

*The Connecticut Law Reporter*

*Department of Public Safety v. FOIC*, 48 Conn. L. Rptr. 728 (November 2, 2009) (Cohn, Henry S., J.)

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# **Commissioner, Dept. of Public Safety et al. v. Freedom of Information Commission et al.**

**Superior Court at New Britain  
No. CV 09 4019783S  
Memorandum Filed November 2, 2009**

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**Administrative Agencies – Freedom of Information – Exemptions – Tax Assessor's Statutory Duty to Make Grand Lists Publicly Available Overrides the Provision of the FOIA that Prohibits the Release of the Residential Addresses of Persons Holding Certain Public Positions.**

**Automobiles – Department of Motor Vehicles – Records – Tax Assessor's Statutory Duty to Make Grand Lists Publicly Available Overrides the Provision of the FOIA that Prohibits the Release of the Residential Addresses of Persons Holding Certain Public Positions.**

**Taxation – Property Tax – Grand List – Tax Assessor's Statutory Duty to Make Grand Lists Publicly Available Overrides the Provision of the FOIA that Prohibits the Release of the Residential Addresses of Persons Holding Certain Public Positions.** This opinion resolves a conflict between the section of the Freedom of Information Act that prohibits disclosure of residential addresses of persons in certain public positions, CGS §1-217 ("No public agency may disclose, under the Freedom of Information act, the residential address of" federal and state judges, police officers, DCF employees, etc.), and the provision of the Property Tax Statute that requires annual publication of each municipality's grand list, CGS §12-55. The opinion holds that the FOIA restriction does not apply to an assessor's statutory duty to make the grand list available to the public. Therefore a municipal tax assessor must comply with an FOIA request for the complete list of motor vehicles subject to taxation provided annually to each town by the Department of Motor Vehicles, without redaction of the names of those taxpayers whose residential address would otherwise be protected from disclosure by §1-217.

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COHN, HENRY S., J. The plaintiffs<sup>(1)</sup> (a town official and the town of North Stonington), and agency and labor union intervenors<sup>(2)</sup> (hereinafter, the plaintiffs) appeal from a January 14, 2009 final

decision of the defendant freedom of information commission (FOIC). The final decision concluded with an order that the plaintiffs provide to the defendant Peter Sachs (Sachs) "free of charge, an exact electronic copy of the file that the Connecticut Department of Motor Vehicles [DMV] provided to North Stonington" also known as "MVR102.dat."

This administrative appeal raises a conflict between two General Statutes: §1-217, prohibiting a public agency from disclosing the residential addresses of specific persons, and §12-55, requiring the tax assessor of each town to publish a grand list of *all* personal property in the town (including motor vehicles), which grand list includes the address of every person in town owning such property. The court concludes that §1-217 does not apply to the preparation and dissemination of the grand list of §12-55, so that, as the tax assessor prepares the grand list and opens the list for public inspection in compliance with §12-55, all town property-holder names and addresses are set forth without redaction. At the same time, this compliance with §12-55 does not affect a public agency's duty to decline disclosure, when a specific request is made to a public agency under the Freedom of Information Act (FOIA), for the residential address of a protected person under §1-217.

The final decision set forth the following relevant findings:<sup>(3)</sup>

2. It is found that on June 16, 2008, the complainant requested "an exact electronic copy of the file the Connecticut Department of Motor Vehicles provided to North Stonington, pursuant to CGS §14-163, for use in preparing its Motor Vehicle Grand List."<sup>(4)</sup>

3. It is found that on June 17, 2008, the respondent assessor replied to the complainant's request for copies of records, described in paragraph 2, above, with an e-mail, in which the assessor informed the complainant that: (a) An exact electronic copy of the Motor Vehicle Grand List (MVR 102.dat) was protected from disclosure pursuant to §1-217, G.S.; and (b) The assessor would modify the electronic copy to redact names and residential addresses protected under §1-217, G.S., only if the complainant agreed to compensate the assessor for his time, payable in advance.

4. By letter dated and filed on June 18, 2008, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide to the complainant an exact electronic copy of the town's Motor Vehicle Grand List, and by failing to comply with the Act's provisions for charging fees for copies of electronic records.

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9. It is found that the respondents receive from the Department of Motor Vehicles a list containing the names and addresses of owners of motor vehicles. It is found that the respondents use this list to compile the town's Motor Vehicle Grand List for use in assessing property taxes. It is found that MVR102.dat is the electronic file of the Motor Vehicle Grand List for North Stonington.

