

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

CORRECTED FINAL DECISION

Virginia Brown,

Complainant,

Docket # FIC 2016-0191

against

Comptroller, State of Connecticut,  
Office of the Comptroller; and State  
of Connecticut, Office of the Comptroller,

Respondents

March 6, 2017

The above-captioned matter was heard as a contested case on October 21, 2016, December 9, 2016 and January 12, 2017, at which times the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The Commission notes that the complainant, who represented herself, did not testify or call a witness.<sup>1</sup> In addition, although she was afforded an opportunity to cross-exam the respondents' witness at the January 12, 2017 hearing, the complainant elected not to do so.

Subsequently, at the Commission's February 22, 2017 regular meeting, less than two weeks before the statutory expiration deadline of this matter, new arguments were raised by the parties. The complainant and respondents had an opportunity to file briefs prior to the meeting, but elected not to do so. The Commissioners unanimously voted to allow the parties to file briefs by Friday, February 24, 2017, and to convene a special meeting to further consider this matter. The special meeting was scheduled for March 6, 2017.

On December 1, 2016, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit which has been marked as Respondents' Exhibit 8: List of Authors and Recipients of the Records on the In Camera Review Index. In addition, on December 29, 2016, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit which has been marked as Respondents' Exhibit 8A: Revised List of Authors and Recipients of the Records on the In Camera Review Index. Subsequently, on January 23, 2017, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit which has been marked as Respondents' Exhibit 12: Retirement Commission Members (Names & Email Addresses).

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 letter and email dated February 11, 2016, the complainant made a request to the respondents for copies of the following:

[a] Public records and/or files that are maintained by the Office of the State Comptroller and are now, or have ever been, in the possession of Kevin Lembo, State Comptroller, P. Martha Carlson, Deputy Comptroller, Natalie Braswell, Assistant Comptroller and General Counsel, Brenda Halpin, Director of Retirement Services Division, Doris Vieira, Fiscal Administrative Manager and former Human Resource Manager and Sandra Cady, former Human Resource Specialist, to include the following:

[i] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September 2012 to the present, **that refer to the elimination of the staff attorney II position in the Retirement Services Division that was previously held by Virginia Brown.**

[ii] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September 2012 to the present, **that refer Linda Yelmini.**

[iii] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September of 2012 to the present, **to and/or from Linda Yelmini.**

[iv] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September of 2012 to the present, **that refer to the Office of the Auditors of Public Accounts.**

[v] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September 2012 to the present, **to and/or from the Office of the Auditors of Public Accounts.**

[vi] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September of 2012 to the present, **that refer to Whistleblower.**

[b] Public records and/or files that are maintained by the Office of the State Comptroller and are now, or have ever been, in the possession of Kevin Lembo, State Comptroller and P. Martha Carlson, Deputy Comptroller, to include the following:

[i] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September of 2012 to the present, **that refer to the SERS twenty-four (24) month disability retirement Standard.**

[ii] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September of 2012 to the present, **that refer to any public employee union and/or representative of such union.**

[iii] All public records and/or files, including internal and external communications, which includes, but is not limited to, electronic communications prepared, owned, used, received or retained on state computers, personal computers and all personal phones (including personal e-mail accounts, text messages and personal notes) used to conduct state business from September of 2012 to the present, **to and/or from any public employee union representative.**

[c] Public records and/or files that are maintained by the Office of the State Comptroller, to include the following:

[i] All tape recordings of State Employee Retirement Commission monthly meetings, including executive sessions that were taped from June 2012 to the present.

[ii] All Personal Service Agreements executed on behalf of the State Employees Retirement Commission.

[Emphasis in original]. The complainant requested that responsive records and/or files be provided to her electronically. In addition, she requested that if the respondents denied the request, or any portion thereof, that they cite each specific exemption that they believed justified the refusal to release the information.

3. It is found that on or about February 16, 2016, the respondents acknowledged the complainant's request and informed her that they were forwarding such request to the appropriate individuals for processing.

4. By email dated March 8, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with copies of records responsive to her February 11, 2016 request, described in paragraph 2, above.

5. Section 1-200(5), G.S., defines "public records or files" as:

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.

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

Except 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 every person shall have the right to (1) inspect such records promptly during regular office or business hours . . . (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 "any 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 requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

9. It is found that the respondents provided the complainant with over 2,000 pages of records, in electronic format, that were responsive to her request. It is found that such records were provided, free of charge, in monthly installments on or about March 9, 2016, April 26, 2016, May 6, 2016, July 22, 2016, August 23, 2016, October 12, 2016, November 29, 2016, and December 8, 2016. It is further found that the respondents withheld over 5,000 pages of records which they maintain are exempt from disclosure.

10. The complainant stated at the hearings in this matter that she is only challenging the improper withholding of the approximately 5,000 pages of records, described in paragraph 9, above. Accordingly, promptness is not an issue in this matter.

11. By order dated December 21, 2016, the hearing officer instructed the respondents to submit the records they claimed are exempt from disclosure for in camera inspection, as well as an in camera index. On December 29, 2016, the respondents submitted unredacted copies of the records responsive to the request at issue, along with multiple indexes, to the Commission. The respondents separated the in camera records into seven groups of records, with each group identified by the name of an individual, and created a separate in camera index for each such group of records. On January 3, 2017, the respondents submitted a revised index for one of the seven groups of records. In addition, at the January 12, 2017 hearing, the complainant narrowed the records at issue and excluded one of the seven groups of records. The in camera records remaining at issue are identified as follows:

Doris Vieira (DV): IC-2016-0191-1 through 62;

Sandra Cady (SC): IC-2016-0191-1 through 73;

Martha Carlson (MC): IC-2016-0191-1 through 905;

Natalie Braswell (NB): IC-2016-0191-1 through 1089;

Brenda Halpin (BH): IC-2016-0191-1 through 1236; and

Kevin Lembo (KL): IC-2016-0191-1 through 1668.<sup>1</sup>

12. On the in camera indexes, the respondents indicate that the following attachments/documents are not exempt from disclosure:

MC: IC-2016-0191-64 through 93, IC-2016-0191-748;<sup>2</sup>

NB: IC-2016-0191-11 through 18, IC-2016-0191-206 through 280, IC-2016-0191-643 through 843, IC-2016-0191-967 through 1041, IC-2016-0191-1043 through 1072;

KL: IC-2016-0191-6 through 49, IC-2016-0191-51 through 62, IC-2016-0191-64 through 68, IC-2016-0191-70 through 72, IC-2016-0191-75 through 83, IC-2016-0191-85 through 121, IC-2016-0191-123 through 132, IC-2016-0191-283 through 323, IC-2016-0191-357 through 517, IC-2016-0191-523 through 625, IC-2016-0191-629 through 633, IC-2016-0191-635 through 709, IC-2016-0191-1538 through 1547, IC-2016-0191-1549 through 1561,

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<sup>1</sup> The records at issue consist of numerous duplicate documents, including, but not limited to multi-page attachments. In an attempt to avoid confusion, the hearing officer has addressed the records individually as referenced and described on the in camera indexes.

<sup>2</sup> On the index for the Martha Carlson in camera records, the respondents also describe IC-2016-0191-742 and IC-2016-0191-745, as "Attachment not exempt." However, upon a careful review of such records, the Commission notes that IC-2016-0191-742 and IC-2016-0191-745 are not attachments, and therefore will not be addressed as "Attachment[s] not exempt." The respondents also describe IC-2016-0191-748 as an "Attachment not exempt." Such record is one page of a multi-page attachment (IC-2016-0191-746 through 785) which the respondents claim is exempt from disclosure. Accordingly, IC-2016-0191-748 will be addressed herein as part of such multi-page attachment for which an exemption is being claimed, and not separately as an "attachment not exempt."

IC-2016-0191-1563 through 1578, and IC-2016-0191-1621 through 1664.<sup>3</sup>

By letter dated December 29, 2016, the respondents represented that any reference in the indexes which states that documents were non-exempt and/or emails were non-exempt means that such documents were provided to the complainant. To date, no objection has been filed by the complainant regarding such representation. Accordingly, such records are not at issue and will not be further addressed herein.

13. On the index for the Brenda Halpin in camera records, the respondents indicate that IC-2016-0191-42 through 45 and IC-2016-0191-243 through 246 were produced to the complainant. The respondents also indicate that the attachments contained in IC-2016-0191-1084 through 1127, IC-2016-0191-1135 through 1166, and IC-2016-0191-1181 through 1224, were produced to the complainant. Although the respondents did not identify the specific page numbers for such attachments, the Commission notes that the attached documents are contained in IC-2016-0191-1087 through 1127, IC-2016-0191-1137 through 1166, and IC-2016-0191-1184 through 1224. To date, no objection has been filed by the complainant regarding whether such records were, in fact, provided to her. Accordingly, such records are not at issue and will not be further addressed herein.

