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# FREEDOM OF INFORMATION

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Joseph McNellis, Michael Donovan, Richard  
Olivier and Bridgeport Firefighters for Merit  
Complainant(s)

against

Personnel Director, Office of the Civil Service  
Commission, City of Bridgeport; Office of Civil Service  
Commission, City of Bridgeport; and City of Bridgeport  
Respondent(s)

Notice of Meeting

Docket #FIC 2023-0479

August 27, 2024

## Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

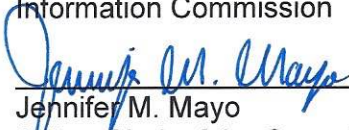
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, September 11, 2024.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE September 4, 2024.*** Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE September 4, 2024.*** PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed ***ON OR BEFORE September 4, 2024*** and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

  
\_\_\_\_\_  
Jennifer M. Mayo  
Acting Clerk of the Commission

Notice to: Attorney Courtney A George  
Attorney Dina A. Scalo

FIC# 2023-0479/ITRA/CZH/NAS/JMM/2024-08-27

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Joseph McNellis, Michael Donovan,  
Richard Olivier, and Bridgeport  
Firefighters for Merit,

Complainants

against

Docket #FIC 2023-0479

Eric Amado, Personnel Director, Office of  
the Civil Service Commission, City of  
Bridgeport; Office of the Civil Service  
Commission, City of Bridgeport; and City  
of Bridgeport,

Respondents

August 22, 2024

The above-captioned matter was heard as a contested case on March 28, 2024 (“March 28<sup>th</sup> hearing”), May 16, 2024 (“May 16<sup>th</sup> hearing”), and July 12, 2024 (“July 12<sup>th</sup> hearing”), at which times the complainants and the respondents appeared, presented testimony, exhibits and argument on the complaint.

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 dated April 14, 2023, the complainants requested copies of the following records:
  - (a) “[c]opies of all official announcements, postings and/or publications relating to [Competitive Promotional Examination #2381 (“Exam”)] or any promotional list relating to the Exam (including any provisional promotional lists)”;
  - (b) “[a]ll public records, files and/or electronic transmissions maintained by the [City of Bridgeport (“City”)] or [the Civil Service Commission (“CSC”)] (whether as part of a database or otherwise) relating to any person(s) recruited, considered, chosen and/or requested to serve as an [a]ssessor for the Exam, including without limitation all information relating to each person’s department, rank, time in rank, agency

standing, municipal population (size and diversity), and municipal architecture”;

- (c) “[a]ll public records, files and/or electronic transmissions (including without limitation all public records, files and/or electronic transmissions existing on the personal computers, personal email accounts and/or personal mobile devices of City employees, representatives, and agents, if any) to or from [Industrial/Organization Solutions, Inc. (“IOS”)] relating to, referencing and/or concerning the Exam, the scoring of the Exam or any appeals, or any promotional list relating to the Exam (including any provisional promotional lists)”;
- (d) “[a]ll public records ... relating to, concerning or referencing the solicitation, recruitment, identification, retention, selection, hire, employment and/or disqualification of [a]ssessors or prospective [a]ssessors for the Exam”;
- (e) “[a]ll public records ... relating to, concerning or referencing any standards, criteria and/or procedures used for vetting, evaluating, selecting or disqualifying [a]ssessors or prospective [a]ssessors for the Exam”;
- (f) “[a]ll public records ... constituting or concerning a roster or list of all persons considered for election to serve as [a]ssessors for the Exam”;
- (g) “[a]ll public records ... constituting or concerning a roster or list of all persons selected to serve as [a]ssessors for the Exam”;
- (h) “[a]ll public records ... relating to, concerning or referencing any recusal(s) by and/or disqualification of any [a]ssessor from administering, grading, scoring or otherwise evaluating any part or portion of any [c]andidate’s Exam”;
- (i) “[a]ll public records ... relating to, concerning or referencing protocols, procedures and/or instructions for [a]ssessors to follow, if any, in the event that they recognize and/or learn the identity of a [c]andidate [for the Exam]”;
- (j) “[f]or each [c]andidate, all public records ... relating to, concerning, identifying and/or documenting which [a]ssessor(s) evaluated, rated and/or scored that [c]andidate’s Exam or any part of that [c]andidate’s Exam”;
- (k) “[c]opies of any and all agreements, including without limitation confidentiality agreements, signed by each [a]ssessor who participated in evaluating, rating and/or scoring any [c]andidate’s Exam”;

- (l) “[a]ll public records ... relating to, concerning, referencing or constituting communications between any or all of the City, [CSC], Personnel Director, Personnel Examiner and/or any other person concerning the identification, recruitment, selection, use, hire and/or employment of any person to serve or contribute as a subject matter expert for the Exam”;
- (m) “[t]he Exam markings, test papers and assessment center video recordings of each [c]andidate on the [list of candidates who sat for and passed the Exam (“List”)]”;
- (n) “[a]ll public records ... relating to, concerning or referencing any and all [a]ssessor training and/or [a]ssessor training sessions provided, offered and/or conducted in connection with the Exam”;
- (o) “[a]ll public records ... which support the contention ... that all [a]ssessors have ‘unimpeachable integrity’”;
- (p) “[a]ll public records ... relating to, concerning, evidencing and/or explaining how seniority points were calculated or derived for the Exam”; and
- (q) “[c]opies of all notices, agendas and minutes for any and all meetings held on or after March 7, 2023 by the City and/or the Commission at which the Exam, the List, or any [c]andidate were disclosed.”

3. It is found that the complainants’ records request, described in paragraph 2, above, relates to Competitive Promotional Examination #2381 for the position of Fire Captain in the Bridgeport Fire Department, noticed on or about November 3, 2022 and held by the Civil Service Commission (“CSC”) on or about February 11, 2023 and February 26, 2023 (“Exam”), and the complainants’ corresponding civil service complaint filed with the respondent CSC on or about April 6, 2023.

