



OLR RESEARCH REPORT

November 30, 2011

2011-R-0426

SUMMARY OF COMMISSIONER OF PUBLIC SAFETY VS. FOIC

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You asked for a brief summary of a 2011 state Supreme Court case, *Commissioner of Public Safety v. Freedom of Information Commission*.

SUMMARY

[CGS § 1-217](#) prohibits public agencies from disclosing under the Freedom of Information Act (FOIA) the residential addresses of various public officials and employees (the complete list appears below). In *Commissioner of Public Safety v. Freedom of Information Commission (FOIC)*, 301 Conn. 323 (2011), the state Supreme Court held that this prohibition applies to motor vehicle grand lists and their component data that the Department of Motor Vehicles (DMV) provides to town assessors.

The majority and concurring opinions are summarized below. The concurrence provides information on the background and legislative history of [CGS § 1-217](#).

Please note that the summaries below do not discuss all issues addressed in the opinions (e.g., the court's conclusion that the case is not moot) or address all arguments raised by the parties. The full majority opinion is available at the following link:

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR301/301CR37.pdf>. The concurrence is available here:

<http://www.jud.ct.gov/external/supapp/Cases/AROCr/CR301/301CR37A.pdf>.

COMMISSIONER OF PUBLIC SAFETY V. FOIC

Facts and Procedural History

In June 2008, Peter Sachs, an attorney and private investigator, asked North Stonington's assessor for an exact electronic copy of the file that DMV provided to the assessor to prepare the town's motor vehicle grand list. The assessor replied that the file was protected from disclosure by [CGS § 1-217](#), but offered to provide a version with the redaction of approximately forty names and addresses protected by [CGS § 1-217](#), if Sachs would pay for the labor to redact the list.

Sachs appealed from the assessor's denial to the Freedom of Information Commission. The Public Safety, Children and Families, and Correction commissioners and the Judicial Branch intervened, among others. The FOIC ordered the town to provide Sachs an exact copy of the electronic file he requested. In its decision, the FOIC found that [CGS § 12-55\(a\)](#), the statute requiring towns to prepare grand lists, does not allow redactions or omissions from the grand lists which assessors must lodge for public inspection. The commission further found that construing [CGS § 1-217](#) to allow the redaction of names or residential addresses from the motor vehicle grand list would be an implicit repeal of [§ 12-55\(a\)](#).

The plaintiffs appealed to the trial court, which dismissed the appeal. The trial court found that interpreting [CGS § 1-217](#) to apply to grand lists was inconsistent with the public's long-standing right to inspect such lists. The court concluded that "it would undercut the 'harmony' of [§ 12-55](#) with [§ 1-217](#) to allow or require the assessor to redact either the [electronic file] or the grand list before it becomes publicly available."

The plaintiffs appealed to the Appellate Court, which transferred the appeal to the Supreme Court.

Majority Opinion

The Supreme Court reversed the trial court and held that [CGS § 1-217](#) does apply to grand lists and their component data. Justice Zarella wrote the majority opinion.

In its analysis, the court examined the interplay of three statutes—[CGS § 12-55\(a\)](#) (requiring town assessors to publish grand lists and to make the lists available for public inspection), [CGS § 1-217\(a\)](#) (prohibiting disclosure under FOIA of certain officials' residential

addresses), and [CGS § 1-210\(a\)](#) (the general requirement under FOIA that all records maintained by public agencies are open to inspection by the public, unless the law provides otherwise). The court concluded that, in reading these statutes together:

there is no ambiguity regarding a town assessor's obligation not to disclose the home addresses of the designated public officials and employees when making a grand list and its component data available for public inspection, despite the lack of an explicit exception in [§ 12-55](#), because [§ 1-217\(a\)](#) prohibits the disclosure of such information and [§ 1-210\(a\)](#) expressly supports this prohibition by permitting exceptions to disclosure when specifically authorized by any federal law or state statute.

The majority further “disagree[d] with the concurrence that the statutory scheme is subject to more than one reasonable interpretation and is sufficiently ambiguous to justify resort to extratextual sources, including the legislative history of [§ 1-217\(a\)](#).” The majority specified that [CGS § 1-217\(a\)](#) applies only to requests under FOIA and that it clearly applied to Sachs' request.

