



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Nina Pirrotti

Complainant(s)

Notice of Meeting

against

Docket #FIC 2024-0301

Town Attorney, Office of the Town Attorney, Town of East Haven; Office of the Town Attorney, Town of East Haven; Town Clerk, Office of the Town Clerk, Town of East Haven; Office of the Town Clerk, Town of East Haven; Chief, Fire Department, Town of East Haven; Fire Department, Town of East Haven; Chair, Civil Service Commission, Town of East Haven; Civil Service Commission, Town of East Haven; and Town of East Haven

Respondent(s)

April 14, 2025

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.

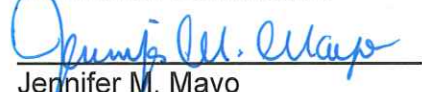
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, April 23, 2025.**

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 April 21, 2025.*** 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 April 21, 2025.*** **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 April 21, 2025*** 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 Betsy A. Ingraham
Meaghan C. Kirby
Attorney Michael J. Luzzi
David A. Ryan, Jr.

FIC# 2024-0301/ITRA/VDH//RB/JMM/2025-04-14

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Nina Pirrotti,

Complainant

against

Docket #FIC 2024-0301

Michael J. Luzzi, Town Attorney,
Office of the Town Attorney, Town of East Haven;
Office of the Town Clerk, Town of East Haven;
Chief, Fire Department, Town of East Haven;
Fire Department, Town of East Haven;
Chair, Civil Service Commission, Town
of East Haven; Civil Service Commission,
Town of East Haven; and Town of East Haven,

Respondents

April 8, 2025

The above-captioned matter was heard as a contested case on November 6, 2024 and February 10, 2025, at which times the complainant and the respondents appeared, stipulated to certain facts, and 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 email dated May 2, 2024, the complainant requested that the respondents provide her with a copy of the following records¹:
 - a. Documents sufficient to show whether the [East Haven Fire Department's Assistant Chief's] ("AC") position was governed by the Civil Service Commission rules from 2017-2021;

¹ The Commission notes that the named complainant is a Connecticut attorney. The Commission further notes that the request in this case was emailed to: michael@luzzilaw.com; aliquori@easthaven-ct.gov; and aliquori@townofeasthavenct.org.

- b. Documents sufficient to show whether or not the AC position was taken out of the Civil Service Commission's purview prior to the administration of the 2021 Assistant Chief Promotional Examination;
- c. All correspondence between the Civil Service Commission and/or Chief Marcarelli and/or the Town Attorney and/or the Board of Fire Commissioners regarding the AC position;
- d. Any amendment to the Civil Service Rules that included or removed the position of the AC from the Civil Service Commission; and
- e. Any Town Charter provisions concerning the East Haven Fire Department Assistant Chief Position.

3. It is found that, by email dated May 7, 2024, Town Attorney Michael Luzzi acknowledged the complainant's request, stating, in relevant part:

Please be advised that I am the Town Attorney for the Town of East Haven. I write on behalf of the Town with regard to your FOIA request....

[T]he Town will search for and gather any public records responsive to these requests. Once the Town has completed its retrieval process, and I have reviewed the relevant material(s), I will notify you. Subject to the foregoing, the Town will gather and provide responsive public records that are not exempt from disclosure.

4. It is found that, by email dated May 13, 2024, the complainant requested that Town Attorney Luzzi and Andrea M. Liquori, the Chief Examiner of the Civil Service Commission (the "Chief Examiner"), provide her with a status update on the processing of the request.

5. It is found that, by email dated May 14, 2024, the Chief Examiner directed the complainant to "go through Attorney Luzzi."

6. It is found that, by email dated May 20, 2024, the complainant requested that Attorney Luzzi provide her with a status update on the processing of the request.

7. By email dated and filed May 28, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with a copy of any of the requested records.