4. It is found that, by email dated April 17, 2023, the respondents acknowledged the complainants’ request but did not immediately disclose responsive records.

5. It is found that, by letter dated May 22, 2023 (“May 22<sup>nd</sup> letter”), the complainants requested a status update regarding their request described in paragraph 2, above.

6. It is found that, by email dated May 22, 2023, Associate City Attorney John Mitola informed the complainants that due to the voluminous request and limited staff at the respondent CSC, it would take time for CSC staff to conduct a search, gather responsive records and review records for potentially exempt information prior to disclosing such records.

7. It is found that, by letter dated August 21, 2023, the complainants again requested a status update regarding their request described in paragraph 2, above.

8. It is found that, by email dated August 23, 2023, Attorney Mitola informed the complainants that “the City has been busy compiling records and we should have them for you by the end of the week or the week of Labor Day.” It is found that, as of Sunday, September 10, 2023, the final day of the week of Labor Day, no records had been disclosed to the complainants.

9. By letter of complaint, dated and filed September 15, 2023, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records described in paragraph 2, above, and failing to provide such records promptly.

10. Section 1-200(5), G.S., provides:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to ... (3) receive a copy of such records in accordance with section 1-212.

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

13. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

14. It is found that on or about September 18, 2023, three days subsequent to the filing of the complaint in this matter, and five months subsequent to the initial request, the respondents disclosed to the complainants twenty-four responsive records with redactions and withheld certain records as exempt from disclosure pursuant to the FOI Act.

15. It is found that, by letter dated October 9, 2023 (“October 9<sup>th</sup> letter”), the complainants informed the respondents that their record production was deficient and demanded that, with regard to the records that were produced to the complainants on or around September 18, 2023, all such records be disclosed without redactions.

16. It is found that, in response to the October 9<sup>th</sup> letter described in paragraph 15, above, the respondents did not provide additional production of responsive records.

17. At the March 28<sup>th</sup> hearing, in addition to the allegations found in their complaint described in paragraph 9, above, the complainants alleged that the respondents had failed to conduct a thorough search for responsive records. The complainants further alleged that the records they received on or about September 18, 2023, were improperly redacted and missing several hundred pages of responsive records. The complainants also requested the imposition of a civil penalty.

### **Search for Responsive Records**

18. The respondents’ witness, Lisa Mastronunzio, testified, and it is found, that she was predominantly responsible for searching for responsive records.<sup>1</sup> Ms. Mastronunzio also testified that, although she does not normally handle the CSC’s response to FOI requests, she was most familiar with the underlying records and would have access to responsive records. Ms. Mastronunzio further testified that she only searched her own Microsoft Outlook “inbox” for responsive records; she did not search her “sent” folder, the electronic files where potentially responsive records would be located, or any other CSC staff or general CSC email accounts.

19. The respondent Personnel Director, Eric Amado, testified, and it is found, that he conducted a cursory search of his email for responsive records, in the Spring of 2023, and concluded that any responsive records he possessed would be duplicates of records in Ms. Mastronunzio’s possession, and he believed that she would gather those records for review and potential disclosure. He also testified, and it is found, that Ms. Mastronunzio is the only CSC staff member who has access to the electronic files that contain responsive records.

20. It is found that, subsequent to the March 28<sup>th</sup> hearing, the respondents conducted a supplemental search and located more than 800 pages of additional records. It is also found that, during this supplemental search, the respondents searched all possible locations within the CSC where responsive records would be maintained and acquired additional software to aid in their search of the Personnel Director’s emails.

21. Ms. Mastronunzio admitted, and it is found, that she made a mistake by only searching her email inbox and should have searched for responsive records in additional locations. The respondents also admitted, and it is found, that the initial search for records was inadequate.

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<sup>1</sup> The Commission notes, however, that there is conflicting testimony as to Ms. Mastronunzio’s understanding of her role in responding to the complainants’ request. See ¶78, below.

22. It is therefore concluded that, at the time of the complaint in this matter, and at the time of the March 28<sup>th</sup> hearing, the respondents had failed to conduct a thorough search for the records described in paragraph 2, above. It is also concluded, however, that after the March 28<sup>th</sup> hearing, the respondents conducted a diligent and thorough search for responsive records.

### **In Camera Inspection**

23. On July 12, 2024 at 6:00pm, by order of the hearing officer, the respondents hand-delivered to the Commission an unredacted copy of approximately 981 pages and two flash drives, along with an in camera index. Such records shall be identified hereinafter as IC-2023-0479-1A through IC-2023-0479-981A, IC-2023-0479-Flash Drive #1, and IC-2023-0479-Flash Drive #2.<sup>2</sup>

24. On July 25, 2024, upon the partial granting of the respondents' Motion for Extension of Time and Request for Supplemental In Camera Submission ("Motion"),<sup>3</sup> the respondents submitted to the Commission an unredacted copy of the remaining records being withheld from disclosure for an in camera inspection, consisting of approximately 844 pages and one flash drive, along with an in camera index. Such records shall be identified hereinafter as IC-2023-0479-1B through IC-2023-0479-844B, and IC-2023-0479-Flash Drive #3.

25. It is found that the respondents used a highlighter to indicate on the in camera records the specific information they claimed as exempt from disclosure. On the in camera indexes, the respondents contended that the highlighted information in such in camera records is exempt from disclosure under §§1-210(b)(5)(A), 1-210(b)(5)(B), 1-210(b)(6), 1-217(a)(7), 1-210(b)(19), G.S., #FIC 2014-032, #FIC 2021-0275, and as nonresponsive/outside the scope of the complainants' request.<sup>4</sup>

26. With regard to the respondents' claim that certain portions of the in camera records, as indicated on the in camera index, contain information that is exempt from disclosure pursuant to §1-210(b)(6), G.S., such statute provides that disclosure is not required of "[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations."

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<sup>2</sup> While in camera records IC-2023-0479-970A through IC-2023-0479-971A were submitted to the Commission with redactions, based upon an affidavit of the respondents, signed on August 2, 2024, the Commission notes that such records were redacted by the City's Office of Labor Relations prior to being submitted to the CSC, which does not maintain an unredacted copy and is not claiming an exemption to disclosure regarding such records.