14. At the December 9, 2016 hearing in this matter, the respondents indicated that they are not claiming that the "To" "From" "Sent" (date) and "Subject" lines contained in any email submitted for in camera inspection are exempt from disclosure.<sup>4</sup>

15. At the February 22, 2017 Commission meeting, the complainant stated that she was not seeking social security numbers or employee numbers. Accordingly, such information is not at issue in this matter. Prior to disclosure, the respondents shall review the in camera records and redact any social security numbers and employee numbers, wherever such numbers are located.

16. On the indexes to the in camera records, the respondents claimed that such records are exempt from disclosure, pursuant to one or more of the following exemptions: §§1-210(b)(1), 1-210(b)(4), 1-210(b)(9), 1-210(b)(10), and/or 1-210(b)(13), G.S. In addition, at the February 22<sup>nd</sup> Commission meeting, the respondents for the first time claimed that certain records were already determined by the Commission to be exempt from disclosure in a separate

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<sup>3</sup> On the index for the Kevin Lembo in camera records, the respondents also describe IC-2016-0191-277, IC-2016-0191-279 and IC-2016-0191-326 as "Attachment not exempt." However, upon a careful review of such records, the Commission notes that IC-2016-0191-277, IC-2016-0191-279 and IC-2016-0191-326 are not attachments, and therefore will not be addressed as "Attachment[s] not exempt." In addition, on the index, the respondents describe IC-2016-0191-282 through 323 as "Attachment not exempt." Upon a careful review of such records, the Commission notes that the first page of the referenced attachment is IC-2016-0191-283, not 282, and will be addressed accordingly.

<sup>4</sup> The respondents did not number the lines on the in camera records; therefore, the hearing officer numbered such lines in pencil in order to identify which portion of a particular record is exempt from disclosure. The "To" "From" "Sent" (date) "Subject" and "Attachment" lines have not been numbered.

matter, and that certain in camera records are medical records exempt from disclosure. In their brief, dated February 24, 2017, the respondents claimed that the medical records are exempt pursuant to §§52-146c, 52-146d, 52-146e and 52-146o, G.S.

17. With regard to the respondents' claim that certain in camera records are exempt from disclosure pursuant to §1-210(b)(1), G.S., that statute provides that disclosure is not required of "[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure." Section 1-210(e)(1), G.S., further provides, in relevant part that, notwithstanding the provisions of §1-210(b)(1), G.S., disclosure shall be required of:

[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

18. The Supreme Court ruled in Shew v. Freedom of Information Commission, that "the concept of preliminary [drafts or notes], as opposed to final [drafts or notes], should not depend upon...whether the actual documents are subject to further alteration..." but rather "[p]reliminary drafts or notes reflect that aspect of the agency's function that precede formal and informed decision making.... It is records of this preliminary, deliberative and predecisional process that...the exemption was meant to encompass." Shew v. Freedom of Information Commission, 245 Conn. 149, 165 (1998). In addition, once the underlying document is identified as a preliminary draft or note, "[i]n conducting the balancing test, the agency may not abuse its discretion in making the decision to withhold disclosure. The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded." State of Connecticut, Office of the Attorney General v. Freedom of Information Commission, 2011 WL 522872, \*8 (Conn. Super. Ct. Jan. 20, 2011) (citations omitted).

19. With regard to the respondents' claim that certain in camera records are exempt from disclosure pursuant to §1-210(b)(4), G.S., that statute provides that disclosure is not required of "[r]ecords pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled...."

20. Section 1-200(8), G.S., defines "pending claim" as "a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted."

21. Section 1-200(9), G.S., defines "pending litigation" as:



(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of an action to enforce or implement legal relief or a legal right.

22. With regard to the respondents' claim that certain in camera records are exempt from disclosure pursuant to §1-210(b)(9), G.S., that statute provides that disclosure is not required of "[r]ecords, reports and statements of strategy or negotiations with respect to collective bargaining...."

23. With regard to the respondents' claim that the majority of the in camera records are exempt from disclosure pursuant to §1-210(b)(10), G.S., such exemption provides that mandatory disclosure is not required of "communications privileged by the attorney-client relationship...."

24. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the attorney-client privilege. Such law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the 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., at 149.

25. 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. . . .

26. As our Supreme Court has stated, a four part test must be applied to determine whether communications are privileged: "(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney, and (4) the communications must be made in confidence." Lash v. Freedom of Information Commission, 300 Conn. 511, 516 (2011), citing Shew v. Freedom of Information Commission, 245 Conn. 149, 159 (1998). In addition, the Supreme Court has stated, "[w]e do not...require magic words to draw the reasonable inference that an attorney offers legal advice to a client regarding pending litigation because the client has

'sought' the advice." Lash, supra at 519 ("The surrounding facts and circumstances make it clear that the plaintiffs sought the legal advice.")

27. With regard to the respondents' claim that certain in camera records are exempt from disclosure pursuant to §1-210(b)(13), G.S., that provision states that disclosure is not required of "[r]ecords of an investigation or the name of an employee providing information under the provisions of section 4-61dd...."

28. Section 4-61dd, G.S., known as the "whistleblower" statute, provides that any person having knowledge of corruption in state government, may report such information to the Auditor of Public Accounts ("Auditors"), who, after reviewing such information, must report it to the Attorney General ("AG"). The AG, with the assistance of the Auditors, must conduct an appropriate investigation of such report, and where necessary, report any findings to the Governor or the Chief State's Attorney.

#### Doris Vieira In Camera Records ("Vieira records")

29. With regard to the respondents' claim that certain in camera records are medical and psychological records exempt from disclosure, §1-210(b)(10), G.S., provides, in relevant party, that "[r]ecords...exempted by ...the general statutes or communications privileged by the ...doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes..." Are exempt from mandatory disclosure. The respondents rely specifically on §§52-146c, 52-146d, 52-146e, and 52-146o, G.S.

30. Section 52-146c, G.S., provides, in relevant part, that "in civil and criminal actions, in juvenile, probate, commitment and arbitration proceedings, in proceedings preliminary to such actions or proceedings, and in legislative and administrative proceedings, all communications shall be privileged and a psychologist shall not disclose any such communications unless the person or his authorized representative consents to waive the privilege and allow such disclosure." Section 52-146c(a)(3) defines "communications" as "all oral and written communications and records thereof relating to the diagnosis and treatment of a person between such person and a psychologist or between a member of such person's family and a psychologist."

31. Section 52-146e, G.S., provides, in relevant part, that "all communications and records as defined in section 52-146d shall be confidential and shall be subject to the provisions of section 52-146d to 52-146j, inclusive." Section 52-146d defines "communications and records" as "all oral and written communications and records thereof relating to diagnosis or treatment of a patient's mental condition between the patient and a psychiatrist, or between a member of the patient's family and a psychiatrist, or between any of such persons and a person participating under the supervision of a psychiatrist in the accomplishment of the objectives of diagnosis and treatment, wherever made, including communications and records which occur in or are prepared at a mental health facility."

32. Section 52-146o, G.S., provides, in relevant part, that "in any civil action or any proceeding preliminary thereto or in any probate, legislative or administrative proceeding, a

physician or surgeon, as defined in subsection (b) of section 20-7b, shall not disclose (1) any communication made to him by, or any information obtained by him from, a patient or the conservator or guardian of a patient with respect to any actual or supposed physical or mental disease or disorder or (2) any information obtained by personal examination of a patient, unless the patient or his authorized representative explicitly consents to such disclosure.”

Doris Vieira In Camera Records (“Vieira records”)

33. On the index to the Vieira records, the respondents claimed that such records are exempt from disclosure pursuant to §§1-210(b)(1) and 1-210(b)(10) G.S., respectively.<sup>5</sup>

34. The respondents claimed that the majority of the Vieira records are exempt from disclosure pursuant to §1-210(b)(10), G.S., only.

35. With respect to IC-2016-0191-1 through 4 and IC-2016-0191-5 through 6, it is found, after careful examination, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-1 through 4 and IC-2016-0191-5 through 6 are not exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

36. With respect to IC-2016-0191-7 through 10, on the index, the respondents describe the only information believed to be exempt in such records, as an email, dated April 14, 2015. Such email appears in IC-2016-0191-9 (lines 17-27) through 10, and will be addressed accordingly. The respondents do not identify a corresponding exemption for IC-2016-0191-7 through 9 (lines 1-16).

37. It is found, after careful examination, that IC-2016-0191-9 (lines 17-27) through 10 are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-9 (lines 17-27) through 10, constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

38. It is found, after careful examination of IC-2016-0191-7 through 9 (lines 1-16), that the respondents failed to prove that such records constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-7 through 9 (lines 1-16) are not exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

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<sup>5</sup> The Commission notes that the “attachment(s)” line found on the following records indicates that a document(s) was attached: IC-2016-0191-7, IC-2016-0191-11, IC-2016-0191-37 and IC-2016-0191-55. However, no documents were attached, nor does the description on the in camera index indicate that there is an attachment associated with such records. Accordingly, such “attachment(s)” will not be further addressed herein. The complainant is not precluded from making a future request for any attached documents.