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12. The respondents and intervenors claim that §1-217, G.S.,<sup>(5)</sup> prohibits the respondents from disclosing the residential address of each protected employee included in the Motor Vehicle Grand List. According to the respondents and intervenors, §1-217, G.S., requires the respondents to redact the residential address for each protected employee included in the Grand List prior to providing a copy of the redacted list to the complainant and other members of the public.

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14. It is found that the respondents compiled the Town of Stonington's Motor Vehicle Grand List, described in paragraph 2, above, pursuant to its obligations as set forth in §12-55, G.S.<sup>(6)</sup>

15. It is concluded that §12-55, G.S., explicitly requires the assessor to make the grand list available for public inspection.

16. It is found that nothing in §12-55, G.S., permits redactions or omissions from the grand list that is lodged for public inspection.

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21. It is concluded that the names and addresses of the people whose property comprises the Motor Vehicle Grand List are both necessary and integral to the completeness and accuracy of the list, as well as to the reasons why it is publicly available.

22. It is concluded that to construe §1-217, G.S., to permit the respondents to redact any names or residential addresses from the motor vehicle grand list "would require finding an implicit repeal of §12-55(a) [G.S.], and Connecticut's historical system of making grand lists, including personal property grand lists, available to the public for correction and disputation." [*Davis v. Freedom of Information Commission*, 47 Conn.Sup. 309, 318 (2002) [29 Conn. L. Rptr. 439].

23. The respondents and intervenors contend that, apart from §12-55, G.S., §1-217, G.S. expressly requires the respondents to redact the names and resident addresses of members of the protected employees.

24. It is found that the Motor Vehicle Grand List does not identify the subject individuals as belonging to the employee categories set forth in §1-217, G.S.

25. It is found that to comply with §1-217, G.S., the respondent assessor customarily excises, from the copy of the motor vehicle grand list that he makes available to the public, the names of about 40 people who, he believes, are members of the protected class of government employees. It is found that the assessor believes that as a long-time official in a small town, he and his staff know at any given time who is a member of the protected class under §1-217, G.S., and he acts on that basis of such ad hoc knowledge.

26. It is found that *any* redaction to the Motor Vehicle Grand List violates the express requirement of §12-55, G.S., that the grand list be accurate and include "the assessed values of all property in the town." Redactions also contravene well-settled public policy and case law that tax rolls are to be accurate, complete, and accessible for public inspection.

27. It is concluded that the respondents' and intervenors' interpretation of §1-217 G.S., directly conflicts with §12-55, G.S., and other statutes requiring the public inspection of all property included in a town's grand list.

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30. It is found that the respondents' interpretation of §1-217, G.S., to require redactions from the Motor Vehicle Grand List and similar lists would lead to absurd consequences and bizarre results. For example, it is found that such an interpretation would make the tax rolls inaccurate and incomplete, would impose an unending duty of inquiry on the assessor to determine who

falls within the protected classes, or who no longer falls within the protected classes, and would destroy the historic integrity of important records that have been available to the public since Colonial days and before.

31 [ . . . ] It is also found that depending on individuals to submit notice to various agencies would only create another ad hoc, inconsistent, unreliable method of enforcing §1-217, G.S., and would also lead to absurd consequences and bizarre results.

34. It is concluded that literal adherence to the statutory language of §1-217, G.S., as interpreted by the respondents and intervenors, would be inconsistent with the [FOI] Act's well-established policy favoring the disclosure of information.

35. It is also concluded that the legislature did not intend, in enacting §1-217, G.S., to repeal, even partially, §12-55, or any requirement that such lists be accurate and complete for public inspection.

36. It is further concluded that had the legislature intended, in enacting §1-217, G.S., to conceal the residential addresses contained in grand lists and similar records that are required by statute to be open for public inspection, it would have done so explicitly . . .

37. It is concluded from the language and legislative history of §1-217, G.S., that the purpose of the law is to protect the safety of government employees.

38. It is found that the most obvious and likely place to obtain a record containing a government employee's residential address is from the employing agency.

39. It is concluded that the reasonable and common sense construction of §1-217, G.S., is that the statute applies only to the agency for which a protected employee works.<sup>(7)</sup> It is further concluded that §1-217, U.S., does not exempt from disclosure names and residential addresses when they are part of grand lists.