The court further concluded that the trial court had improperly relied on cases that did not analyze [CGS § 1-217\(a\)](#).

Concurrence and Legislative History

In a concurring opinion, Justice Norcott (joined by Justice Eveleigh) agreed that [CGS § 1-217\(a\)](#) applies to motor vehicle grand lists and their component data, but found the law to be sufficiently ambiguous to justify looking beyond the statutory text. The concurrence examined the statute's legislative history, among other things.

The concurrence noted that the General Assembly first enacted [CGS § 1-217](#) in 1995 (PA 95-163). According to the concurrence, the testimony before the Government Administration and Elections Committee in 1995 indicates that the General Assembly enacted the act:

to address the security risk first realized when the [Department of Correction] had to comply with a prison inmate's request . . . for the names of every correction officer in the state, some of which could then be crossreferenced with the gun permit owners' database to yield the officers' home addresses.

The concurrence further noted that since 1995 there have been several changes to [CGS § 1-217](#), including expansions to protect more classes of government employees. In addition, PA 99-77 “eliminated the requirement that the protected employee or official make a written request for nondisclosure and furnish their business address instead, thereby making such protection ‘[automatic]’” PA 99-156 made the prohibition apply to disclosure by any public agency, not just state agencies.

The concurrence concluded that:

Particularly given the expansion in 1999 of the applicability of [§ 1-217](#) beyond state agencies to municipalities, and committee testimony that would apply it to land and tax records, the legislative history supports a conclusion that the legislature intended [§ 1-217](#) to protect the residential addresses of a broad group of public officials and employees, and did not envision excepting entire classes of governmental records, including grand lists, from its reach.

The concurrence disagreed with the FOIC’s contention—which relied on a vetoed public act—that this construction of [CGS § 1-217](#) is unworkable and inconsistent with legislative intent. The vetoed act, PA 05-278, would have restricted [CGS § 1-217](#) only to the public agency to which an official or employee belongs and provided that it did not “exempt from disclosure the residential addresses of elected officials or residential addresses listed on a grand list, tax delinquency list, elector registration or enrollment form, voting list or any record that is otherwise required by law to be disclosed to the public.” (According to her veto message, Governor Rell vetoed PA 05-278 due to a separate provision that would have excluded legislators’ e-mails from the disclosure requirements of the act.)

The concurrence agreed with the plaintiff that the FOIC’s reliance on the history of PA 05-278 was “belied by the multiplicity of more recent unsuccessful attempts to amend [§ 1-217](#) in a similar manner, supported by the commission, which did not progress beyond committee.”

The concurrence disagreed with the FOIC’s contention that applying [CGS § 1-217](#) to grand lists and their component data impliedly repealed [CGS § 12-55\(a\)](#). In a footnote, the concurrence further disagreed with the FOIC’s argument that the application of [CGS § 1-217](#) to grand lists or other public records not kept by an official’s or employee’s agency would be unworkable in practice. The concurrence noted that “as a practical matter, protected persons may and should notify their towns of their status under [§ 1-217](#).” The concurrence also noted:

the practicality of the Judicial Branch's suggestion that public agencies should take a more "proactive approach" to aid in the identification of protected individuals, such as by modifying government forms that request residential addresses to inquire whether the filer of the form is protected under [§ 1-217](#).

LIST OF PROTECTED OFFICIALS UNDER CGS § 1-217

[CGS § 1-217](#) protects from disclosure the residential addresses of the following public officials and employees:

1. federal court judges and magistrates;
2. Connecticut Superior and Appellate Court judges, Supreme Court justices, and family support magistrates;
3. sworn members of municipal police departments or the State Police and sworn law enforcement officers within the Department of Environmental Protection;
4. Department of Correction employees;
5. attorneys who represent or have represented the state in a criminal prosecution;
6. attorneys who are or have been employed by the Public Defender Services Division and social workers employed by the division;
7. Division of Criminal Justice inspectors;
8. firefighters;
9. Department of Children and Families employees;
10. Board of Pardons and Paroles members and employees;
11. Judicial Branch employees;
12. Department of Mental Health and Addiction Services employees who provide direct patient care; and
13. Commission on Human Rights and Opportunities members and employees.

JO:ts