8. 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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

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

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

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

Events and Motions Preceding the Contested Case Hearings

12. It is found that, on August 6, 2024, the Commission issued a Notice of In-Person Hearing and Order to Show Cause, indicating that a contested case hearing would take place on this matter on September 16, 2024 (the “scheduled hearing”). It is found that, on August 29, 2024, the respondents, through their counsel Attorney David A. Ryan, Jr., telephoned counsel for the complainant, Attorney Betsy A. Ingraham, to discuss the status of the respondents’ compliance with the FOI request (the “August 29 discussion”).

13. It is found that, during the August 29 discussion, Attorney Ryan informed Attorney Ingraham that he intended to file a motion to postpone the scheduled hearing because he was unavailable on such date, and that, as part of the motion, he was required to represent to the Commission that the parties were making a good faith effort to resolve the instant matter. It is further found that Attorney Ryan informed Attorney Ingraham that he had prepared an opinion letter (the “legal memorandum”) for the Town concerning the hiring process for the Assistant Fire Chief.² It is further found that, to resolve the pending FOI matter, Attorney Ryan suggested that he provide the complainant with access to the legal memorandum. It is found

² The Commission notes that the legal memorandum which Attorney Ryan prepared for the Town is dated July 30, 2021.

that, Attorney Ingraham responded that, without seeing the legal memorandum, she could not guarantee that access to a single record would resolve all five parts of the complainant's FOI request. See ¶ 2, above. *The Commission notes that, as of August 29, 2024, 119 days had elapsed since the complainant made her request for records and the respondents had yet to provide her with a copy of any of the requested records.*

14. By motion dated and filed September 3, 2024, the respondents moved to postpone the scheduled hearing, stating in part, that the complainant and the respondents "are working hard toward a resolution" of this matter. The hearing officer denied the motion.

15. By motion for reconsideration dated and filed September 4, 2024, Attorney Ryan renewed the motion to postpone the hearing. In the motion, Attorney Ryan represented that: "[t]his matter was recently transferred to our office by Attorney Michael Luzzi," and "[s]ince taking over responsibility [for processing the complainant's request], counsel immediately began reviewing documents and have been continuously working on reaching a resolution of the matter with the complainant." On September 5, 2024, the hearing officer granted the respondents' motion and indicated that the hearing was rescheduled to November 6, 2024.

16. It is found that, by email dated September 20, 2024, Attorney Ingraham requested that Attorney Ryan provide her with a status update regarding his offer to provide the complainant with access to the legal memorandum and other responsive records, stating:

... When we last spoke, you were going to discuss with [your client] whether the opinion letter you wrote would be produced...as a step towards attempting to resolve the FOI complaint. Can you please provide an update on your client's position on that? Also, you said that your office was working to gather documents responsive to the remainder of [the] request. Can you please provide a status on that?

(Emphasis added).

17. It is found that, by email dated September 26, 2024, not having received a response to her September 20 email, Attorney Ingraham again requested an update on the complainant's ability to review the legal memorandum, stating in relevant part:

... You obtained a continuance of the FOI hearing with the commission on the representation that we were working toward a resolution—but right now, that seems to be stalled. We would appreciate an update on the status of the opinion letter and production of other responsive documents.

18. It is found that, on October 1, 2024, Attorney Ryan informed Attorney Ingraham that the respondents had agreed to show the complainant the legal memorandum on a screen in

his office so that the complainant could decide whether she wished to pursue her FOI request or whether, after reviewing the legal memorandum, the parties could consider the FOI request resolved. It is further found that Attorney Ryan informed Attorney Ingraham that, as of October 1, 2024 other than the legal memorandum, neither he nor the respondents had gathered or reviewed any records responsive to the complainant's request because they were trying "to avoid" such efforts. *The Commission notes that, as of October 1, 2024, 152 days had elapsed since the complainant made her request for records in this case and the respondents had yet to provide her with a copy of any of the requested records.*

19. It is found that, on October 3, 2024, the parties agreed that the complainant would report to Attorney Ryan's office on October 16, 2024 to review the legal memorandum.

