civil penalty based on the record in this matter.

82. In his complaint, the complainant also requested that all actions taken by the respondents at their May 14 and 15 meetings be declared null and void.

83. However, given that the Fire Commission's recommendation to initiate involuntary retirement

was ultimately denied by the Pension Board, and that the complainant was ultimately returned to full duty, no purpose would be served by declaring the actions null and void.

84. Finally, it is found that the respondents have recently attended a training session conducted in part by staff of the Commission, and that ordering further training would not be an appropriate remedy.

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 the complainant with copies of any records that it pledged to provide at the October 23, 2008 hearing on this matter, if they have not already done so.

2. Henceforth the respondents shall strictly comply with the notice requirements contained in §§1-225(a), and 1-200(6)(A), G.S.

3. Although the Commission declines to impose civil penalties on procedural grounds in this matter, the Commission considers the violations egregious.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 10, 2009

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:

Gerald L. Fanfarelli
c/o Elizabeth A. Ceriello, Esq.

20 Westfield Road
West Hartford, CT 06119
and
c/o Scott F. Lewis, Esq.
Lewis, Lewis & Ferraro, LLC
28 North Main Street
West Hartford, CT 06107

William Celentano, Chairman, Board
of Fire Commissioners, City of New
Haven; Boise Kimber, Member, Board
of Fire Commissioners, City of New
Haven; Wendy Mongillo, Member,
Board of Fire Commissioners, City of
New Haven; Board of Fire Commissioners,
City of New Haven; Michael Grant,
Chief, Fire Department, City of New Haven;
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James Kottage, Chairman, Pension Board
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and Firemen's Retirement Fund, City of New
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Administrator, Pension Board of the Policemen's
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c/o Carolyn W. Kone, Esq.
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271 Whitney Avenue
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Cynthia A. Cannata
Acting Clerk of the Commission

[1] This was presumably intended as a request for the names and addresses of the current members of the Pension Board, not the Fire Commission.

[2] This too was presumably intended as a request for minutes of the Pension Board's May 15 meeting, not the Fire Commission's meeting the day before.