

HHB-CV-13-6022849-S	:	SUPERIOR COURT
	:	
STEPHEN J. SEDENSKY III	:	
STATE'S ATTORNEY FOR THE	:	
JUDICIAL DISTRICT OF DANBURY	:	
<i>Plaintiff,</i>	:	
	:	JUDICIAL DISTRICT OF
V.	:	NEW BRITAIN AT NEW BRITAIN
	:	
FREEDOM OF INFORMATION	:	
COMMISSION, JACK GILLUM AND	:	
ASSOCIATED PRESS	:	
<i>Defendants.</i>	:	OCTOBER 30, 2013

**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR STAY PENDING  
FINAL RESOLUTION**

The plaintiff, State's Attorney for the Judicial District of Danbury has moved this court for an order staying the ruling of the Freedom of Information Commission, dated September 27, 2013, pending the resolution of this matter. A stay will ensure that the appeal will not be moot and will remain viable pending its resolution. Additionally, a stay will protect crime victims and witnesses as well as allow information relative to child abuse to remain protected. A balancing of the equities in this matter demonstrates the need for the entry of a stay in order to preserve the status quo pending the final resolution of this matter. The rights and statutory obligations of the State's Attorney, law enforcement and crime victims\witnesses to appeal would be lost absent this stay as the appeal would become effectively moot were a stay not in effect.

**Facts**

The facts of this matter are set forth in the plaintiff's petition. Specifically, the Freedom of Information Commission has ordered, in violation of applicable law, the Newtown Police

Department to release to Jack Gillum and Associated Press all 9-1-1 calls coming from inside Sandy Hook Elementary School on the morning of December 14, 2012.<sup>1</sup> The calls are from intended crime victims and witnesses to the crimes, which include murder, attempted murder and risk of injury to a minor.<sup>2</sup> Said crimes are also child abuse as it relates to the children in the school per Connecticut General Statutes (C.G.S.) Sec. 46b-120(7),<sup>3</sup> which has been specifically referenced in the criminal context in State v. Nathan J., 294 Conn. 243, 257-8 (2009).<sup>4</sup>

In ordering this, the Commission failed to

1. Give effect to C.G.S. Sec. 17a-101k(a)<sup>5</sup> and failed to even address the applicable

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<sup>1</sup> On the morning of December 14, 2012, a person armed with an assault rifle shot his way into Sandy Hook Elementary School in Newtown, Connecticut. He shot and killed 20 children and 6 adults before killing himself.

<sup>2</sup> See Connecticut General Statutes Secs. 53a-54, 53a-49 and 53-21(a)(1).

<sup>3</sup> Sec. 46b-120. (Formerly Sec. 51-301). Definitions. The terms used in this chapter shall, in its interpretation and in the interpretation of other statutes, be defined as follows:  
(7) A child or youth may be found “abused” who (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment.

<sup>4</sup> In State v. Nathan J. the court notes “We next turn to the term “abuse.” Although the statute concerning risk of injury to a child does not provide a definition of abuse, the legislature and the courts have nonetheless defined the term in the analogous context of child abuse proceedings.<sup>FN11</sup> General Statutes § 46b-120 (4)(A), pertaining to juvenile matters, defines an abused child as a child who “has been inflicted with physical injury or injuries other than by accidental means...”<sup>FN12</sup> See also Daniels v. Alander, 75 Conn.App. 864, 886, 818 A.2d 106 (“whether a child, sibling or parent is under a threat of mistreatment or abuse [means] that a child had physical injuries inflicted on him or her other than by accidental means”), aff’d, 268 Conn. 320, 844 A.2d 182 (2004). Abuse, therefore, merely requires nonaccidental physical injury and does not take into account the factors that inform the parental justification defense. See Lovan C. v. Dept. of Children & Families, 86 Conn.App. 290, 299, 860 A.2d 1283 (2004) (concluding that, although § 46b-120 [4][A] only requires nonaccidental injury, parental justification defense implicates additional concerns when parents are involved).”

<sup>5</sup> Sec. 17a-101k. Registry of findings of abuse or neglect of children maintained by Commissioner of Children and Families. Notice of finding of abuse or neglect of child. Appeal of finding. Hearing procedure. Appeal after hearing. Confidentiality. Regulations. (a) The Commissioner of Children and Families shall maintain a registry of the commissioner’s findings of abuse or neglect of children pursuant to section 17a-101g that conforms to the requirements of this section. The regulations adopted pursuant to subsection (i) of this section shall provide for the use of the registry on a twenty-four-hour daily basis to prevent or discover abuse of children and the establishment of a hearing process for any appeal by a person of the commissioner’s determination that such person is responsible for the abuse or neglect of a child pursuant to subsection (b) of section 17a-101g. The information contained in the

case of Groton v. Freedom of Information Commission, 104 Conn. App. 150 (2007), in its decision.