<sup>3</sup> The Commission notes that the respondents' Motion was submitted to the Commission one day prior to the deadline ordered by the hearing officer for the respondents to submit *all* withheld records for an in camera inspection.

<sup>4</sup> With regard to the respondents' claim that those portions of the in camera records, described on the in camera indexes as "Residential Address of Firefighter" and "Account Number", are exempt from disclosure pursuant to §§1-217(a)(7) and 1-210(b)(5)(B), G.S., it is found that the complainants are not contesting the redactions of firefighter residential addresses or account numbers, and therefore, such in camera records will not be further addressed herein.

27. The respondents argue, in their post-hearing brief, that the identities of the assessors who administered the Exam are “examination data”, as that term is used in §1-210(b)(6), G.S. In support of this argument, the respondents rely solely on Docket #FIC 2009-519, Richard H. Kosinski v. Commissioner, State of Connecticut, Department of Education, ¶19 (June 23, 2010) (“Kosinski”):

It is also concluded that pages a) through n) of the ‘Candidate Rating Sheet’ (paragraph 11.d, above) are ‘other examination data’ that is permissibly exempt pursuant to §1-210(b)(6), G.S. As in Patricia Washington, Personnel Director of the City of Hartford v. FOIC, *supra*, pages a) through n) of the ‘Candidate Rating Sheet’ (paragraph 11.d, above) ‘are the equivalent of a scoring key’ (*id.* at 10), because they disclose the factors to be rated and the name of the rater, as well as on most pages detailed notes of the individual interviewer that support assigned numerical ratings.

Kosinski at ¶19. Specifically, the respondents rely on the language, “and the name of the rater”, found in paragraph 19 of Kosinski, above. It is found, however, that the language relied upon by the respondents is just one descriptive factor identified in such paragraph, which relates back to the prior language in the same sentence. It is also found that the pages determined to be exempt pursuant to §1-210(b)(6), G.S., in such paragraph, are part of a document labeled as a “Candidate Rating Sheet”, which also contained: (a) factors to be rated by the interviewers; and (b) detailed notes of individual interviewers.

28. The respondents also argue, in their post-hearing brief, that Kosinski “functionally overturned” the Commission’s prior decision, Docket #FIC 86-91, Joseph St. Pierre, et al. v. Chairman, Merit Promotional Committee, State of Connecticut Department of Income Maintenance (May 14, 1986) (“St. Pierre”), which explicitly held that the name of a program supervisor exam rater was not exempt from disclosure pursuant to §§5-225 and 1-19(b)(6)<sup>5</sup>, G.S. See St. Pierre at ¶¶13-14.

29. With respect to the respondents’ claim that there is a conflict between St. Pierre and Kosinski, with regard to the application of §1-210(b)(6), G.S., the Commission notes that Kosinski did not hold that the identities of interviewers, separate and apart from “[t]est questions, scoring keys, [or] other examination data”, are exempt from disclosure pursuant to §1-210(b)(6), G.S.

30. The respondents further argued, at the hearings and in their post-hearing brief, that if the identities of the assessors were known, they could be subject to pressure or influence by candidates taking the exams that such assessors administer.

31. In Docket #FIC 2006-543, David Garside v. Personnel Coordinator, City of New London; and City Manager, City of New London (April 25, 2007) (“Garside”), the Commission considered and rejected the same argument raised by the respondents, as referenced in paragraph 30, above, under similar circumstances. The Commission held:

<sup>5</sup> §1-19(b)(6), G.S., is the predecessor to §1-210(b)(6), G.S.

[i]t is found that the respondents offered no evidence to demonstrate how the integrity of the evaluation process would be compromised by the release of the raters' names, or how the names of the raters are 'data used to administer' an examination. It is therefore found that the respondents have failed to prove that such names are permissibly exempt under §1-210(b)(6), G.S.

Garside at ¶15. It is found that the Commission also rejected this argument in St. Pierre:

[i]t is further found that the claimed interest in protecting raters against pressure from examinees does not outweigh the public interest in protecting examinees by making raters accountable for their evaluations. The respondent did not prove that the integrity of the examination process would be any more compromised by raters' fears of examinees' responses than by the lack of accountability inherent in a system in which evaluations are anonymous.<sup>6</sup>

St. Pierre at ¶12.

32. It is concluded, based on the findings in paragraphs 27 through 31, above, that the identities of the assessors, by themselves, do not constitute "[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations." It is also concluded that the email addresses and phone numbers of assessors are, likewise, not test questions, scoring keys and other examination for employment or academic examinations.

33. It is therefore concluded that the identities of the assessors, and the emails and phone numbers of such assessors, are not exempt from disclosure pursuant to §1-210(b)(6), G.S.

34. Based upon a careful inspection of the in camera records, it is found that the highlighted portions of the following records, which the respondents claim are exempt from disclosure because they reveal the identities of Exam assessors, candidates, and/or subject matter experts, as described on the in camera indexes, are not test questions, scoring keys or other examination data used to administer the Exam:

IC-2023-0479-1A through IC-2023-0479-10A; IC-2023-0479-16A; IC-2023-0479-19A; IC-2023-0479-20A through IC-2023-0479-21A; IC-2023-0479-23A; IC-2023-0479-25A; IC-2023-0479-161A; IC-2023-0479-170A; IC-2023-0479-172A; IC-2023-0479-282A through IC-2023-0479-283A; IC-2023-0479-370A; IC-2023-0479-372A; IC-2023-0479-374A; IC-2023-0479-376A; IC-2023-0479-379A; IC-2023-0479-381A; IC-2023-0479-383A through IC-2023-0479-384A;

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<sup>6</sup> The Commission notes that the complainants' initial complaint to the CSC regarding the Exam, described in paragraph 3, above, alleges improprieties in the examination process by certain anonymous assessors.