39. With respect to IC-2016-0191-15 through 18, it is found, after careful examination, that such records are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-15 through 18 constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

40. With respect to IC-2016-0191-19 through 21, it is found, after careful examination, that IC-2016-0191-19 (lines 16-28) through 21 are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-19 (lines 16-28) through 21 constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

41. It is found, after careful examination of IC-2016-0191-19 (lines 1-15), that such record does not constitute a communication within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that such record is not exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such record.

42. With respect to IC-2016-0191-22 through 36, on the index, the respondents indicate that such records contain an email, dated October 16, 2014, for which they are claiming an exemption, and certain additional emails and attachments that are not claimed to be exempt from disclosure. It is found that IC-2016-0191-22 through 36 do not contain an email dated October 16, 2014. It is found, however, that the information contained in IC-2016-0191-22 through 36, including the attachments, are responsive to the complainant's request and will be addressed accordingly.

43. It is found, after careful examination of IC-2016-0191-22 through 36, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-22 through 36 are not exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

44. With respect to IC-2016-0191-37 through 39, on the index, the respondents indicate that such records contain an email, dated November 7, 2014, for which they are claiming an exemption. It is found that IC-2016-0191-37 through 39 do not contain an email dated November 7, 2014. It is found, however, that the emails contained in IC-2016-0191-37 through 39 are responsive to the complainant's request and will be addressed accordingly.

45. It is found, after careful examination of IC-2016-0191-37 through 39, that IC-2016-0191-37 (lines 1-15) does not constitute a communication within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-37 (lines 1-15) is not exempt from

disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such record.

46. It is found, after careful examination of IC-2016-0191-37 (lines 16-24) through 39, that such records are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-37 (lines 16-24) through 39 constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

47. With respect to IC-2016-0191-40 through 41, it is found, after careful examination of IC-2016-0191-40 (lines 1-15), that such record does not constitute a communication within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-40 (lines 1-15) is not exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such record.

48. It is found, after careful examination, that IC-2016-0191-40 (lines 16-30) through 41 are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-40 (lines 16-30) through 41 constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

49. With respect to IC-2016-0191-43 through 51, it is found, after careful examination, that such records are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-43 through 51 constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

50. With respect to IC-2016-0191-52 through 54,<sup>6</sup> on the index, the respondents indicate that the only information believed to be exempt in such records are the “first 2 emails.” Such emails appear in IC-2016-0191-52 (lines 1-2), and will be addressed accordingly.

51. It is found, after careful examination, that the respondents failed to prove that IC-2016-0191-52 through 54, including the emails described in paragraph 50, above, constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that

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<sup>6</sup> The records, which are described on the index as DV52-DV55, “Email chain, 11/12/14 at 10:33 from Braswell; email at 5:19 Cady forwarding Braswell’s email,” appear in the in camera submission as DV-52 through 54, and will be addressed accordingly.

IC-2016-0191-52 through 54 are not exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

52. With respect to IC-2016-0191-55 through 62,<sup>7</sup> it is found, after careful examination, that such records are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-55 through 62 constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

53. With respect to IC-2016-0191-42, the respondents neglected to identify the corresponding exemption pursuant to which such record is claimed to be exempt. It is found, however, that IC-2016-0191-42 is identical to IC-2016-0191-5, which was claimed to be exempt from disclosure pursuant to §1-210(b)(10), G.S., as described in paragraph 35, above. It is further found, after careful examination of IC-2016-0191-42, that such record does not constitute a communication within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-42 is not exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such record.

54. With respect to IC-2016-0191-11 and IC-2016-0191-12 through 14, the respondents claimed that such records are exempt from disclosure pursuant to §1-210(b)(1), G.S., only. It is found, however, that the respondents failed to prove that IC-2016-0191-11 and IC-2016-0191-12 through 14 are “preliminary drafts or notes” within the meaning of §1-210(b)(1), G.S. Accordingly, it is concluded that IC-2016-0191-11 and IC-2016-0191-12 through 14, are not exempt from disclosure pursuant to §1-210(b)(1), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

#### Sandra Cady In Camera Records (“Cady records”)

55. On the index to the Cady records, the respondents claimed that such records are exempt from disclosure pursuant to §§1-210(b)(1) and/or 1-210(b)(10), G.S.<sup>8</sup>

56. It is found, after careful examination of the following documents, that such records

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<sup>7</sup> The records, which are described on the index as DV56-DV62, “Emails from Graff, Braswell, Cady dated April 14, 17, 20, 2015,” appear in the in camera submission as DV55 through 62, and will be addressed accordingly.

<sup>8</sup> The Commission notes that the “attachment(s)” line found on the following records indicate that a document(s) was attached: IC-2016-0191-5, IC-2016-0191-28, IC-2016-0191-31 and IC-2016-0191-49. However, no documents were attached, nor does the description on the in camera index indicate that there is an attachment associated with such records. Accordingly, such “attachment(s)” will not be further addressed herein. The complainant is not precluded from making a future request for any attached documents.

are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice: IC-2016-0191-1 through 2, IC-2016-0191-3 through 4, IC-2016-0191-6 through 9, IC-2016-0191-10 through 12, IC-2016-0191-13 through 15, IC-2016-0191-16 through 19, IC-2016-0191-20 through 22, IC-2016-0191-23 through 25, IC-2016-0191-26, IC-2016-0191-27, IC-2016-0191-50, IC-2016-0191-51 (lines 31-33 from “as we have” to “plan”), IC-2016-0191-61 through 62, IC-2016-0191-63 through 64, and IC-2016-0191-65 through 66.

57. It is found that the documents described in paragraph 56, above, constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.<sup>9</sup>

58. It is found, after careful examination of the following documents, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S.: IC-2016-0191-32 through 36, IC-2016-0191-37 through 48, IC-2016-0191-49, IC-2016-0191-51 (lines 1-31 up to “as we have”, lines 34-44) through 54, IC-2016-0191-55 through 57, IC-2016-0191-58 through 59, IC-2016-0191-60,<sup>10</sup> IC-2016-0191-67 through 70, and IC-2016-0191-71. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

59. It is found, after careful examination of IC-2016-0191-5, IC-2016-0191-28, IC-2016-0191-31 and IC-2016-0191-72 through 73, that the respondents failed to prove that such records constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-5, IC-2016-0191-28, IC-2016-0191-31 and IC-2016-0191-72 through 73, are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

60. With respect to IC-2016-0191-29 through 30, it is found that such records consist of an email (IC-2016-0191-29) and one page attachment (IC-2016-0191-30). It is found that although the email makes reference to an attachment, the attached document is not the document to which reference is made. It is further found, however, that IC-2016-0191-29 and IC-2016-0191-30 are both responsive to the complainant’s request.

61. It is found, after careful examination of IC-2016-0191-29 through 30, that the respondents failed to prove that such records constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-29 through 30, are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

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<sup>9</sup> The respondents also claimed that IC-2016-0191-6 through 9 and IC-2016-0191-16 through 19 are exempt from disclosure pursuant to §1-210(b)(1), G.S. In view of the conclusion in paragraph 57, however, there is no need to address any further exemption.

<sup>10</sup> The record, which is described on the in camera index as SC-62, “Email from Brenda Halpin, to Virginia Brown, dated 6/25/14 (5:37 pm),” appears in the in camera record submission as SC-60, and will be addressed accordingly.

62. The respondents also claim that IC-2016-0191-5, IC-2016-0191-28, IC-2016-0191-29 through 30 and IC-2016-0191-31, are exempt from disclosure pursuant to §1-210(b)(1), G.S. It is found, however, that the respondents failed to prove that such records are “preliminary drafts or notes” within the meaning of §1-210(b)(1), G.S. Accordingly, it is concluded that IC-2016-0191-5, IC-2016-0191-28, IC-2016-0191-29 through 30 and IC-2016-0191-31 are not exempt from disclosure pursuant to §1-210(b)(1), G.S.

63. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraphs 58, 59, 60, 61, and 62, above.

Martha Carlson In Camera Records (“Carlson records”)

64. On the index to the Carlson records, the respondents claimed that such records are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(4) and/or 1-210(b)(10), G.S.<sup>11</sup>

65. The respondents claimed that the majority of the Carlson records are exempt from disclosure pursuant to §1-210(b)(10), G.S.