20. It is found that, on October 16, 2024, Attorney Ingraham reported to Attorney Ryan's office and was escorted into a conference room with a screen; the complainant, Attorney Nina Pirrotti, was not able to be present but was available by telephone. It is found that Attorney Ingraham proposed to put the complainant on video through her cell phone so that she could see what was being displayed on the screen. It is found that Attorney Ryan objected to such proposal, contending that Attorney Ingraham might videotape the legal memorandum. In response, it is found that Attorney Ingraham represented as an officer of the court that she would not videotape the legal memorandum. At which time, Attorney Ryan replied, "I don't trust you." It is found that Attorney Ingraham agreed not to use her phone to conference in the complainant and instead took out her computer to take some notes. It is found that Attorney Ryan informed Attorney Ingraham that she could not have electronic devices in the conference room, nor could she take notes on a note pad. It is found that, at such time, Attorney Ingraham stepped out of the conference room to speak with the complainant. It is found that, when Attorney Ingraham returned to the conference room, Attorney Ryan informed her that he was not going to show her the legal memorandum unless the complainant agreed to withdraw her FOI request. It is found that Attorney Ingraham refused such terms. At such time, it is found that Attorney Ryan left the conference room and returned with the following offer: he would provide Attorney Ingraham with a copy of the legal memorandum, which she could leave with and provide to the complainant, but the complainant would have to agree not to pursue her FOI request. It is found that Attorney Ingraham refused the offer and departed Attorney Ryan's office. See Ex. G.

21. It is found that, by email dated October 28, 2024, Attorney Ingraham confirmed with Attorney Ryan that the complainant had decided that the best course of action was for her to pursue the FOI complaint before the Commission in order to obtain a disclosure order for all non-exempt records responsive to the request.

The First Contested Case Hearing on November 6, 2024

22. At the first contested case hearing on this matter, Attorney Ingraham appeared and testified on behalf of the complainant. It is found that, at such time, the complainant had not received a copy of any of the requested records. *The Commission notes that, at the time of the first hearing, 188 days had elapsed since the complainant made her request for records in this case.*

23. In response, the respondents conceded that although they did maintain records responsive to the request, they still had not gathered or reviewed any of the records. The respondents contended that they were under no obligation to provide responsive public records to the complainant because she was requesting public records on behalf of a client, who had filed a federal civil action against the Town of East Haven and therefore the rules of federal discovery, not the FOI Act, governed what records the respondents were required to provide to the complainant. The respondents further contended that because the discovery process in the federal litigation had closed, the complainant was foreclosed from pursuing her FOI request before the Commission. The respondents then presented the hearing officer and the complainant's counsel with a Motion to Dismiss reiterating the same legal arguments. After the motion was presented, the respondents informed the hearing officer that they did not wish to call a witness or raise any other legal claims.

The First In Camera Order

24. At the conclusion of the first hearing, the hearing officer recommended on the record that all parties review the Connecticut Supreme Court's decision in Chief of Police, Hartford Police Dep't v. Freedom of Info. Comm'n, 252 Conn. 377 (2000) ("Chief"). In addition, the hearing officer ordered the respondents to submit all records claimed exempt from disclosure to the Commission for in camera inspection by November 27, 2024, and the complainant to respond to the Motion to Dismiss by December 4, 2024. The hearing officer further informed the parties that, once the in camera records had been inspected, a continued hearing would be scheduled, at which time the respondents would be permitted an additional opportunity to substantiate any claims of exemption they wished to pursue.

25. Despite the unequivocal nature of the hearing officer's in camera order,³ the respondents appeared at the Commission on November 27, 2024 prepared to submit a single, three-page record for in camera inspection. It is found that this record was the legal memorandum that was the subject of the October 16, 2024 in-person conference between Attorney Ryan and Attorney Ingraham. See ¶ 20, above. The hearing officer refused the proffered submission, as it was in total non-compliance with her order.