IC-2023-0479-387A through IC-2023-0479-388A; IC-2023-0479-390A; IC-2023-0479-392A; IC-2023-0479-394A; IC-2023-0479-396A; IC-2023-0479-413A; IC-2023-0479-415A through IC-2023-0479-416A; IC-2023-0479-418A through IC-2023-0479-419A; IC-2023-0479-425A (line 13, words 4 through 5); IC-2023-0479-426A (line 2, words 1 through 2); IC-2023-0479-429A (line 13) through IC-2023-0479-430A; IC-2023-0479-432A (lines 11 through 12); IC-2023-0479-433A; IC-2023-0479-440A; IC-2023-0479-442A (lines 13 through 14; line 17, words 18 through 19); IC-2023-0479-443A; IC-2023-0479-449A (line 7); IC-2023-0479-450A; IC-2023-0479-452A (lines 6 through 7; line 10, words 18 through 19); IC-2023-0479-453A; IC-2023-0479-460A through IC-2023-0479-462A; IC-2023-0479-469A (line 28); IC-2023-0479-471A through IC-2023-0479-472A; IC-2023-0479-473A (line 3, words 18 through 19; line 23; line 31); IC-2023-0479-474A; IC-2023-0479-481A through IC-2023-0479-482A; IC-2023-0479-484A; IC-2023-0479-486A; IC-2023-0479-488A; IC-2023-0479-490A; IC-2023-0479-492A; IC-2023-0479-494A; IC-2023-0479-496A; IC-2023-0479-498A; IC-2023-0479-505A (line 13, words 4 through 5); IC-2023-0479-506A (line 2, words 1 through 2); IC-2023-0479-508A (line 24, words 4 through 5); IC-2023-0479-509A (line 12, words 1 through 2); IC-2023-0479-511A (line 7, words 1 through 2); IC-2023-0479-513A (line 8, words 4 through 5; line 27, words 1 through 2); IC-2023-0479-516A; IC-2023-0479-523A through IC-2023-0479-524A; IC-2023-0479-526A through IC-2023-0479-527A; IC-2023-0479-529A; IC-2023-0479-531A; IC-2023-0479-533A through IC-2023-0479-534A; IC-2023-0479-537A; IC-2023-0479-539A; IC-2023-0479-541A; IC-2023-0479-543A; IC-2023-0479-545A; IC-2023-0479-547A; IC-2023-0479-549A; IC-2023-0479-551A; IC-2023-0479-553A; IC-2023-0479-555A; IC-2023-0479-557A; IC-2023-0479-559A; IC-2023-0479-561A; IC-2023-0479-563A; IC-2023-0479-565A; IC-2023-0479-568A; IC-2023-0479-571A; IC-2023-0479-587A; IC-2023-0479-591A (line 1 through 2, line 5, words 18 through 19; line 25); IC-2023-0479-592A; IC-2023-0479-598A; IC-2023-0479-604A; IC-2023-0479-615A; IC-2023-0479-691A; IC-2023-0479-977A; IC-2023-0479-708B through IC-2023-0479-709B; IC-2023-0479-717B; IC-2023-0479-720B; IC-2023-0479-748B through IC-2023-0479-749B; IC-2023-0479-752B; and IC-2023-0479-754B through IC-2023-0479-755B.

35. It is therefore concluded that those portions of the records described in paragraph 34, above, are not exempt from disclosure, pursuant to §1-210(b)(6), G.S. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to disclose such records to the complainants.

36. With regard to the remaining in camera records claimed to be exempt, pursuant to §1-210(b)(6), G.S. in Washington v. Freedom of Information Commission, et. al., 25 Conn. L. Rptr. 334 (1999), the Superior Court concluded that, “[b]ased on the testimony at the FOIC hearing,” oral board panelists’ scoring sheets were “the equivalent of a scoring key”, which is specifically exempted from disclosure under §1-210(b)(6), G.S.

37. The Commission has interpreted Washington to mean that certain oral examination data for employment positions are exempt from disclosure pursuant to §1-210(b)(6), G.S. See Docket #FIC 2000-501, Randal Edgar et al. v. Paul Sequeira, Superintendent of Schools, Waterbury Public Schools (March 28, 2001) (scores assigned by interviewers to each candidate for the position of superintendent of schools constitute examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2001-006, Dennis Murray v. Director of Personnel, City of Hartford (April 11, 2001) (scoring sheets of each oral board panelist for each candidate constitute examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2003-377, Joseph R. Casey, Jr. v. Commissioner, State of Connecticut, Department of Correction (April 14, 2004) (forms containing questions asked by the interview panel, candidates' responses, ratings given by the interview panel members and any comments made by such members constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2008-525, David Glidden and the Connecticut State Employees Association v. Commissioner, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (July 22, 2009) (interviewer notes, interview questions, and interview reports and recommendations for hiring/promotions constitute test questions, scoring keys and other examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2009-123, Richard Malley v. Commissioner, State of Connecticut, Department of Environmental Protection; and State of Connecticut, Department of Environmental Protection (February 24, 2010) (DEP interviewer's report and recommendations for hiring or promotion constitutes examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2013-064, Alireza Jamalipour v. Commissioner, State of Connecticut, Department of Transportation; and State of Connecticut, Department of Transportation (September 25, 2013) (recommendations for selection, or the explanation for the selection or non-selection of the candidates included in an Interview Selection Report were permissively exempt from disclosure pursuant to §1-210(b)(6), G.S.); Docket #FIC 2014-197, George Winter v. Commissioner, State of Connecticut, Department of Motor Vehicles; and State of Connecticut, Department of Motor Vehicles (January 14, 2015) (oral interview questions, scores, rankings and the criteria used in development of the questions constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); and Docket #FIC 2017-0730, Joseph Dinegar v. Superintendent, State of Connecticut, Connecticut Technical High School System; and State of Connecticut, Connecticut Technical High School System (June 27, 2018) (the scoring rubric, test questions, responses to test questions, interview questions, interviewer notes/evaluations, and scoring keys for candidates for employment constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.).