66. It is found, after careful examination of the following documents, and attachments thereto, that such records are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice:

IC-2016-0191-9 through 13,<sup>12</sup> IC-2016-0191-35 through 38, IC-2016-0191-39 through 61, IC-2016-0191-94 through 96, IC-2016-0191-97 (lines 9-36) through 98,<sup>13</sup> IC-2016-0191-106 through 107, IC-2016-0191-108 through 112, IC-2016-0191-113 through 117, IC-2016-0191-118 through 124, IC-2016-0191-125 through 134, IC-2016-0191-136 through 183, IC-2016-0191-184 (lines 15-24) through 186, IC-2016-0191-187 through 191, IC-2016-0191-192 through 622, IC-2016-0191-623 through 651, IC-2016-0191-656 through 657, IC-2016-0191-658, IC-2016-0191-662 through 683, IC-2016-0191-684 (lines 27-45), IC-2016-0191-685 (lines 27-28,

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<sup>11</sup> The Commission notes that the “attachment(s)” line found on the following records indicate that a document(s) was attached: IC-2016-0191-113, IC-2016-0191-135, IC-2016-0191-732, IC-2016-0191-733, IC-2016-0191-736, IC-2016-0191-740, IC-2016-0191-809, IC-2016-0191-828, and IC-2016-0191-840. However, no documents were attached, nor does the description on the in camera index indicate that there is an attachment associated with such records. Accordingly, such “attachment(s)” will not be further addressed herein. The complainant is not precluded from making a future request for any attached documents.

<sup>12</sup> On the index to the in camera records, the respondents claimed that IC -2016-0191-9 through 13 was exempt pursuant to §1-210(b)(1), G.S., only. However, at the Commission’s February 22<sup>nd</sup> regular meeting and in their February 24<sup>th</sup> brief, the respondents argued that such record was exempt pursuant to §1-210(b)(10), G.S., and will be addressed accordingly.

<sup>13</sup> The record, which is described on the index as MC-97 – MC-99, “Email from Brenda Halpin to Martha Carlson, dated 11/18/13 (5:30 pm),” appears in the in camera submission as MC-97 through 98, and will be addressed accordingly.



from “as we have” to “plan”), IC-2016-0191-695 through 706, IC-2016-0191-738 through 739, IC-2016-0191-786 through 808, IC-2016-0191-809 through 811, IC-2016-0191-812 through 815, IC-2016-0191-816 through 818, IC-2016-0191-819 through 820, IC-2016-0191-821 through 825, IC-2016-0191-826 through 827, IC-2016-0191-828 through 833, IC-2016-0191-834 through 837, IC-2016-0191-838 through 839, and IC-2016-0191-840 through 843.

67. It is found that the documents described in paragraph 66, above, constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.<sup>14</sup>

68. It is found, after careful examination of the following documents, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S.: IC-2016-0191-62 through 63, IC-2016-0191-97 (lines 1-8), IC-2016-0191-103, IC-2016-0191-184 (lines 1-14), IC-2016-0191-684 (lines 1-26), IC-2016-0191-685 (lines 1-27 up to “as we have”, lines 29-59) through 694, IC-2016-0191-707 through 724, IC-2016-0191-729, IC-2016-0191-732, IC-2016-0191-733 and IC-2016-0191-740 through 742. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

69. With respect to IC-2016-0191-135, after careful examination of such record, it is found that the respondents failed to prove that IC-2016-0191-135 constitutes a communication within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that such record is not exempt from disclosure pursuant to §1-210(b)(10), G.S.

70. With respect to IC-2016-0191-99 through 102,<sup>15</sup> IC-2016-0191-659 through 661, and IC-2016-0191-730 through 731, it is found that the respondents failed to identify all recipients of such records. It is found that the respondents failed to prove that such individual(s) were “attorneys” or “clients,” (nor are these facts evident from the records themselves), and that therefore, the respondents failed to prove that IC-2016-0191-99 through 102, IC-2016-0191-659 through 661, and IC-2016-0191-730 through 731 constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

71. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraphs 68, 69 and 70, above.

72. With respect to IC-2016-0191-844 through 905, it is found that such documents consist of a two-page email chain (IC-2016-0191-844 through 845) with a multi-page attachment

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<sup>14</sup> The respondents also claimed that IC-2016-0191-738 through 739 are exempt from disclosure pursuant to §1-210(b)(4), G.S. In view of the conclusion in paragraph 67, above, however, there is no need to address any further exemption.

<sup>15</sup> The record, which is described on the index as MC-100 – MC-102, “Email, with attachment, from Natalie Braswell, dated 8/27/15 (9:32 am),” appears in the in camera submission as MC-99 through 102, and will be addressed accordingly.

(IC-2016-0191-846 through 905). It is found that the email chain makes reference to an attachment. It is also found, however, that the multi-page attachment is not the document to which reference is made.

73. It is found, after careful examination of IC-2016-0191-844 through 845, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S., and are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

74. With respect to IC-2016-0191-846 through 905, such records do not appear to correspond with the email chain found in IC-2016-0191-844 through 845, described in paragraphs 72 and 73, above. It is found, however, that IC-2016-0191-846 through 905 are responsive to the complainant's request. After careful examination of IC-2016-0191-846 through 905, it is found that the respondents failed to prove that such records constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-846 through 905 are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

75. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding IC-2016-0191-844 through 905 from disclosure.

76. With respect to IC-2016-0191-743 through 785, it is found that such documents consist of a three-page email chain (IC-2016-0191-743 through 745) with a multi-page attachment (IC-2016-0191-746 through 785). It is found that the email chain does not make any reference to such multi-page attachment.

77. It is found, after careful examination of IC-2016-0191-743 (lines 17-25), that such record is a communication transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is found that IC-2016-0191-743 (lines 17-25) constitutes a communication privileged by the attorney-client relationship, and is exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such record from disclosure.<sup>16</sup>

78. It is found, after careful examination of IC-2016-0191-743 (lines 1-16) and IC-2016-0191-744 through 745, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S., and are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

79. The respondents also claim that IC-2016-0191-743 (lines 1-16) and IC-2016-0191-744 through 745 are exempt from disclosure pursuant to §1-210(b)(4), G.S., as records pertaining to strategy and negotiations with respect to pending claims or pending litigation. It is found, however, that the respondents did not offer any evidence to prove the applicability of §1-210(b)(4), G.S. Accordingly, it is found that the respondents failed to prove that IC-2016-0191-743 (lines 1-16) and IC-2016-0191-744 through 745 are exempt from disclosure pursuant to §1-210(b)(4), G.S.

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<sup>16</sup> The respondents also claimed that IC-2016-0191-743 (lines 17-25) is exempt from disclosure pursuant to §1-210(b)(4), G.S. In view of the conclusion in paragraph 77, above, however, there is no need to address any further exemption.

80. Based upon the foregoing, it is concluded that the respondents violated the FOI Act by withholding IC-2016-0191-743 (lines 1-16) and IC-2016-0191-744 through 745 from disclosure.

81. With respect to IC-2016-0191-746 through 785, such records do not appear to correspond with the email chain found in IC-2016-0191-743 through 745, described in paragraph 76, above. It is found, however, that such documents are responsive to the complainant's request.

82. After careful examination of IC-2016-0191-754 through 759, it is found that such documents contain detailed medical and psychological information within the meaning of §§52-146o, 52-146c, 52-146d and 52-146e, G.S., and therefore, are exempt from disclosure, accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.<sup>17</sup>

83. After careful examination of IC-2016-091-746 through 753 and IC-2016-0191-760 through 785, it is found that the respondents failed to prove that such records constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-746 through 753 and IC-2016-0191-760 through 785 are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

84. The respondents also claimed that IC-2016-0191-746 through 753 and IC-2016-0191-760 through 785, described in paragraph 83, above, are exempt from disclosure pursuant to §1-210(b)(4), G.S., as records pertaining to strategy and negotiations with respect to pending claims or pending litigation. It is found, however, that the respondents did not offer any evidence to prove the applicability of §1-210(b)(4), G.S. Accordingly, it is found that the respondents failed to prove that IC-2016-0191-746 through 753 and IC-2016-0191-760 through 785 are exempt from disclosure pursuant to §1-210(b)(4), G.S.

85. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding IC-2016-0191-746 through 753 and IC-2016-0191-760 through 785 from disclosure.

86. With respect to IC-2016-0191-1 through 8 and IC-2016-0191-14 through 34, the respondents claimed that such records are exempt from disclosure pursuant to §1-210(b)(1), G.S., only. It is found, however, that the respondents failed to prove that such records are "preliminary drafts or notes" within the meaning of §1-210(b)(1), G.S. Accordingly, it is concluded that IC-2016-0191-1 through 8 and IC-2016-0191-14 through 34 are not exempt from disclosure pursuant to §1-210(b)(1), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

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<sup>17</sup> On the index, the respondents claimed that IC-2016-0191-754 through 759 were exempt pursuant to §§1-210(b)(4) and 1-210(b)(10), G.S., only. In view of the conclusion in paragraph 82, above, however, there is no need to address any further exemptions.

87. With respect to IC-2016-0191-652 through 653 and IC-2016-0191-654 through 655, the Commission notes that such records were made exhibits in this matter, and provided to the complainant. Accordingly, IC-2016-0191-652 through 653 and IC-2016-0191-654 through 655 will not be further addressed herein.

Natalie Braswell In Camera Records (“Braswell records”)

88. On the index to the Braswell records, the respondents claimed that such records are exempt from disclosure pursuant to §§1-210(b)(4), 1-210(b)(10) and/or 1-210(b)(13), G.S.<sup>18</sup>

89. The respondents claimed that the majority of the Braswell records are exempt from disclosure pursuant to §1-210(b)(10), G.S.

