

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Joan Zygmunt,

Complainant

against

Docket # FIC 2021-0275

Attorney General, State of Connecticut,
Office of the Attorney General; and State of
Connecticut, Office of the Attorney General,

Respondents

November 16, 2022

The above-captioned matter was heard as a contested case on April 11, 2022, at which time the complainant and the respondents appeared, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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. It is found that, by email dated April 16, 2021, the complainant requested from the respondents copies of:
 - (a) Any and all communications between yourself and any other personnel in the Attorney General's ["AG's"] Office and/or between personnel in the AG's office, regarding a letter dated April 15, 2019, sent from Joan L. Zygmunt to Governor Ned Lamont and copied to Attorney General William Tong, concerning Ms. Zygmunt's CHRO complaint against the Judicial Branch for ADA Title II discrimination/retaliation in the civil case Lucas Stone et al. v. Norman Pattis et al.;
 - (b) Any and all communications between yourself and/or between anyone in the AG's office and anyone in any other state office, department or branch regarding the letter described in (a) above;
 - (c) Any and all communications between yourself and/or any other personnel in the AG's office, and/or between personnel in the

AG's office, regarding the affidavit submitted by Joan L. Zygmunt for the plaintiff in the U.S. District Court case, Daniel M. Lynch v. State of Conn. Judicial Branch; and

- (d) Any and all communications between yourself and/or between any other personnel in the AG's office and anyone in any other state office, department or branch regarding the affidavit described in (c) above.

3. It is found that, by letter dated April 21, 2021, the respondents acknowledged receipt of the complainant's request. Three weeks later, by letter dated May 12, 2021, the respondents informed the complainant that they had previously provided her with copies of all non-exempt records responsive to the requests, described in paragraphs 2(a) and 2(b), above, and provided copies of such records to her again. As to paragraphs 2(c) and 2(d), the respondents informed the complainant that they located twenty-three pages of emails responsive to her request, but that such emails were exempt from disclosure pursuant to §§1-210(b)(10) and 52-146(r), G.S., as attorney-client privileged communications.

4. By letter of complaint filed May 18, 2021,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request for records.

5. At the time of the request, §1-200(5), G.S., provided that:

"[p]ublic 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.²

6. Section 1-210(a), G.S., provides, in relevant part, that:

[e]xcept 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

¹On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

²Section 147 of Public Act 21-2 (June Special Session) subsequently amended the definition of "[p]ublic records or files" to also include data or information that is "videotaped." That amendment was effective on June 23, 2021.

every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides, in relevant part, that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing, the complainant contended that the records provided to her in response to the requests, described in paragraphs 2(a) and 2(b), above, were not the records she was seeking.

10. However, the respondents testified, and it is found, that their information technology department conducted a search for all documents related to the case referenced in paragraphs 2(a) and 2(b), above, and that such search identified three pages of records, which the respondents provided to the complainant. The respondents testified, and it is found, that they also searched their hardcopy correspondence and did not locate the letter referenced in the complainant’s request or any other responsive records.

11. Based upon the foregoing, it is found that the respondents conducted a thorough and diligent search for the records described in paragraphs 2(a) and 2(b), above.

12. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the requests described in paragraphs 2(a) and 2(b), above.

13. With respect to the requests, described in paragraphs 2(c) and 2(d), above, the hearing officer, at the close of the hearing, ordered the respondents to submit all records claimed to be exempt from disclosure to the Commission for in camera inspection. Such records were submitted on May 2, 2022, and are hereinafter referred to as IC-2021-0275-01 through IC-2021-0275-27.

14. The respondents claimed that portions of IC-2021-0275-19 through IC-2021-0275-20 and portions of IC-2021-0275-27 are non-responsive to the requests, described in paragraph 2, above.

15. After careful in camera inspection, it is found that such portions are not responsive, and therefore, need not be disclosed to the complainant.

16. The respondents further claimed that IC-2021-0275-01 through IC-2021-0275-17; portions of IC-2021-0275-18; the remaining portions of IC-2021-0275-19 through IC-2021-0275-20; IC-2021-0275-21 through IC-2021-0275-23; portions of IC-2021-0275-24; IC-2021-0275-25 through IC-2021-0275-26; and the remaining portions of IC-2021-0275-27 are exempt from disclosure pursuant to §§1-210(b)(10) and 52-146r, G.S.