38. Based upon a careful in camera inspection of the following records, and the testimony of the respondents' witnesses at the hearings in this matter, it is found that the highlighted portions of the following records constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.:

IC-2023-0479-20A; IC-2023-0479-87A; IC-2023-0479-90A; IC-2023-0479-93A; IC-2023-0479-425A (line 13, words 12 through 15); IC-2023-0479-426A (line 2, word 17); IC-2023-0479-429A (line 14)<sup>7</sup>; IC-2023-0479-432A (line 15); IC-2023-0479-442A (line 17, word 4); IC-2023-0479-449A (line 8); IC-2023-0479-452A (line 10, word 4); IC-2023-0479-469A (line 29); IC-2023-0479-473A (line 3, word 4); IC-2023-0479-505A (line 13, words 12 through 15); IC-2023-0479-506A (line 2, word 17); IC-2023-0479-508A (line 24, words 12 through 15); IC-2023-0479-509A (line 12, word 17); IC-2023-0479-511A (line 7, word 17); IC-2023-0479-513A (line 8, words 12 through 15; line 27, word 17); IC-2023-0479-518A through IC-2023-0479-519A; IC-2023-0479-581A (lines 26 through 29); IC-2023-0479-582A (lines 16 through 19; lines 26 through 30); IC-2023-0479-583A (lines 18 through 20); IC-2023-0479-584A (lines 23 through 27); IC-2023-0479-585A (line 2); IC-2023-0479-591A (line 5, word 4); IC-2023-0479-975A (lines 9 and 14); and IC-2023-0479-348B (lines 2 through 3).

39. Based upon a careful in camera inspection of the following records, and the testimony of the respondents' witnesses at the hearings in this matter, it is found that, in addition to the highlighted portions of the records identified in paragraph 38, above, the following records constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.:

IC-2023-0479-910A through IC-2023-0479-921A; IC-2023-0479-923A through IC-2023-0479-929A; IC-2023-0479-Flash Drive #1 (all files); IC-2023-0479-Flash Drive #2 (all files); IC-2023-0479-1B through IC-2023-0479-341B; and IC-2023-0479-354B through IC-2023-0479-702B.

40. It is therefore concluded that those portions of the in camera records, described in paragraphs 38 and 39, above, are permissively exempt from disclosure pursuant to §1-210(b)(6), G.S. Accordingly, it is concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., by withholding such records, or portions thereof, as alleged by the complainants.<sup>8</sup>

41. On the in camera index, the respondents also indicated that the highlighted portions of IC-2023-0479-936A, described on the in camera index as "Description of Promotional Exam Information", are exempt from disclosure pursuant to §1-210(b)(6), G.S.

42. Based upon a careful in camera inspection, it is found that the respondents failed to prove that the records described in paragraph 41, above, constitute test questions, scoring keys

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<sup>7</sup> The Commission notes that the respondents erroneously indicated on the in camera index that only the highlighted portion of line 13 of IC-2023-0479-429A was being claimed as exempt from disclosure; however, the respondents also highlighted a portion of line 14. The Commission also notes that this is not the only occurrence of such error in the in camera records, and in such instances, as here, the hearing officer has referred to the specific line numbers and words, where necessary.

<sup>8</sup> The respondents also claimed that portions of the records identified in paragraphs 38 and 39, above, are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.; however, due to the findings in such paragraphs, and the conclusions reached in paragraph 40, above, such claims will not be further addressed herein.

and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.

43. It is therefore concluded that those portions of the records described in paragraph 41, above, are not exempt from disclosure pursuant to §1-210(b)(6), G.S. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to disclose such records to the complainants.

44. On the in camera index, the respondents claimed portions of the following in camera records are exempt from disclosure because they reveal the amount of the honorarium paid to assessors, which they claim is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.:

IC-2023-0479-21A (lines 27 through 28); IC-2023-0479-283A (lines 27 through 28); IC-2023-0479-939A (lines 24 through 25); IC-2023-0479-708B (line 9); IC-2023-0479-709B (line 9); IC-2023-0479-717B (line 9); IC-2023-0479-720B (line 9); IC-2023-0479-748B (line 8); IC-2023-0479-749B (line 8); IC-2023-0479-752B (line 8); IC-2023-0479-754B (line 8); and IC-2023-0479-755B (line 8).

45. With regard to the respondents' claim that certain portions of the in camera records are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S., that provision states that disclosure is not required of:

[t]rade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy....

46. The definition of "trade secret" in §1-210(b)(5)(A), G.S., "on its face, focuses exclusively on the nature and accessibility of the information, not on the status or characteristics of the entity creating and maintaining that information." University of Connecticut v. FOI Commission, 303 Conn. 724, 734 (2012). The information claimed to be a trade secret must "be of the kind included in the nonexhaustive list contained in the statute." Elm City Cheese Co., Inc. v. Federico, 251 Conn. 59, 70 (1999). In addition, "to qualify for a trade secret exemption under §1-210(b)(5)(A), a substantial element of secrecy must exist, to the extent that there would be difficulty in acquiring the information except by the use of improper means." (Citation omitted; internal quotation marks omitted.) Director, Dept. of Information Technology of Town of Greenwich v. FOI Commission, 274 Conn. 179, 194 (2005).

47. University of Connecticut v. FOI Commission, 303 Conn. 737, established that a public agency may hold a trade secret for purposes of claiming the relevant exemption in

response to a request for disclosure of public records. “[N]othing in the [A]ct indicates an intention to exclude public agencies from the exemption to disclosure for trade secrets they have created if the agencies generally do not engage in ‘trade.’” Id. at 734.