41. Accordingly, it is concluded that the respondents violated the FOI Act by failing to provide to the complainant the complete electronic file of the Motor Vehicle Grand List for the Town of North Stonington, described in paragraph 2, above.

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The FOIC entered the following order in the final decision: "Forthwith, the respondents shall provide to the complainant, free of charge, an exact electronic copy of the file that the Connecticut Department of Motor Vehicles provided to North Stonington, pursuant to §14-163, G.S., also known as 'MVR102.dat.' " (ROR, pp. 187-94.)<sup>(8)</sup>

The plaintiff's appeal, disputing the FOIC's ultimate conclusion in finding 39 that "§1-217, G.S., does not exempt from disclosure" residential addresses "when they are part of grand lists." The court in deciding this appeal is bound by the substantial evidence rule derived from §4-183(j)(5), (6) of the Uniform Administrative Procedure Act (UAPA).

That rule in FOIA cases has been set forth as follows. "In deciding the issues presented, the court is bound by the rules derived from the Uniform Administrative Procedure Act (UAPA, General Statutes, §4-166 et seq.). Our review of an agency's factual determination is constrained by . . . §4-183 (j), which mandates that a court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court

finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record . . . This limited standard of review dictates that, [w]ith regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency . . . An agency's factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole." (Citations omitted; internal quotation marks omitted). *Rocque v. Freedom of Information Commission*, 255 Conn. 651, 658, 774 A.2d 957 (2001).

Under the UAPA, "[c]ases that present pure questions of law [as opposed to factual determinations] invoke a broader standard of review than is ordinarily involved in deciding whether in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Citations omitted.) *Williams v. Freedom of Information Commission*, 108 Conn.App. 471, 476, 948 A.2d 1058 (2008).<sup>(9)</sup>

"Even as to questions of law, the court's ultimate duty is to decide only whether, in light of the evidence, the agency acted unreasonably, arbitrarily, illegally or in abuse of discretion. Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and reasonably and logically could follow from those facts . . . We also note other principles surrounding the deferential standard of review afforded administrative appeals. When the legislature intentionally uses broad terms without definition, it evinces a judgment that the agency should define the parameters of the broad terms of relevant statutes on a case-by-case basis . . . The practical construction placed on the statute by the agency, if reasonable, is highly persuasive." (Citations omitted; internal quotation marks omitted.) *Wiese v. Freedom of Information Commission*, 82 Conn.App. 604, 608-09, 847 A.2d 1004 (2004).

The plaintiffs first contend that the FOIC erred by treating the request from Sachs as one for the grand list developed under §12-55, instead of his actual request for the DMV disk provided to the plaintiffs under §14-163. The FOIC has found otherwise in findings 9 (the DMV list is used to compile and complete the grand list) and 14 (the plaintiffs compile the grand list pursuant to §12-55). These findings are supported by substantial evidence in the record. The assessor testified that he received the DMV disk for his town and made additional adjustments not involving addresses to complete the grand list. In addition, he believed that he had the right to delete from the grand list before its issuance forty addresses that he was notified or believed to be covered by §1-217. (ROR, pp. 25, 48, 50, 51, 52, 60, 61, and 62.) In any event it was conceded by the plaintiffs at oral argument that had Sachs asked for the unredacted grand list of §12-55, the plaintiffs would have also refused his request relying on §1-217.

The plaintiffs' main argument is that the FOIC erred by ordering the assessor, when he disseminates the §12-55 grand list, to disclose residential addresses of persons exempt under §1-217.<sup>(10)</sup> It is contended that the only logical step is for the assessor to delete such addresses for persons he believes in good faith to qualify for the exemption before issuing the grand list. Therefore, Sachs was not entitled to obtain either the DMV disk or the unredacted grand list.

As the FOIC has concluded, however, the plaintiffs' interpretation is inconsistent with the long-standing right of the public to inspect the entire grand list. For example, in *Gold v. McDermott*, 32 Conn.Sup. 583, 590, 247 A.2d 643 (1975), a case arising prior to the adoption of the current FOIA, the Appellate Session of the Superior Court noted that §12-55 "imposes an affirmative duty on the assessor to make completed grand lists available for public inspection." *Gold* itself concerned, among other items, "raw valuation data collected by Appraisal Surveys, computer printouts and tapes with the assessment valuation of properties provided by Appraisal Surveys, and manuals and printouts with

standards and formulae developed by Appraisal Surveys and Hartford to convert the valuation data on the property record cards into assessment valuations." *Id.*, 585. Such items were available under the FOIA as it then existed and, prior to that, at common law, "particularly to allow a citizen to ascertain whether public money is being properly expended." *Id.*, 586.

In *Davis v. Freedom of Information Commission*, 47 Conn.Sup. 309, 790 A.2d 1188 (2001) [29 Conn. L. Rptr. 439], *aff'd*, 259 Conn. 45, 787 A.2d 530 (2002), the assessor denied a person access to the motor vehicle grand list of §12-55, relying on the federal Drivers Privacy Protection Act and DMV §§14-10 and §14-50a. The FOIC held that while these provisions prohibited the DMV from disclosing personal information, they did not apply to tax assessors. The Superior Court agreed with the FOIC, because §12-55 mandated full public disclosure. Section 12-55 was a portion of Connecticut's "historical system of making grand lists, including personal property grand lists, available to the public for correction and disputation." *Id.*, 318.

While the *Davis* courts did not consider the applicability of §1-217 to the assessor's role, *Davis* indicates the well-recognized presumption in favor of openness in the preparation and dissemination of the §12-55 grand list. Moreover, looking to *Gold*, it is clear that not only does the public have full access to personal property grand lists, but to real estate grand lists and reapportionment data. Public lists in general—such as registration and enrollment lists—also have historically been available for public access. See General Statutes §§9-39, 9-413a. An expansive extension of §1-217 to public lists would harm both taxpayers and candidates.

The court also rejects the plaintiffs' argument, based upon the population of North Stonington, that full disclosure of the grand list would mean that the addresses of persons protected by §1-217 would be easily revealed. The assessor himself testified that he did not know if the forty people who had their addresses removed from the grand list were the only persons eligible for the exemption or whether there were less than forty people. (ROR, p. 64.) Moreover, the requirement of disclosure written into §12-55 and similar statutes cannot be enforced based upon the population of a town. As our Supreme Court declared in *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 302, n.14, 914 A.2d 996 (2007), one should not ignore "the fact that the legislative process requires lawmakers to consider many public interests [including access to information] as they strive to achieve a particular legislative end. Attempts to balance differing public policies and interests are found throughout our body of statutory law."

Here the statutory mandate of disclosure is met with the statutory duty of municipal officials to protect discrete individuals by refusing to disclose their residence addresses. "In construing two seemingly conflicting statutes, we are guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law . . . Legislation never is written on a clean slate, nor is it ever read in isolation or applied in a vacuum. Every new act takes its place as a component of an extensive and elaborate system of written laws . . . Construing statutes by reference to others advances the values of harmony and consistency within the law. In fact, courts have been said to be under a duty to construe statutes harmoniously where that can reasonably be done . . . If a court can by any fair interpretation find a reasonable field of operation for two allegedly inconsistent statutes, without destroying or preventing their evident meaning and intent, it is the duty of the court to do so." *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 157, 788 A.2d 1158 (2002).

The DMV disk was in the custody and control of the assessor and maintained and kept on file by the assessor, making it a public record. See §1-210(a). It did not identify any person as one in the §1-217 class; it was an entirely neutral list of names, addresses and motor vehicles.<sup>(11)</sup> Thus, the FOIC did not err in the final decision in concluding that §1-217 did not apply to the DMV working document or to the unredacted grand list itself. Nor did the FOIC err in its conclusion that the assessor

had no basis for refusing to supply Sachs with an "exact electronic copy of the file the [DMV] provided to North Stonington, pursuant to §14-163, for use in preparing its Motor Vehicle Grand List." In keeping with the FOIC's conclusion, it would undercut the "harmony" of §12-55 with §1-217 to allow or to require the assessor to redact either the DMV document or the grand list before it becomes publicly available.

On the other hand, the court cannot agree (again in an effort at harmonization) with the FOIC that "the most obvious and likely place" to obtain a record containing a residential address is at the agency where he or she is employed. (ROR, p. 194, finding 38). Nor does the court agree with the FOIC's construction that "the statute applies only to the agency for which a protected employee works." (ROR, p. 194, finding 39.) Any governmental official must not disclose the residential address of an individual protected by §1-217.<sup>(12)</sup> With this modification, the appeal is dismissed.<sup>(13)</sup>

<sup>1</sup>The plaintiffs are the tax assessor of the town of North Stonington, and Nicholas H. Mullane II, first selectman, on behalf of the town of North Stonington.