2. Failed to defer and give acknowledgement of and proper weight to the testimony, opinions and interpretation of C.G.S. §17a-101k(a) given by the state authority assigned to criminally enforce it, that being the plaintiff State's Attorney for the Judicial District of Danbury under C.G.S. Sec. 17a-101k(a).<sup>6</sup>
3. Failed to defer and give acknowledgement of and proper weight to the testimony and opinions of the plaintiff State's Attorney as to how investigations are conducted and as to how evidence and witness information may not become relevant and important to an investigation until sometime later in the investigation.
4. Failed to acknowledge the testimony of the plaintiff state's attorney that a witness had been subject to intimidation<sup>7</sup> and instead erroneously stated in its decision that there was no evidence of potential witness intimidation if their identities were made known;<sup>8</sup>
5. Failed to find that recorded witness statements should be considered the equivalent of written statements, consistent with State v. Whelan, 200 Conn.743, 754 fn9 (1986);<sup>9</sup>

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registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of federal law or regulations. Any violation of this section or the regulations adopted by the commissioner under this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year.

<sup>6</sup> It is the responsibility of the State's Attorney for the Judicial District of Danbury to determine violations of C.G.S. Sec. 17a-101k(a), which is a criminal offense and prosecute them if necessary.

<sup>7</sup> This witness was not a person on the 9-1-1 calls.

<sup>8</sup> See paragraph 31 of the Commission's Final Decision relating to the C.G.S. Sec. 1-210(b)(3)(A) exemption under the Freedom of Information Act.

<sup>9</sup> See C.G.S. Sec. 1-210(b)(3)(B).

6. Failed to find that on December 14, 2012 when the request for the 9-1-1 calls were made or at the time of the constructive denial, the 9-1-1 calls were part of a prospective law enforcement action;<sup>10</sup>

Pursuant to Griffin Hospital v. Commission on Hospitals and Health Care, 196 Conn. 451, 456- 461(1985), a motion to stay should involve a “balancing of the equities” and be considered under the following factors: “[1] the likelihood that the appellant will prevail; [2] the irreparability of the injury to be suffered from immediate implementation of the . . . order [under review]; [3] the effect of a stay upon other parties to the proceeding; and [4] the public interest involved”.

#### **Likelihood of Success on Merits and Irreparable Injury**

The plaintiff is confident that an appellate analysis of this issue will result in a reversal of the Commission’s decision. Even if the Commission’s decision is upheld, however, it would provide future guidance on a number of legal issues that the case presents. Such guidance would be impossible were this matter to become moot in the absence of a stay, thus leading to irreparable injury.

Here the irreparable injury would be

1. Disclosure of information relative to child abuse in violation of C.G.S. Sec. 17a-101k(a) and its applicable case law;
2. Intimidation of the 9-1-1 callers who are victims\witnesses to the crimes; and
3. Release of what is effectively witness statements.

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<sup>10</sup> See C.G.S. Sec. 1-210(b)(3)(C)

**The Effect of a Stay on Other Parties**


Nothing in this factual scenario leads to concerns regarding irreparable injury to the defendants or any other party. The Commission, Jack Gillum and the Associated Press will suffer no irreparable injury in waiting for a final resolution of this matter.

**Public Interest**

It is in the public's interest for this matter to be fully resolved by this administrative appeal and that a stay be in place during its pendency. It is in the public interest that 9-1-1 callers and child abuse information be protected while this appeal is pending. To do otherwise would put victims and witnesses at risk for intimidation, disclose witness statements and foster second guessing on the part of those who would use the 9-1-1 system, especially as it is related to child abuse.

**WHEREFORE**, the plaintiff State's Attorney for the Judicial District of Danbury respectfully moves for a stay effective throughout the pendency of the appeal in this matter, including any appeals in the Appellate or Supreme Court, in the event any are taken.

PLAINTIFF  
Stephen J. Sedensky III  
State's Attorney  
Judicial District of Danbury

BY:   
Stephen J. Sedensky III  
State's Attorney  
Judicial District of Danbury  
146 White St.  
Danbury, CT 06810  
Tel.: (203) 207-8670  
Fax: (203) 207-8684  
Juris No. 102482  
[stephen.sedensky@ct.gov](mailto:stephen.sedensky@ct.gov)

**CERTIFICATION**

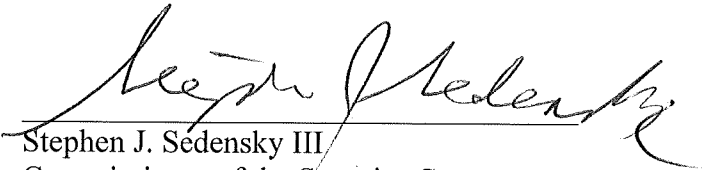
I hereby certify that a copy of the foregoing was mailed, first class postage prepaid, this 30<sup>th</sup> day of October, 2013 to:

Colleen M. Murphy, Esq.  
Executive Director and General Counsel  
Freedom of Information Commission  
18-20 Trinity Street  
Hartford, CT 06106

Jack Gillum and The Associated Press  
c/o David A. DeBassio, Esq. and  
Timothy Jensen, Esq.  
Hinkley Allen & Snyder, LLP  
20 Church Street  
18<sup>th</sup> Floor  
Hartford, CT 06103

Chief, Police Department,  
Town of Newtown;  
Police Department, Town of Newtown  
c/o Nathan C. Zezula, Esq.  
David L. Grogins, Esq.  
Cohen and Wolf, P.C.  
158 Deer Hill Ave.  
Danbury, CT 06810

State's Attorney  
State of Connecticut,  
Division of Criminal Justice  
c/o Leonard Boyle  
Chief State's Attorney's Office  
300 Corporate Place  
Rocky Hill, CT 06067

  
Stephen J. Sedensky III  
Commissioner of the Superior Court