48. Allco Renewable Energy Limited v. FOI Commission, 205 Conn. App. 144 (2021) (“Allco”), provided additional guidance in determining the definition of “trade secret” within the meaning of §1-210(b)(5)(A), G.S. There, the court stated:

to address the nature of the information at issue, the analysis must consider the competitive nature of the industry involved. ... The inquiry necessarily considers the extent to which the economic value of the thing being assessed inheres in the secrecy by which it is developed and maintained. Beyond [the required element of secrecy], it is not possible to state precise criteria for determining the existence of a trade secret. The status of information claimed as a trade secret must be ascertained through a comparative evaluation of all the relevant factors, including the value, secrecy, and definiteness of the information....

(Citations omitted; quotation marks omitted.) Id. at 158-59.

49. At the hearings in this matter, the respondents argued that the amount of money (“honorarium”) the City paid to its assessors, for their respective participation in the Exam, is exempt from disclosure as a “trade secret” because if other municipalities knew the amount of such honorarium, it might increase competition for assessors and become more expensive or difficult for the City. The respondents also argued, in their post-hearing brief, that the honorarium is “cost data” as that term is used in §1-210(b)(5)(A), G.S., that derives value from remaining confidential, and is the subject of reasonable efforts to maintain such confidentiality.

50. It is found that the respondents made reasonable efforts to keep the amount of the honorarium secret from the general public. It is also found, however, that the respondents did not submit evidence, beyond the general speculation set forth in paragraph 49, above, regarding the alleged competitive nature of the market for obtaining the participation of assessors for exams, such as the one described in paragraph 3, above. Nor did the respondents submit evidence regarding how the economic value of the honorarium inheres in the secrecy in which it is developed. See Allco, at 158-59. It is further found that the respondents did not submit evidence to support their argument that the honorarium paid to assessors is “cost data”, as that term is used in §1-210(b)(5)(A), G.S., such that the nature of the information claimed to be exempt from disclosure would be of the kind included in the non-exhaustive list contained within the statute, or why such honorarium should be treated differently from the amount of money a public agency pays for other goods and services, such as employee salaries.<sup>9</sup>

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<sup>9</sup> The Commission notes that it has long held that the salaries paid to employees of public agencies are not exempt from disclosure under the FOI Act. See Docket #FIC 78-148, Joseph Dubitsky v. Town of West Hartford, et al. (September 13, 1978).

51. It is therefore concluded that the respondents failed to prove that the honorarium paid to assessors for their respective participation in the Exam, is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.

52. It is therefore concluded that those portions of the in camera records described in paragraph 44, above, are not exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to disclose such records to the complainants.

53. On the in camera index, the respondents claimed that IC-2023-0479-605A through IC-2023-0479-692A, described on the in camera index as “Proprietary Promotional Exam Assessor Training/Test/Scoring Materials; Descriptions of Promotional Exam”, are exempt from disclosure pursuant to §1-210(b)(5)(A), G.S. On the in camera index, the respondents also claimed that IC-2023-0479-Flash Drive #3 (all content), described on the in camera index as “Promotional Examination Orientation Recording”, is exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.

54. At the hearings in this matter, and in their post-hearing brief, the respondents argued that promotional exam materials developed by Industrial Organizational Solutions (“IOS”) for the Exam are confidential trade secrets. The respondents’ witnesses testified, and it is found, that the respondents undertake considerable efforts to ensure the confidentiality of promotional exam materials and related IOS work product. It is also found that the assessors used during promotional exams are required to sign strict confidentiality agreements provided by IOS. It is further found that IOS materials derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use.

55. It is found, based upon the findings in paragraph 54, above, and upon a careful in camera inspection, that the in camera records described in paragraph 53, above, constitute “trade secrets” within the meaning of §1-210(b)(5)(A), G.S. Accordingly, it is concluded that such records are permissively exempt from disclosure pursuant thereto.<sup>10</sup>

56. It is therefore concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., with respect to the in camera records described in paragraph 53, above.

57. On the in camera index, the respondents indicated, without citing any statutory authority, that the highlighted portions of the following in camera records, described on such in camera index as “Employee ID Numbers” or “Employee ID Number”, are exempt from disclosure:

IC-2023-0479-943A (lines 15 through 17); IC-2023-0479-958A (lines 3 through 9); IC-2023-0479-966A (lines 3 through 62); IC-2023-0479-967A (lines 2 through 35); IC-2023-0479-968A (lines 1 through 35); IC-2023-0479-342B (line

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<sup>10</sup> The respondents also claimed on the in camera index that the in camera records identified in paragraph 53, above, are exempt from disclosure pursuant to §1-210(b)(6), G.S.; however, due to the findings in such paragraph, and the conclusions reached in paragraph 55, above, such claims will not be further addressed herein.

7); IC-2023-0479-343B (line 16); IC-2023-0479-703B (line 7); and IC-2023-0479-721B through IC-2023-0479-747B (line 7).

58. It is found that although the respondents failed to cite any statutory authority to support their contention that the portions of the records described in paragraph 57, above, are exempt from disclosure, the respondents cited to a Commission decision: “#FIC 2014-032” (an apparent reference to a Commission decision which is addressed in paragraph 60, below).

59. On the in camera index, the respondents also indicated that the following records were exempt from disclosure and cited to another Commission decision: “#FIC 2021-0275” (an apparent reference to a Commission decision which is addressed in paragraph 61, below):

IC-2023-0479-342B (lines 7 through 8); IC-2023-0479-343B (lines 16 through 17); IC-2023-0479-351B (lines 2 through 28); IC-2023-0479-703B (lines 7 through 8); IC-2023-0479-707B (lines 2 through 27); and IC-2023-0479-721B through IC-2023-0479-747B (lines 7 through 8).

60. In Docket #FIC 2014-032, Marc Schwab and the City of Waterbury v. Commissioner, State of Connecticut, Department of Correction, et al. (November 19, 2014), cited by the respondents, the Commission recognized that it consistently declines to order the disclosure of employee identification numbers, social security numbers, and drivers’ license numbers contained in personnel, medical or similar files, pursuant to §1-210(b)(2), G.S., as such disclosure would constitute an invasion of personal privacy.<sup>11</sup> Id. at ¶19, FN 1.