<sup>2</sup>The intervenors are the State of Connecticut judicial branch, and the departments of children and families, public safety and correction, and AFSCME, Council 4, Local 387, 391, and 1565.

<sup>3</sup>The findings of the FOIC list the assessor and town as "respondents," and Sachs as the "complainant," while in this decision, as indicated, they are the plaintiffs and defendant respectively.

<sup>4</sup>Section 14-163(a) provides in part: "[T]he commissioner [of motor vehicles] shall furnish to each assessor in this state a list identifying motor vehicles and snowmobiles that are subject to property taxation in each such assessor's town. Said list shall include the names and addresses of the owners of such motor vehicles and snowmobiles, together with the vehicle identification numbers for all such vehicles for which such numbers are available." This list is broken down by tax town. According to the plaintiff assessor, "[o]n your registration, it says list your tax town. Our tax town is 102. And so, if you list on your registration tax town 102 as where the car is garaged, we get that car, so we can tax it. No matter what their mailing address is, we get it. So I don't think the list is redacted in any way." (Return of Record, ROR, p. 48.) The list (on disk) from the motor vehicle department is the item at issue here, "MVR102.dat."

<sup>5</sup>Those protected by this section include state and federal judges, police, employees of the department of correction, attorneys that are or who have been prosecutors or public defenders, inspectors of the division of criminal justice, firefighters, DCF employees, members or employees of the board of pardons and parole, judicial employees, employees of DMHAS, and members and employees of CHRO.

<sup>6</sup>Section 12-55(a) provides in part: "On or before the thirty-first day of January of each year, except as otherwise specifically provided by law, the assessors . . . shall publish the grand list for their respective towns. Each such grand list shall contain the assessed values of all property in the town . . . The assessor . . . shall lodge the grand list for public inspection . . ."

<sup>7</sup>At the hearing in this court on September 23, 2009, the attorney for the FOIC conceded that this sentence sets forth one possible construction that harmonized the two statutes at issue. As seen in the second paragraph of this decision, and as indicated below, the court does not agree with this interpretation.

<sup>8</sup>The plaintiffs are found to be aggrieved for the purposes of §4-183(a).

<sup>9</sup>The court also notes that *Williams v. Freedom of Information Commission*, *supra*, at 476, followed the case of *Longley v. Retirement Commission*, 284, Conn. 149, 163-64, 931 A.2d 890 (2007), in that the court should give deference to an agency's articulated, time-tested and reasonable interpretation. While the precise issue of this appeal had not come before the FOIC, it has had many cases involving governmentally-prepared lists, sufficient to allow the court to give deference to the FOIC's interpretation.

<sup>10</sup>The court does not agree with another contention advanced by the plaintiffs. Section 12-55(a) begins: "On or before the thirty-first day of January of each year, except as otherwise provided by law, the assessors . . . shall publish the grand list for their respective towns." The contention is made that the phrase "otherwise provided by law" permits a reference to the FOIA exemption of §1-217. The court observes, however, that the only clear meaning of this phrase is that the grand

list shall be published "on or before the thirty-first day of January" unless relevant tax law provides otherwise. Thus, §12-55 has no indirect reference to §1-217.

<sup>11</sup>For example, the grand list of §12-55 is distinguishable from a directory of town employees with title and street address. In preparing such a town directory, §1-217 would clearly apply.

<sup>12</sup>The example of the federal judge, exempted by §1-217(a)(1), provides proof of the FOIC's mistaken construction of the legislature's intention. Since federal judges are employed by the United States government, the judges' employer would not be bound by Connecticut law to refuse to disclose residence addresses. A town assessor, however, when asked for the residence address of a particular federal judge, would be bound by §1-217 to refuse.

<sup>13</sup>To the extent that the intervenor, AFSCME, Council 4, relies upon the FOIA exemption, §1-210(b)(2), invasion of personal privacy, the court rejects this argument as it was never developed in the record. Cf. *Director, Retirement & Benefit Services Division v. Freedom of Information Commission*, 256 Conn. 764, 775 A.2d 981 (2001) (employees took action to shield their addresses).

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