The Ruling on the Respondents' Motion To Dismiss

26. On November 27, 2024, the hearing officer denied the respondents' motion to dismiss, relying on the Connecticut Supreme Court's decision in Chief, as follows:

As the Court made clear, a civil litigant is not barred from making a public records request because of pending civil litigation involving the same parties. See Chief. The Court expressly noted that the legislative intent of the FOI Act must be construed as allowing discovery matters in civil litigation and the rights of members of the public to challenge the denial of public records requests to proceed independently of each other:

³ At the conclusion of the first hearing, the hearing officer ordered the respondents to search for and gather all records responsive to the request, to provide the complainant with all non-exempt responsive records, and to submit to the Commission for in camera inspection all records for which an exemption to disclosure was being claimed.

The most plausible way to effect such an intention is to read the language as meaning that the two issues—disclosability under the act, and rights under discovery laws—are separate and independent of each other. Indeed, reading the statutory language as the plaintiff would have us do would mean that, although the statute *explicitly* provides that nothing in the act shall be deemed to limit the rights of litigants under the laws of discovery, nonetheless the rights of litigants under the laws of discovery *implicitly* limit the rights of the public under the act. We decline to infer from statutory language an implicit meaning that would undermine the statute's explicitly barred meaning.

Chief, 252 Conn. at 388–89 (emphasis in original).

Moreover, the Chief Court further noted that its holding meant that litigants might be able to obtain documents through the FOI process that were not available during civil litigation, and determined that the broad purpose of the FOI Act overrode that potential concern:

We do not deny that, except to the extent that other provisions of the act exempt documents from disclosure, the practical effect of our interpretation is that a member of the public might be able to secure under the act documents from an agency that he is suing or intends to sue that he might not be able to secure through discovery in the litigation. The reason for that, however, is rooted in the fundamental purposes of the act, which presumptively make public documents available to the public, and in the notion that the act and judicial discovery rules are designed with different aims and limitations in mind. Although in many cases the two routes for disclosure might overlap, in some cases they might arrive at different destinations. The fact that a member of the public might also be an adversary of the agency, however, does not by itself strip him of his rights under the act. Moreover, there may also be instances in which a litigant would be able to secure documents through discovery that are exempt from disclosure under the act. The reason for that is, likewise, rooted in the fact that the act and discovery rules have different purposes and limits.

Chief, 252 Conn. at 397–98 (emphasis added).

The Second In Camera Order

27. On November 27, 2024, the hearing officer also issued a second in camera order, directing the respondents:

...to search for and gather all records responsive to each and every part of the complainant's request. The respondents must submit to the Commission for in camera inspection an unredacted copy of the records claimed exempt from disclosure (thus, any record responsive to the request that is not provided to the Commission for in camera inspection must be disclosed to the complainant)...The respondents are ordered to hand-deliver the in camera records to the undersigned hearing officer...on **December 10, 2024**....

(Emphasis in original).

28. The respondents did not comply with the second in camera order. Instead, on December 10, 2024, at 4:49 pm, the respondents filed a motion for reconsideration of their motion to dismiss.

The Third In Camera Order and Notice of Civil Penalty Hearing

29. On December 12, 2024, the hearing officer denied the respondents' motion for reconsideration and issued a *third in camera order*, as follows:

...the respondents are ordered to deliver to the Commission for in camera inspection **ALL** records responsive to the request for public records for which an exemption to disclosure is being claimed...The respondents shall hand-deliver the in camera records to the hearing officer...on **December 23, 2024**.

(Emphasis in original).