61. In Docket #FIC 2021-0275, Joan Zygmunt v. Attorney General, State of Connecticut, Office of the Attorney General, et al. (November 16, 2022), also cited by the respondents, the Commission, in its discretion, declined to order the disclosure of personal identifiers, such as those described in paragraph 60, above, even though they were not contained in personnel, medical or similar files.

62. Although the respondents failed to cite to any statutory authority to prove that the records described in paragraphs 57 and 59, above, are exempt from disclosure and failed to properly brief their legal arguments with respect to Schwab and Zygmunt, based on the Commission’s historical determination that such information is exempt pursuant to §1-210(b)(2), G.S., and the facts and circumstances in this case, the Commission, in its discretion, declines to order the disclosure of employee identification numbers and social security numbers.

63. It is found, however, that birthdates, email addresses, and phone numbers are not personal identifiers of the kind referenced in Schwab and Zygmunt. It is therefore found that disclosure of such information would not constitute an invasion of personal privacy under §1-210(b)(2), G.S., as interpreted in Schwab and Zygmunt.

64. It is therefore concluded, based on the historical determination described in paragraph 62, above, and the facts and circumstances in this case, that the respondents did not

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<sup>11</sup> Section 1-210(b)(2), G.S., provides that disclosure is not required by “[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.”

violate §§1-210(a) or 1-212(a), G.S., by failing to disclose employee identification numbers and social security numbers.

65. It is further concluded, however, that the respondents did violate §§1-210(a) and 1-212(a), G.S., by failing to disclose the portions of the in camera records described in paragraphs 57 and 59, above, that consist of birthdates, email addresses, and phone numbers.

66. With regard to IC-2023-0479-756B through IC-2023-0479-844B, the respondents indicated that such record, described as "Bridgeport Fire Department Standard Operating Procedures" on the in camera index, is exempt from disclosure pursuant to §1-210(b)(19), G.S. The respondents also indicated that such record is nonresponsive and outside the scope of the complainants' request.

67. However, it is found that, on August 2, 2024, the respondents submitted a Notice to Freedom of Information Commission regarding In Camera Records, in which the respondents informed the Commission that they had come to an agreement with the complainants as to the in camera records identified in paragraph 66, above, and that such records are no longer an issue. Accordingly, the records described in paragraph 66, above, will not be further addressed herein.

### **Promptness**

68. With regard to the complainants' allegation that the respondents failed to provide the requested records promptly, this Commission takes guidance from Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982).

69. In Advisory Opinion #51, the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6047741 (July 20, 2020) \*6, a public agency should consider its obligations under the FOI Act as a "primary duty" of that agency, "on par with the [agency's] other significant duties, or said another way, that the agency's FOIA duty is not a second class duty."

70. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

71. With respect to the factors listed above, although the complainants did not explicitly specify in their records request the time by which they needed the requested records or the importance of such records, the complainants did alert the respondents to the need for the records

promptly in their May 22<sup>nd</sup> letter and stressed that the request had been pending for 30 days without compliance. It is also found that the respondents knew or should have known that the records request described in paragraph 2, above, was of high importance to the complainants because it directly related to the civil service complaint pending before the CSC, as described in paragraph 3, above. It is further found that, in their October 9<sup>th</sup> letter, the complainants again demanded prompt compliance with their request when they alerted the respondents to the deficiency of their initial records production.

72. It is found that Ms. Mastronunzio had significant other duties between the date of the records request on April 14<sup>th</sup> and the date of the initial disclosure of public records on or about September 18, 2023, which included responding to a United States Department of Justice (“DOJ”) Title VII inquiry, in addition to her day-to-day responsibilities. It is also found that such duties are of high importance to the public. Ms. Mastronunzio further testified that the CSC is busy and understaffed, and that the DOJ Title VII inquiry ended sometime in June of 2024.

73. It is also found, however, that Ms. Mastronunzio could not recall when she first became familiar with the complainants’ records request or when she first began working on it. Ms. Mastronunzio also testified that it took a few minutes to search her inbox, and although she later provided conflicting testimony, she further testified that it took her approximately eight to nine hours total, over the course of a single month, to review the records she initially located and disclosed, prior to September 18, 2023. It is therefore found that Ms. Mastronunzio spent less than ten hours searching and reviewing responsive records over the course of one month, even though five months elapsed between the time of the complainants’ initial records request and the respondents’ initial disclosure.

74. It is found that, although Attorney Mitola cited the voluminous nature of the complainants’ request in his May 22<sup>nd</sup> email, described in paragraph 6, above, the respondents disclosed only 24 records to the complainants on or about September 18, 2023. It is also found that Ms. Mastronunzio did not begin meeting with the City attorneys regarding this complaint until July or August of 2023. It is further found that, while the respondents conducted a supplemental search for records, as described in paragraph 20, above, as of the continued hearing on July 12, 2024, none of the approximately 981 additional pages of records had been disclosed to the complainants, nearly one year and three months subsequent to the initial records request.<sup>12</sup>

75. It is concluded, based upon the conclusions in paragraph 22, above, and the testimony and findings in paragraphs 71 through 74, above, that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S.

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<sup>12</sup> The Commission notes that, at the continued hearing on July 12, 2024, the respondents’ attorney represented that she would soon be disclosing to the complainants the responsive records, with redactions, that were included in the batch of records submitted for in camera review on July 12, 2024, that the respondents were not claiming as exempt. The Commission also notes, however, that in the complainants’ Reply Brief, received and filed on August 1, 2024, the complainants represented that they still had not received any responsive records since the initial disclosure on September 18, 2023.

### Civil Penalty

76. In light of the complainants' request for a civil penalty, and the testimony and evidence presented at the March 28<sup>th</sup> and May 16<sup>th</sup> hearings, by order of the hearing officer, a civil penalty hearing was conducted on July 12, 2024.