17. Section 1-210(b)(10), G.S., provides, in relevant part, that disclosure is not required of “communications privileged by the attorney-client relationship . . .”

18. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. Freedom of Information Commission, 260 Conn. 143 (2002). In that case, our Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” *Id.*, 149.

19. Section 52-146r(2), G.S., defines “confidential communications” as: “all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .”

20. The Supreme Court has stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell v. Freedom of Information Commission, *supra*, 260 Conn. 149.

21. Moreover, “[w]here legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived.” Rienzo v. Santangelo, 160 Conn. 391, 395 (1971), see also Olson v. Accessory Controls & Equipment Corp., 254 Conn. 145, 159 (2000). In addition, “the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice. . . . The privilege fosters full and frank communications between attorneys and their clients and thereby promote[s] the broader public interests in the observation of law and [the] administration of justice.” PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329–30 (2004).

22. Based upon careful in camera inspection of the records, or portions thereof, identified in paragraph 16, above, it is found that such records or portions include both written communications transmitted in confidence between employees of a public agency, acting within the scope of their employment, and their attorneys, related to legal advice sought, and records prepared by the attorneys in furtherance of the rendition of such legal advice. In addition, it is found that the respondents did not waive the attorney-client privilege. Therefore, it is found that such records are exempt from disclosure pursuant to §1-210(b)(10), G.S.

23. Based on the foregoing, it is concluded that the respondents did not violate the FOI Act by withholding the records or portions thereof, described in paragraph 16, above, from the complainant.

24. The respondents also contended that the remaining portions of both IC-2021-0275-18 and IC-2021-0275-24 are exempt from disclosure pursuant to §1-210(b)(20), G.S.

25. Section 1-210(b)(20), G.S., provides that public agencies are not required to disclose “[r]ecords of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system[.]”

26. It is found that the portions claimed to be exempt from disclosure consist of a username and password. However, it is found that the respondents offered no evidence that such username and password constitute a code that is not otherwise available to the public or that disclosure of such username and password would compromise the security or integrity of the respondents’ information technology system.

27. Accordingly, it is found that the respondents failed to prove that such records are exempt from disclosure pursuant to §1-210(b)(20), G.S.

28. Nevertheless, the Commission notes that it has historically declined to order the disclosure of personal identifiers, such as social security numbers and employee identification numbers when contained in personnel, medical or similar files pursuant to §1-210(b)(2), G.S., as such disclosure would constitute an invasion of personal privacy. See, e.g., Kevin J. Daly, Jr. and the City of Waterbury v. Commissioner, State of Connecticut, Department of Correction, et al., FIC #2014-032 (Nov. 19, 2014); Donna L. Roberto v. Richard D. Nicholson, Commissioner, State of Connecticut, Department of Revenue Services, et al., FIC #2010-185 (Nov. 17, 2010). In doing so, the Commission has observed that disclosure of such personal identifiers would allow people “to access a wealth of data, including personal, financial, and tax data concerning the individual assigned that [identifier].” Garrison v. Supervisor, Unclaimed Property Division, State of Connecticut Office of the Treasurer, FIC #89-76 (Sept. 13, 1989). It is found that a username and password constitute such a personal identifier.

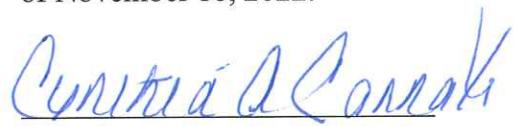
29. Although the username and password in this case are not contained in personnel, medical or similar files, based on the facts and circumstances in this case, the Commission, in its discretion, declines to order the disclosure of the username and password contained in the in camera records or portions thereof, described in paragraph 24, above.

30. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the requests described in paragraphs 2(c) and 2(d), above.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 16, 2022.

A handwritten signature in blue ink, appearing to read "Cynthia A. Cannata".

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:

JOAN ZYGMUNT, 20 Hendrie Court, Stamford, CT 06902

ATTORNEY GENERAL, STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL; AND STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL, c/o Assistant Deputy Attorney General Antoria Howard, State of Connecticut, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission