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November 1, 2007

Senator Martin M. Looney
Senator Andrew W. Roraback
Co-chairs, Senate Bipartisan Committee of Review
Legislative Office Building
Hartford, CT 06106-1591

Re: Your letter dated October 31, 2007

Dear Senators Looney and Roraback:

This letter is written in response to your letter to me, dated October 31, 2007, on behalf of the Bipartisan Committee of Review ("Committee"), requesting guidance on a time-sensitive matter regarding the application and interpretation of the Freedom of Information ("FOI") Act. You have asked for a response to your letter by today at 1:00 p.m. I am pleased to provide any guidance or assistance that the Committee requires. However, I must advise that the responses provided represent my views on the questions posed, based upon my experience as General Counsel to the FOI Commission, and do not necessarily represent the views of the FOI Commission itself.

Your letter indicates that the Committee, through a staff member, recently contacted the Waterbury Police Department ("WPD") to inquire whether a sworn statement that was quoted in the Waterbury Republican American newspaper was now "publicly available" since it had been released to the press and if so, to ask the WPD to provide the Committee with a copy of the statement. In response, the Committee received a submission from the WPD, purported to be a redacted copy of an investigation report, along with a cover letter from a legal advisor of the WPD, stating that the provision of such report and cover letter to the Committee was with the understanding that they would not be subject to further disclosure by the Committee. Your letter additionally states that: neither the Committee nor its staff made any such representation concerning nondisclosure; and no senator or staff member has reviewed the redacted documents. You then state that given these facts, the Committee has several questions it would like answered, in order to determine how to handle the documents in its possession.

At the outset, I would like to make clear that I am not in possession of, nor have I reviewed, the actual investigation report at issue. There is no mechanism for me to review the report *in camera*, as you requested, in the absence of an evidentiary contested case hearing. See, Regulations of Connecticut State Agencies §1-21j-37. Thus, if the FOI

Commission were to receive such report, it would be subject to the disclosure provisions of the FOI Act, in the same way the FOI Act applies to all other public agencies in Connecticut. Given these circumstances, my responses are obviously not targeted toward specific information contained in the documents provided to you. Further, it is my belief that a review of such records is not necessary to answer the questions posed by the Committee.

The questions and answers are set forth below:

1. Given that the police have provided these documents to the committee, can the police lawfully impose conditions on their disclosure?

From the facts presented, the answer to this question is no. The only conditions that can be placed on the disclosure of public records are those that are set forth in federal law or state statute. See Conn. Gen. Stat. §1-210(a). Unless a federal law or state statute explicitly prohibits the Committee from disclosing public records, the rule is disclosure.

Under the facts presented, it appears that the WPD *may* believe that the report contains uncorroborated allegations of criminal activity. Section 1-210(b)(3)(G), G.S., provides in relevant part that: "Nothing in the Freedom of Information Act shall be construed to require the disclosure of... (3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of... (G) uncorroborated allegations [of criminal activity] subject to destruction pursuant to section 1-216." If the records do in fact, contain such uncorroborated allegations of criminal activity, and assuming that all of the other elements of the exemption apply, the WPD would be permitted to withhold those portions of the records containing such information.

It should be noted that even if the records do in fact contain such information, the police department could choose to disclose such information, upon request. The FOI Act simply provides that, if the exemption applies, nothing *requires* the WPD to disclose the records at issue. Once a public agency makes the decision to disclose however, it cannot then control any further downstream disclosures, i.e., it cannot prohibit another public agency, such as the Committee, from releasing the records to others. If the legislature had intended to prohibit downstream or secondary disclosures, it presumably would have done so explicitly, as it has done in other statutes. See, e.g., Conn. Gen. Stat. §§12-15 and 17a-101k.

There is one additional perplexing matter related to this question. The WPD indicated that it had provided a "redacted" copy of the records to the Committee. It is wholly unclear why, if the records provided were in fact redacted to omit the "uncorroborated allegations," the WPD would request that the Committee not disclose the records in their redacted form. Further, if the records provided to the Committee have been masked to

shield any purportedly confidential information, the Committee's concerns about releasing permissively exempt information, should be alleviated.

2. If so, what conditions may the police lawfully impose on the committee?

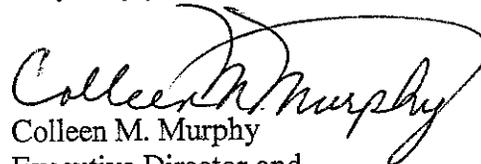
Since the response to question 1. was answered in the negative, this question does not require a response.

3. Would the committee be acting in violation of the law if it chose to disclose the information to the public?

Based upon the facts as presented, and for the reasons set forth in response to question 1., the Committee would not be acting in violation of the FOI Act, or any other applicable law of which I am aware, if it chose to disclose the records it received from the WPD to the public or others.

I hope these responses have been helpful to you. If the Committee desires further clarification or if I can be of any additional assistance, please do not hesitate to contact me.

Very truly yours,


Colleen M. Murphy
Executive Director and
General Counsel

cc: Sandra Norman-Eady, Office of
Legislative Research