90. It is found, after careful examination of the following documents, and attachments thereto, that such records, are communications transmitted in confidence between an attorney(s) and client(s) relating to legal advice sought by the client(s) and/or prepared in furtherance of the rendition of such legal advice:

IC-2016-0191-1 through 2, IC-2016-0191-5 through 6, IC-2016-0191-7 through 8, IC-2016-0191-9 through 10, IC-2016-0191-19 through 21, IC-2016-0191-27 through 28, IC-2016-0191-48 through 52, IC-2016-0191-53 through 81, IC-2016-0191-84 through 89, IC-2016-0191-90 through 115, IC-2016-0191-116 through 119, IC-2016-0191-120 through 121, IC-2016-0191-122, IC-2016-0191-123 through 126, IC-2016-0191-127 through 148, IC-2016-0191-149 through 152, IC-2016-0191-153 through 155, IC-2016-0191-156 through 161, IC-2016-0191-162 (lines 36-47) through 163 (lines 1-18, lines 34-35 from “as we have” to “plan”), IC-2016-0191-173 through 184, IC-2016-0191-201 through 202, IC-2016-0191-203 through 205, IC-2016-0191-281, IC-2016-0191-285 through 286, IC-2016-0191-287 through 289, IC-2016-0191-290 through 292, IC-2016-0191-293 through 294, IC-2016-0191-295, IC-2016-0191-296, IC-2016-0191-297 through 298, IC-2016-0191-299 through 300, IC-2016-0191-301, IC-2016-0191-302, IC-2016-0191-303 through 304, IC-2016-0191-305 through 308, IC-2016-0191-309 through 316, IC-2016-0191-317 through 318, IC-2016-0191-319 through 323, IC-2016-0191-324 through 328, IC-2016-0191-329 through 333, IC-2016-0191-334 through 336, IC-2016-0191-337 through 342, IC-2016-0191-343 through 348, IC-2016-0191-349 through 352, IC-2016-0191-353 through 355, IC-2016-0191-356 through 358, IC-2016-0191-359 through 361, IC-2016-0191-374 through 375, IC-2016-0191-378 through 379, IC-2016-0191-380 through 382, IC-2016-0191-383 through 434, IC-2016-0191-435 through 464, IC-2016-0191-465 through 490, IC-2016-0191-491 through 504, IC-2016-0191-505 through 522, IC-2016-0191-523 through 524, IC-2016-0191-525 through 528, IC-2016-0191-529 through 532, IC-2016-0191-533 through 536, IC-2016-0191-537 through 541, IC-2016-0191-542 through 547, IC-2016-0191-548 through 554, IC-2016-0191-555 through 556, IC-2016-0191-557 (lines 20-21)

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<sup>18</sup> The Commission notes that the “attachment(s)” line found on the following records indicate that a document(s) was attached: IC-2016-0191-309, IC-2016-0191-329 and IC-2016-0191-628. However, no documents were attached, nor does the description on the in camera index indicate that there is an attachment associated with such records. Accordingly, such “attachment(s)” will not be further addressed herein. The complainant is not precluded from making a future request for any attached documents.

through 558, IC-2016-0191-559 (lines 20-21) through 561, IC-2016-0191-562 (lines 20-21) through 564, IC-2016-0191-566 through 567, IC-2016-0191-568 through 569, IC-2016-0191-570 through 571, IC-2016-0191-572 through 575, IC-2016-0191-577 through 580, IC-2016-0191-581 through 583, IC-2016-0191-584 through 591, IC-2016-0191-592 through 599, IC-2016-0191-600 through 602, IC-2016-0191-603 through 605, IC-2016-0191-606 through 618, IC-2016-0191-619 through 624, IC-2016-0191-625 through 627, IC-2016-0191-628 through 630, IC-2016-0191-631 through 633, IC-2016-0191-634 through 636, IC-2016-0191-639, IC-2016-0191-641, IC-2016-0191-844 through 847, IC-2016-0191-848 through 852, IC-2016-0191-853 through 858, IC-2016-0191-859 through 864, IC-2016-0191-865 through 868, IC-2016-0191-869 through 871, IC-2016-0191-872 through 874, IC-2016-0191-875 through 877, IC-2016-0191-878 through 880, IC-2016-0191-881 through 882, IC-2016-0191-883 through 885, IC-2016-0191-886 through 888, IC-2016-0191-889 through 892, IC-2016-0191-893 through 895, IC-2016-0191-896 through 900, IC-2016-0191-901 (lines 19-25) through 906, IC-2016-0191-908 through 913, IC-2016-0191-915 (lines 19-29) through 920, IC-2016-0191-922 (lines 22-26) through 927, IC-2016-0191-931 through 936, IC-2016-0191-940 through 945, IC-2016-0191-946 through 949, IC-2016-0191-957, IC-2016-0191-958 through 959, IC-2016-0191-960 through 962, IC-2016-0191-963 through 964, and IC-2016-0191-965 through 966.

91. It is found that the documents described in paragraph 90, above, constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.<sup>19</sup>

92. It is found, after careful examination of the following records, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S.:

IC-2016-0191-3 through 4, IC-2016-0191-24 through 26, IC-2016-0191-29 through 33, IC-2016-0191-34 through 38, IC-2016-0191-39 through 43, IC-2016-0191-44 through 47, IC-2016-0191-82 through 83, IC-2016-0191-162 (lines 1-35), IC-2016-0191-163 (lines 19-34 up to “as we have”, lines 36-57), IC-2016-0191-164 through 172, IC-2016-0191-185 through 200, IC-2016-0191-282, IC-2016-0191-362 through 367, IC-2016-0191-368 through 372, IC-2016-0191-373, IC-2016-0191-376 through 377, IC-2016-0191-557 (lines 1-19), IC-2016-0191-559 (lines 1-19), IC-2016-0191-562 (lines 1-19), IC-2016-0191-565, IC-2016-0191-576, IC-2016-0191-637 through 638, IC-2016-0191-640, IC-2016-0191-901 (lines 1-18), IC-2016-0191-907, IC-2016-0191-914, IC-2016-0191-915 (lines 1-18), IC-2016-0191-921 through 922 (lines 1-21), IC-2016-0191-928 through 930, IC-2016-0191-937 through 939, IC-2016-0191-950 through 951, IC-2016-0191-952 through 954, IC-2016-0191-1042, and IC-2016-0191-1073 through 1074. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

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<sup>19</sup> The respondents also claimed that IC-2016-0191-1 through 2, IC-2016-0191-5 through 6, IC-2016-0191-7 through 8, IC-2016-0191-123 through 126, and IC-2016-0191-295 are exempt from disclosure pursuant to §1-210(b)(4), G.S. In view of the conclusion in paragraph 91, above, however, there is no need to address any further exemption.

93. With respect to IC-2016-0191-1075, it is found that the respondents failed to identify a recipient of such record. It is found that such communication is an email sent to an unidentified individual's private email account, and that the respondents offered no evidence regarding whether an attorney-client relationship existed between the attorney and such individual. It is found therefore, that the respondents failed to prove that such individual was an "attorney" or "client," and that therefore, the respondents failed to prove that IC-2016-0191-1075 constitutes a communication within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that such record is not exempt from disclosure pursuant to §1-210(b)(10), G.S.

94. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraphs 92 and 93 , above.

95. The respondents claimed that IC-2016-0191-1076 and IC-2016-0191-1079 through 1089 are exempt from disclosure pursuant to §1-210(b)(13), G.S., only. After careful inspection of such records, however, it is found that the respondents failed to prove that IC-2016-0191-1076 and IC-2016-0191-1079 through 1089 are "records of an investigation," of a whistleblower complaint, and therefore are not exempt from disclosure. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records from disclosure.

96. It is found that the respondents did not identify the corresponding exemption for IC-2016-0191-642. It is further found that the respondents failed to prove that such record is exempt from disclosure. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding IC-2016-0191-642 from disclosure.

#### Brenda Halpin In Camera Records ("Halpin records")

97. On the index to the Halpin records, the respondents claimed that such records are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(9) and/or 1-210(b)(10), G.S.<sup>20</sup>

98. The respondents claimed that the majority of the Halpin records are exempt from disclosure pursuant to §1-210(b)(10), G.S.

99. It is found, after careful examination of the following documents, and attachments thereto, that such records are communications transmitted in confidence between an attorney(s)

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<sup>20</sup> The Commission notes that the "attachment(s)" line found on the following records indicate that a document(s) was attached: IC-2016-0191-230, IC-2016-0191-236, IC-2016-0191-910, IC-2016-0191-911, IC-2016-0191-912, IC-2016-0191-952 and IC-2016-0191-962. However, no documents were attached. In addition, with respect to IC-2016-0191-910, IC-2016-0191-911, IC-2016-0191-912, IC-2016-0191-952 and IC-2016-0191-962, there is no indication on the in camera index that there is an attachment associated with such records. Accordingly, the documents referenced in the "attachment(s)" line on IC-2016-0191-230, IC-2016-0191-236, IC-2016-0191-910, IC-2016-0191-911, IC-2016-0191-912, IC-2016-0191-952 and IC-2016-0191-962 will not be further addressed herein. The complainant is not precluded from making a future request for any attached documents.

for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice:

IC-2016-0191-4, IC-2016-0191-5 through 9, IC-2016-0191-136 through 139, IC-2016-0191-154 through 168, IC-2016-0191-169 through 182, IC-2016-0191-186 through 187, IC-2016-0191-188 through 191, IC-2016-0191-192 through 213, IC-2016-0191-214 through 215, IC-2016-0191-216 through 218, IC-2016-0191-220 through 224, IC-2016-0191-225 through 229, IC-2016-0191-230 through 233, IC-2016-0191-236 through 240, IC-2016-0191-252 through 723, IC-2016-0191-724 through 726, IC-2016-0191-727 through 728, IC-2016-0191-729 through 731, IC-2016-0191-732 through 733, IC-2016-0191-734 through 736, IC-2016-0191-738, IC-2016-0191-739 (lines 31-33 from “as we have” to “plan”), IC-2016-0191-744 through 748, IC-2016-0191-749 through 750, IC-2016-0191-751 through 752, IC-2016-0191-753 through 754, IC-2016-0191-755, IC-2016-0191-810, IC-2016-0191-811 (lines 36-47) through 812 (lines 1-18, lines 34-35 from “as we have” to “plan”), IC-2016-0191-816 through 820, IC-2016-0191-821 through 822, IC-2016-0191-823 through 824, IC-2016-0191-825 through 826, IC-2016-0191-827, IC-2016-0191-851 through 856, IC-2016-0191-857 through 886, IC-2016-0191-887 through 905, IC-2016-0191-906 through 908, IC-2016-0191-929 through 932, IC-2016-0191-936 through 937, IC-2016-0191-948 through 949, IC-2016-0191-971 through 977, IC-2016-0191-980 through 983, IC-2016-0191-985 through 1000, IC-2016-0191-1001 through 1012, IC-2016-0191-1013 through 1016, IC-2016-0191-1017 through 1020, IC-2016-0191-1021 (lines 9-36) through 1022, IC-2016-0191-1023 through 1027, IC-2016-0191-1032, IC-2016-0191-1128, IC-2016-0191-1129 (lines 17-25), IC-2016-0191-1132 through 1133, IC-2016-0191-1167 through 1170, IC-2016-0191-1171 through 1172, IC-2016-0191-1173 through 1174, IC-2016-0191-1175, IC-2016-0191-1225 through 1226, IC-2016-0191-1227 (lines 17-25), and IC-2016-0191-1230 through 1231.

100. It is found that the documents described in paragraph 99, above, constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.<sup>21</sup>

101. With respect to IC-2016-0191-933 through 935, it is found that such records consist of a two-page email chain (IC-2016-0191-933 through 934) with a one page attachment (IC-2016-0191-935). It is found that although the email chain makes reference to an attachment, the attached document is not the document to which reference is made.

102. It is found, after careful examination of IC-2016-0191-933 through 934, that such records are communications transmitted in confidence between an attorney(s) for the respondents and employees and/or officials of the respondents relating to legal advice sought by the respondents and/or prepared in furtherance of the rendition of such legal advice. It is further

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<sup>21</sup> The respondents also claimed that IC-2016-0191-936 through 937 and IC-2016-0191-938 through 939 are exempt from disclosure pursuant to §1-210(b)(9), G.S. In view of the conclusion in paragraph 100, above, however, there is no need to address any further exemption.

found that IC-2016-0191-933 through 934 constitute communications privileged by the attorney-client relationship, and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

103. It is found, after careful examination of IC-2016-0191-935, that such record does not appear to correspond with the email chain found in IC-2016-0191-933 through 934, described in paragraphs 101 and 102, above, nor does it appear to be responsive to the complainant's request. Accordingly, such record will not be further addressed herein.

104. It is found, after careful examination of the following documents, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S.:

IC-2016-0191-140, IC-2016-0191-143 through 153, IC-2016-0191-183, IC-2016-0191-219, IC-2016-0191-737, IC-2016-0191-739 (lines 1-31 up to "as we have", lines 34-44) through 743, IC-2016-0191-756 through 757, IC-2016-0191-758 through 759, IC-2016-0191-760 through 761, IC-2016-0191-762 through 767, IC-2016-0191-768 through 777, IC-2016-0191-778 through 779, IC-2016-0191-780, IC-2016-0191-781, IC-2016-0191-782, IC-2016-0191-783, IC-2016-0191-784, IC-2016-0191-785, IC-2016-0191-811 (lines 1-35), IC-2016-0191-812 (lines 19-34 up to "as we have", lines 36-57), IC-2016-0191-813 through 815, IC-2016-0191-828 through 835, IC-2016-0191-836 through 837, IC-2016-0191-838 through 839, IC-2016-0191-840 through 845, IC-2016-0191-846 through 849, IC-2016-0191-850, IC-2016-0191-909, IC-2016-0191-950 through 951, IC-2016-0191-952 through 953, IC-2016-0191-954 through 955, IC-2016-0191-956 through 957, IC-2016-0191-958 through 959, IC-2016-0191-960 through 961, IC-2016-0191-962 through 963, IC-2016-0191-964, IC-2016-0191-965 through 967, IC-2016-0191-968 through 970, IC-2016-0191-978, IC-2016-0191-979, IC-2016-0191-984, IC-2016-0191-1021 (lines 1-8), IC-2016-0191-1033 through 1064, IC-2016-0191-1065, IC-2016-0191-1068 through 1078, IC-2016-0191-1081 through 1083, IC-2016-0191-1084 through 1086, IC-2016-0191-1129 (lines 1-16), IC-2016-0191-1130 through 1131, IC-2016-0191-1134, IC-2016-0191-1135 through 1136, IC-2016-0191-1178 through 1180, IC-2016-0191-1181 through 1183, IC-2016-0191-1227 (lines 1-16), and IC-2016-0191-1228 through 1229.

Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

105. With respect to IC-2016-0191-786 through 809, IC-2016-0191-910, IC-2016-0191-911, IC-2016-0191-912, IC-2016-0191-913 through 928, IC-2016-0191-938 through 939, IC-2016-0191-940 through 941, IC-2016-0191-942 through 943, IC-2016-0191-944 through 945, IC-2016-0191-946 through 947, and IC-2016-0191-1232 through 1236, after careful examination of such records, it is found that the respondents failed to prove that IC-2016-0191-786 through 809, IC-2016-0191-910, IC-2016-0191-911, IC-2016-0191-912, IC-2016-0191-913 through 928, IC-2016-0191-938 through 939, IC-2016-0191-940 through 941, IC-2016-0191-942 through 943, IC-2016-0191-944 through 945, IC-2016-0191-946 through 947, and IC-2016-0191-1232 through 1236, constitute communications within the meaning of §1-210(b)(10), G.S.

Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.



106. With respect to IC-2016-0191-938 through 939, the respondents also claimed that such records are exempt from disclosure pursuant to §1-210(b)(9), G.S. It is found, however, that the respondents failed to prove that IC-2016-0191-938 through 939 are “[r]ecords, reports and statements of strategy or negotiations with respect to collective bargaining.” Accordingly, it is concluded that IC-2016-0191-938 through 939 are not exempt from disclosure pursuant to §1-210(a) and 1-212(a), G.S.

107. With respect to IC-2016-0191-1028 through 1031, it is found that the respondents failed to identify the recipient of such records. It is found that the respondents failed to prove that such individual was an “attorney” or “client,” (nor is this fact evident from the record itself) and that therefore, the respondents failed to prove that IC-2016-0191-1028 through 1031 constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

108. With respect to IC-2016-0191-968 through 970, the respondents also claimed that such record is exempt from disclosure pursuant to §1-210(b)(1), G.S. It is found, however, that the respondents failed to prove that IC-2016-0191-968 through 970 is a “preliminary draft or note” within the meaning of §1-210(b)(1), G.S. Accordingly, it is concluded that such record is not exempt from disclosure pursuant to §1-210(b)(1), G.S.

109. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraphs 104, 105, 106, 107, and 108, above.