77. Section 1-206(b)(2), G.S., provides, in relevant part:

upon a finding that denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at the hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than five thousand dollars.<sup>13</sup>

78. Mr. Amado, testified at the July 12<sup>th</sup> hearing, and it is found, that he initially became aware of the records request on or around April 14, 2023 and subsequently coordinated the CSC's response with CSC staff and attorneys for the City. Mr. Amado also testified that he tasked Ms. Mastronunzio with leading the search for responsive records because she had access to all responsive records, including the electronic files, which he assumed would be a part of her search for records. Ms. Mastronunzio provided conflicting testimony, however, about whether she was responsible for the entire CSC response.<sup>14</sup> Ms. Mastronunzio also testified that she was unfamiliar with the FOI Act and, at one point, informed an attorney for the City that she was confused about what was responsive to the complainants' request. Ms. Mastronunzio further testified that she did not initially ask her colleague, who more regularly deals with FOI requests, for assistance, or confer with Mr. Amado.

79. Mr. Amado testified that, although he received FOI training from the City's attorneys, he did not receive "comprehensive" FOI training and was not intimately familiar with the FOI Act or its requirements. Mr. Amado further testified that he assumed the CSC's disclosure would be sufficient because he knew that Ms. Mastronunzio was working with the City's attorneys.

80. Mr. Amado further testified that he was not involved in the CSC's response to the records request until he became aware of the deficiencies in the CSC's initial search and disclosure, as a result of the evidence elicited at the May 16<sup>th</sup> hearing. Mr. Amado also testified, and it is found, that he then worked with the City to purchase new software to better search and more easily redact emails in his Microsoft Outlook email account.

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<sup>13</sup> The Commission notes that, pursuant to Public Act 23-200, §1-206(b)(2), G.S., was amended to increase the maximum civil penalty authorized under the FOI Act from \$1,000 to \$5,000.

<sup>14</sup> When questioned by the complainants, during the July 12<sup>th</sup> hearing, whether she knew who conducted a search for records on behalf of the entire CSC, Ms. Mastronunzio answered: "No, I do not."

81. It is found that, although the complainants alleged in their October 9<sup>th</sup> letter that the respondents' search and disclosure was deficient and highlighted specific examples as to why, the respondents did not respond to such letter or engage in any additional search efforts until after the March 28<sup>th</sup> hearing on this matter, and further, that Mr. Amado did not, personally, engage in any additional search efforts until after the May 16<sup>th</sup> hearing on this matter.

82. It is also found that, during the May 16<sup>th</sup> hearing, Ms. Mastronunzio initially argued that Complainants' Exhibit F: April 3, 2023 Mastronunzio Email to all Exam Candidates, which was specifically referenced in the complainants' October 9, 2023 letter, was withheld from disclosure as "exam questions"; however, upon further proof by the complainants, Ms. Mastronunzio admitted that such record did not constitute "exam questions" and was erroneously withheld from disclosure.

83. It is found that the initial search that was conducted prior to the September 18, 2023 disclosure, was deficient and not reasonable.

84. It is found that the respondents' failure to address whatsoever, the complainants' October 9, 2023 letter, was not reasonable.

85. It is found that the respondents' erroneous claim that Complainants' Exhibit F was exempt from disclosure as "exam questions", pursuant to §1-210(b)(6), G.S., and their subsequent withholding of such record from the September 18, 2023 disclosure, was not reasonable.


86. It is found that it was not reasonable for the respondent Personnel Director to assume that his subordinate, who had little to no experience with the FOI Act, would fully comply with the requirements of the FOI Act without input, oversight, review or involvement by the respondent Personnel Director, particularly in light of the testimony described in paragraphs 78 and 79, above.

87. It is found that the respondent CSC has previously been found in violation of the FOI Act, most recently in Docket #FIC 2019-0100, Bridgeport Fire Fighters Local 834 v. Chairman, Civil Service Commission, City of Bridgeport, et al. (December 31, 2019). It is also found that the respondent City has repeatedly been found in violation of the FOI Act and cautioned that failure to promptly provide requested records in future cases may result in the imposition of a civil penalty. See, e.g. Docket #FIC 2021-0475, Russell Peeler v. Rebeca Garcia, Chief, Police Department, City of Bridgeport, et al., ¶15 (August 10, 2022) ("Peeler"). It is further found that the respondent City has been found in violation of the FOI Act multiple times since the Commission imposed a civil penalty on the respondent City in Peeler. See Docket #FIC 2022-0366, Evan Parzych v. Chief, Police Department, City of Bridgeport, et al. (August 9, 2023); Docket #FIC 2022-0182, Johanna Fay v. Chief Police Department, City of Bridgeport, et al. (April 12, 2023); Docket #FIC 2022-0183, Johanna Fay v. Chief Police Department, City of Bridgeport, et al. (April 12, 2023); Docket #FIC 2022-0169, Jermaine Rogers v. Office of the City Attorney, City of Bridgeport, et al. (March 22, 2023); and Docket #FIC 2022-0161, Cliff Brown v. Chief, Police Department, City of Bridgeport, et al. (March 22, 2023).

88. It is concluded, based upon the specific facts and circumstances of this case, that the complainants' right to prompt access to non-exempt responsive public records was denied by the respondents "without reasonable grounds" within the meaning of §1-206(b)(2), G.S., and that the imposition of a civil penalty is warranted.

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

1. Within seven (7) days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainants the records described in paragraphs 34, 41, 44, 57, and 59 of the findings, above, free of charge.
2. In complying with paragraph 1 of the order, above, the respondents may redact employee identification numbers and social security numbers.
3. Within fourteen (14) days of the date of the Notice of Final Decision in this matter, the respondent Civil Service Commission shall contact the Commission's public education officer to schedule training regarding the requirements of the FOI Act.
4. The respondent Personnel Director Eric Amado shall remit to the Commission, within thirty (30) days of the Notice of Final Decision in this matter, a civil penalty in the amount of five hundred dollars (\$500.00).
5. Henceforth, the respondents shall strictly comply with the promptness and disclosure provisions in §§1-210(a) and 1-212(a), G.S.

  
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C. Zack Hyde  
as Hearing Officer