110. With respect to IC-2016-0191-1 through 3, IC-2016-0191-12 through 41, IC-2016-0191-46 through 115, and IC-2016-0191-116 through 135, the respondents claimed that such records are exempt from disclosure pursuant to §1-210(b)(1), G.S., only. It is found, however, that the respondents failed to prove that IC-2016-0191-1 through 3, IC-2016-0191-12 through 41, IC 2016-0191-46 through 115, and IC 2016-0191-116 through 135, are “preliminary drafts or notes” within the meaning of §1-210(b)(1), G.S. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(1), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

111. With respect to IC-2016-0191-10 through 11, IC-2016-0191-234 through 235, and IC-2016-0191-241 through 242, the respondents claimed that such records are exempt from disclosure pursuant to §1-210(b)(9), G.S., only. It is found, however, that the respondents failed to prove that such records are “[r]ecords, reports and statements of strategy or negotiations with respect to collective bargaining.” Accordingly, it is concluded that IC-2016-0191-10 through 11, IC-2016-0191-234 through 235, and IC-2016-0191-241 through 242, are not exempt from disclosure pursuant to §1-210(b)(9), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

Kevin Lembo In Camera Records (“Lembo records”)

112. On the index to the Lembo records, the respondents claimed that such records are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(4), 1-210(b)(10) and/or 1-210(b)(13), G.S.<sup>22</sup>

113. The respondents claimed that the majority of the Lembo records are exempt from disclosure pursuant to §1-210(b)(10), G.S.

114. It is found, after careful examination of the following documents, and attachments thereto, that such records are communications transmitted in confidence between attorney(s) and client(s) relating to legal advice sought by the client and/or prepared in furtherance of the rendition of such legal advice:

IC-2016-0191-1 through 4, IC-2016-0191-73, IC-2016-0191-135 through 150, IC-2016-0191-278 through 279, IC-2016-0191-324 (lines 17-25), IC-2016-0191-327 through 349, IC-2016-0191-350 through 353, IC-2016-0191-716 through 720, IC-2016-0191-721 through 725, IC-2016-0191-726 through 730, IC-2016-0191-731 through 735, IC-2016-0191-736 through 745, IC-2016-0191-746 through 793, IC-2016-0191-794 through 796, IC-2016-0191-797 through 801, IC-2016-0191-802 through 830, IC-2016-0191-831 through 1263, IC-2016-0191-1264 through 1265, IC-2016-0191-1266 through 1267, IC-2016-0191-1268 through 1269, IC-2016-0191-1270 through 1273, IC-2016-0191-1274 through 1277, IC-2016-0191-1290 through 1291, IC-2016-0191-1297 through 1304, IC-2016-0191-1305 through 1313, IC-2016-0191-1314 through 1319, IC-2016-0191-1320 through 1327, IC-2016-0191-1328 through 1333, IC-2016-0191-1334 through 1355, IC-2016-0191-1357 through 1358, IC-2016-0191-1359 through 1361, IC-2016-0191-1362 through 1365, IC-2016-0191-1366 through 1368, IC-2016-0191-1369 through 1370, IC-2016-0191-1371 (lines 27-45), IC 2016-0191-1372 (lines 27-28 from “as we have” to “plan”, IC-2016-0191-1376 through 1387, IC-2016-0191-1410 through 1412, IC-2016-0191-1413 through 1416, IC-2016-0191-1523 through 1536, IC-2016-0191-1615 through 1616, IC-2016-0191-1617 through 1618, IC-2016-0191-1619 through 1620 and IC-2016-0191-1667 through 1668.

115. It is found that the documents described in paragraph 114, above, constitute communications privileged by the attorney-client relationship, and are exempt from disclosure

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<sup>22</sup> The Commission notes that the “attachment(s)” line found on the following records indicate that a document(s) was attached: IC-2016-0191-273, IC-2016-0191-274, IC-2016-0191-275, IC-2016-0191-518, IC-2016-0191-519, IC-2016-0191-710, IC-2016-0191-711, IC-2016-0191-714, IC-2016-0191-715, IC-2016-0191-716 and IC-2016-0191-731. However, no documents were attached. In addition, with respect to IC-2016-0191-273, IC-2016-0191-518, IC-2016-0191-519, IC-2016-0191-710, IC-2016-0191-711, IC-2016-0191-714, IC-2016-0191-715, IC-2016-0191-716 and IC-2016-0191-731, there is no indication on the in camera index that there is an attachment associated with such records. Accordingly, the documents referenced in the “attachment(s)” line on IC-2016-0191-273, IC-2016-0191-274, IC-2016-0191-275, IC-2016-0191-518, IC-2016-0191-519, IC-2016-0191-710, IC-2016-0191-711, IC-2016-0191-714, IC-2016-0191-715, IC-2016-0191-716 and IC-2016-0191-731, will not be further addressed herein. The complainant is not precluded from making a future request for any attached documents.

pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.<sup>23</sup>

116. It is found, after careful examination of the following documents, that such records do not constitute communications within the meaning of §1-210(b)(10), G.S.:

IC-2016-0191-5, IC-2016-0191-50, IC-2016-0191-63, IC-2016-0191-69, IC-2016-0191-74, IC-2016-0191-84, IC-2016-0191-122, IC-2016-0191-151 through 154, IC-2016-0191-273, IC-2016-0191-274, IC-2016-0191-275 through 277, IC-2016-0191-280 through 282, IC-2016-0191-324 (lines 1-16), IC-2016-0191-325 through 326, IC-2016-0191-354 through 356, IC-2016-0191-518, IC-2016-0191-519 through 520, IC-2016-0191-521 through 522, IC-2016-0191-626 through 628, IC-2016-0191-634, IC-2016-0191-710, IC-2016-0191-714, IC-2016-0191-715, IC-2016-0191-1356, IC-2016-0191-1371 (lines 1-26), IC-2016-0191-1372 (lines 1-27 up to “as we have”, lines 29-63) through 1375, IC-2016-0191-1388 through 1409, IC-2016-0191-1537, IC-2016-0191-1548, IC-2016-0191-1562, and IC-2016-0191-1665 through 1666.

Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

117. It is found, after careful examination of IC-2016-0191-1292 through 1296, that the respondents failed to prove that such records constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that IC-2016-0191-1292 through 1296 are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

118. With respect to IC-2016-0191-133 through 134 and IC-2016-0191-711 through 713, it is found that the respondents failed to identify the recipients of such records. It is found that the respondents failed to prove that such individuals were “attorneys” or “clients,” (nor are these facts evident from the records themselves), and that therefore, the respondents failed to prove that IC-2016-0191-133 through 134 and IC-2016-0191-711 through 713, constitute communications within the meaning of §1-210(b)(10), G.S. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

119. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraphs 116, 117, and 118, above.

120. With respect to IC-2016-0191-1592 through 1614, the respondents neglected to identify the corresponding exemption pursuant to which such record is claimed to be exempt. It is found, however, that such record is identical to IC-2016-0191-327 through 349, which the respondents claimed is, and was found to be, exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, it is found that IC-2016-0191-1592 through 1614 is exempt from disclosure pursuant to §1-210(b)(10), G.S.

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<sup>23</sup> The respondents also claimed that IC-2016-0191-802 through 830, IC-2016-0191-1264 through 1265, IC-2016-0191-1266 through 1267, IC-2016-0191-1268 through 1269, IC-2016-0191-1270 through 1273, and IC-2016-0191-1274 through 1277, are exempt from disclosure pursuant to §1-210(b)(4), G.S. In view of the conclusion in paragraph 115, above, however, there is no need to address any further exemption.

121. With respect to IC-2016-0191-155 through 212, IC-2016-0191-213 through 272, IC-2016-0191-1278, IC-2016-0191-1279, IC-2016-0191-1280 through 1284, IC-2016-0191-1285 through 1286, IC-2016-0191-1287 through 1289, and IC-2016-0191-1417 through 1522, the respondents claimed that such records are exempt from disclosure pursuant to §1-210(b)(1), G.S., only. It is found, however, that the respondents failed to prove that such records are “preliminary drafts or notes” within the meaning of §1-210(b)(1), G.S. Accordingly, it is concluded that IC-2016-0191-155 through 212, IC-2016-0191-213 through 272, IC-2016-0191-1278, IC-2016-0191-1279, IC-2016-0191-1280 through 1284, IC-2016-0191-1285 through 1286, IC-2016-0191-1287 through 1289, and IC-2016-0191-1417 through 1522, are not exempt from disclosure pursuant to §1-210(b)(1), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such records.

122. With respect to IC-2016-0191-1579 through 1591, the respondents claimed that such records are exempt from disclosure pursuant to §1-210(b)(13), only. After careful inspection of IC-2016-0191-1579 through 1591, it is found that such records are not “records of an investigation,” of a whistleblower complaint, and therefore are not exempt from disclosure. Accordingly, the respondents violated the FOI Act by withholding such records from disclosure.

123. At the February 22<sup>nd</sup> Commission meeting, the respondents claimed for the first time that certain records were already determined by the Commission to be exempt from disclosure. The respondents claimed that in a prior case involving these same parties, Docket #FIC 2015-055; *Brown v. Comptroller, State of Connecticut, Office of the State Comptroller, et.al.* (October 23, 2015), the following documents were found to be exempt pursuant to §§1-210(b)(1) and 1-210(b)(13), G.S., respectively. The respondents identified the records at issue in this matter as follows: MC: IC-2016-0191-104 through 105, IC-2016-0191-734 through 735, IC-2016-0191-736 through 737; NB: IC-2016-0191-22 through 23, IC-2016-0191-283 through 284, IC-2016-0191-955 through 956, IC-2016-0191-1077 through 1078; BH: IC-2016-0191-141 through 142, IC-2016-0191-184 through 185, IC-2016-0191-247 through 251, IC-2016-0191-1066 through 1067, IC-2016-0191-1079 through 1080, and IC-2016-0191-1176 through 1177.<sup>24</sup>

124. The respondents’ claims raised for the first time at the February 22<sup>nd</sup> Commission meeting, compel the Commission to review the records submitted in camera in connection with the prior case, Docket #FIC 2015-055. Accordingly, the in camera records from Docket #FIC 2015-055 are hereby made part of the record in this matter. They will be maintained in camera and will be utilized solely for the purpose of assessing the respondents’ claims described in paragraph 123, above. See Regulations of Connecticut State Agencies Section 1-21j-37.

125. After careful inspection of the following in camera records submitted in this matter, it is found that such records are duplicates of a two-page email identified in Docket #FIC 2015-

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<sup>24</sup> On the index, the respondents had claimed that the majority of the records, described in paragraph 123, above are exempt pursuant to §1-210(b)(10), G.S., only. However, at the Commission’s February 22<sup>nd</sup> meeting and in their February 24<sup>th</sup> brief, the respondents no longer claimed that such records are exempt pursuant to §1-210(b)(10), G.S., relying instead on the exemptions claimed in Docket #FIC 2015-055 pertaining to §§1-210(b)(1) and 1-210(b)(13), G.S. Accordingly, the Commission will not further address the applicability of §1-210(b)(10), G.S., to the records described in paragraph 123, above.

055 as IC-2015-055-25 through 26, which the Commission determined to be exempt pursuant to §1210(b)(13), G.S.: MC: IC-2016-0191-104 (lines 18-32) through 105, IC-2016-0191-734 (lines 8-36) through 735, IC-2016-0191-736 (lines 18-29) through 737; NB: IC-2016-0191-22 through 23, IC-2016-0191-283 (lines 18-32) through 284, IC-2016-0191-1077 (lines 8-36) through 1078; BH: IC-2016-0191-141 (lines 8-36) through 142, IC-2016-0191-184 (lines 18-32) through 185, IC-2016-0191-1066 (lines 8-36) through 1067, IC-2016-0191-1079 (lines 18-29) through 1080, and IC-2016-0191-1176 (lines 18-29) through 1177. Accordingly, it is concluded that such records are “records of an investigation,” of a whistleblower complaint, and therefore are exempt from disclosure. The respondents did not violate the FOI Act by withholding such records from disclosure.

126. With respect to MC: IC-2016-0191-104 (lines 1-17), IC-2016-0191-734 (lines 1-7), IC-2016-0191-736 (lines 1-17); NB: IC-2016-0191-283 (lines 1-17), IC-2016-0191-1077 (lines 1-7); BH: IC-2016-0191-141 (lines 1-7), IC-2016-0191-184 (lines 1-17), IC-2016-0191-1066 (lines 1-7), IC-2016-0191-1079 (lines 1-17, and IC-2016-0191-1176 (lines 1-17), it is found that the respondents have failed to prove that such records are “records of an investigation,” of a whistleblower complaint, and therefore, are not exempt from disclosure. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding MC: IC-2016-0191-104 (lines 1-17), IC 2016-0191-734 (lines 1-7), IC-2016-0191-736 (lines 1-17); NB: IC-2016-0191-283 (lines 1-17, IC-2016-0191-1077 (lines 1-7); BH: IC-2016-0191-141 (lines 1-7), IC 2016-0191-184 (lines 1-17), IC-2016-0191-1066 (lines 1-7), IC-2016-0191-1079 (lines 1-17), and IC-2016-0191-1176 (lines 1-17), from disclosure.

127. After careful inspection of NB: IC-2016-0191-955 through 956, it is found that such records is a duplicate of a two-page email identified in Docket #FIC 2015-055 as IC-2015-055-34 through 35, which the Commission determined to be exempt pursuant to §1-210(b)(13), G.S. Accordingly, it is concluded that NB: IC-2016-0191-955 through 956 is a “record of an investigation”, of a whistleblower complaint, and therefore is exempt from disclosure. The respondents did not violate the FOI Act by withholding such records from disclosure.

128. After careful inspection of BH: IC-2016-0191-247 through 251, it is found that such record is not an exact duplicate of the document identified by the respondents as IC-2015-055-8 through 13 in Docket #FIC 2015-055, which the Commission determined to be exempt pursuant to §1-210(b)(1), G.S. Accordingly, it is found that the respondents have failed to prove that BH: IC-2016-0191-247 through 251 is exempt from disclosure pursuant to §1-210(b)(1), G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such record.

129. The respondents also claimed, in their February 24<sup>th</sup> brief, that MC: IC-2016-0191-725 through 728, is exempt pursuant to §1-210(b)(13), G.S.<sup>25</sup> The Commission notes that

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<sup>25</sup> On the index, the respondents claimed that MC: IC-2016-0191-725 through 728 was exempt pursuant to §1-210(b)(10), G.S., only. However, at the Commission’s February 22nd meeting and in their February 24<sup>th</sup> brief, the respondents no longer claimed that such record was exempt pursuant to §1-210(b)(10), G.S., relying instead on the whistleblower exemption in §1-210(b)(13), G.S. Accordingly, the Commission will not further address the applicability of §1-210(b)(10), G.S., to MC: IC-2016-0191-725 through 728.

MC: IC-2016-0191-726 (lines 20-36) through 728 is a duplicate of a document identified in Docket #FIC 2015-055 as IC-2015-055-44 through 46, which the Commission determined to be exempt pursuant to §1-210(b)(13), G.S. Accordingly, it is concluded that MC: IC-2016-0191-726 (lines 20-36) through 728 is a “record of an investigation,” of a whistleblower complaint, and therefore is exempt from disclosure. The respondents did not violate the FOI Act by withholding such record from disclosure.

130. With respect to MC: IC-2016-0191-725 through 726 (lines 1-19), it is found that the respondents have failed to prove that such record is a “records of an investigation,” of a whistleblower complaint, and therefore, is not exempt from disclosure. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such record from disclosure.

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

1. The respondents shall provide the complainant with copies of the in camera records described in paragraphs 35, 38, 41, 43, 45, 47, 51, 53, 54, 58, 59, 61, 62, 68, 69, 70, 73, 74, 78, 79, 83, 84, 86, 92, 93, 95, 96, 104, 105, 106, 107, 108, 110, 111, 116, 117, 118, 121, 122, 126, 128, and 130 of the findings, above, free of charge.

2. Henceforth, the respondents shall strictly comply with the disclosure provisions in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 22, 2017.



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:

Virginia Brown  
54 Hollister Drive  
Avon, CT 06001

Comptroller, State of Connecticut, Office of  
the Comptroller; and State of Connecticut,  
Office of the Comptroller  
c/o Josephine S. Graff, Esq.  
Ann E. Lynch, Esq.  
Assistant Attorneys General  
State of Connecticut,  
Office of the Attorney General  
55 Elm Street  
Hartford, CT 06106



Cynthia A. Cannata  
Cynthia A. Cannata  
Acting Clerk of the Commission

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*Endnote:*

<sup>1</sup> At the December 9, 2016 hearing, the respondents called the complainant as a witness. The complainant argued that she was present in her capacity as an attorney, and was not going to testify. The hearing officer ordered the complainant to testify, but she refused. Prior to the end of the hearing, the hearing officer informed the parties that they would have an opportunity to brief the issue regarding the complainant's refusal to testify. Subsequently, on December 12, 2016, the respondents filed a motion for an order that the matter not be rescheduled and/or for the Commission to draw an adverse inference from the complainant's refusal to testify. The complainant filed an objection thereto. Subsequently, on December 19, 2016, the hearing officer denied the motion for an order that the matter not be rescheduled. He also notified the parties that they are not precluded from subpoenaing witnesses in this matter on their own. In addition, the hearing officer notified the parties that he would consider the respondents' alternative motion for an adverse inference at the conclusion of the presentation of evidence. On the morning of the January 12, 2017 hearing, the complainant submitted an Objection to the Respondents' Subpoena for Testimony of Complainant, which subpoena is not in the record. In her objection, the complainant informed the Commission that she was served with a subpoena by the respondents' counsel on December 26, 2016. She argued that the Commission has neither the authority to enforce the subpoena, nor to quash such subpoena. She also requested that the hearing officer sustain her objection to the respondents' subpoena on the following grounds: (1) she was an unnecessary witness; (2) requiring judicial intervention would prevent a "just, speedy and inexpensive determination of the issues presented"; and (3) the subpoena is overly broad, unreasonable, oppressive, unduly burdensome, and intended to harass and annoy the complainant. At the January 12<sup>th</sup> hearing, the respondents did not request that the Commission enforce the subpoena; rather, they requested, once again, that an adverse inference be reached given the complainant's refusal to testify. The complainant's objection is hereby denied. In addition, the Commission declines to make a finding concerning the respondents' request for an adverse inference. The record speaks for itself.