The hearing officer also gave notice to Town Attorney Michael J. Luzzi⁴ that, pursuant to §1-206(b)(2), G.S., a continued hearing was going to take place on January 22, 2025,⁵ at which time the Commission would consider the imposition of a civil penalty against him. The hearing officer further informed Town Attorney Luzzi that he would be given an opportunity to be heard under oath at the continued hearing

30. On December 19, 2024, Attorney Ryan appeared at the Commission with the same three-page record that the respondents had attempted to submit for in camera inspection on November 27, 2024. See ¶ 25, above. The hearing officer informed Attorney Ryan that she was again rejecting the submission because the respondents had been ordered on two previous occasions to submit all responsive records that were being claimed exempt from disclosure to

⁴ The hearing officer has amended the case caption in this matter to add Town Attorney Luzzi's full name before his title.

⁵ At the request of the complainant, the continued hearing was rescheduled to February 10, 2025.

the Commission for in camera inspection. In response, Attorney Ryan made the following representation on behalf of the respondents:

...other than the legal memorandum, which was being claimed exempt from disclosure, the respondents were going to provide the complainant with all records responsive to the request, without redactions.

Based on Attorney Ryan's representation, the hearing officer accepted the respondents' December 19 in camera submission.

31. On December 23, 2024, the hearing officer issued an order setting forth Attorney Ryan's representation referenced in paragraph 30, above, for the benefit of the complainant, and further ordering that:

...[by January 13, 2025], the respondents [shall] file an affidavit concerning their disclosure of records to the complainant.

Such affidavit must: 1) describe the scope of the respondents' search for responsive records; 2) state when responsive records were provided to the complainant; 3) detail the number of pages provide to the complainant; and 4) confirm that such records were provided to the complainant without redactions...

...upon receipt of the respondents' affidavit, the complainant shall email the hearing officer (and the respondents) by January 15, 2025, confirming receipt of the responsive records....

32. On January 13, 2025, Attorney Ryan filed his affidavit, in which he attested:

...Following the order of the hearing officer, ...a thorough search for responsive records is being conducted by Respondents....On or before January 22, 2025, all responsive records will be disclosed to the Complainant without redactions....The record in this matter will be supplemented with an additional Affidavit noting the amount of pages disclosed.

33. It is found that Attorney Ryan's affidavit did not comply with the order referenced in paragraph 31, above, because, based on Attorney Ryan's representation on December 19, 2024, all records responsive to the request, other than the legal memorandum submitted to the Commission for in camera inspection, should have been provided to the complainant by January 13, 2025. See ¶ 31, above. Moreover, despite the averment in his affidavit, Attorney

Ryan never “supplemented” the administrative record with an additional affidavit detailing the number of pages the respondents provided to the complainant. See ¶¶ 31 and 32, above.

The Second Contested Case Hearing/Civil Penalty Hearing on February 10, 2025

34. Attorney Meaghan Kirby appeared at the second contested case hearing and testified on behalf of the complainant.

35. Pursuant to an order by the hearing officer, Town Attorney Michael J. Luzzi appeared at the second contested case hearing and testified on behalf of himself and the other respondents.

36. It is found that, on January 13, 2025, the complainant received Attorney Ryan’s affidavit referenced in paragraph 32, above; however, she still had not received a copy of any of the requested records.

37. It is found that, by email dated January 15, 2025, the respondents sent an email to approximately ten individuals within the respondent agencies whom they believed might maintain records responsive to the request set forth in paragraph 2, above, stating, in relevant part:

...Many of you have been contacted previously regarding this matter.... We specifically are asking for your assistance with [locating records responsive to requests] numbers 3 and 4, as we will be able to compile items responsive to the others. However, if you have any items relative (sic) to 1, 2, and 5, please send them as well. Please notify us of any correspondence during the relevant time period....

38. It is found that many of the individuals to whom the respondents sent the January 15, 2025 email did not respond back, and, on January 18, 2025, the respondents sent a follow-up email to such individuals. There is no evidence in the record as to whether the individuals who failed to respond to the January 15 email subsequently responded to the January 18 email.

39. Despite the respondents’ implication to the contrary, it is found that the January 15 email referenced in paragraph 37, above, is the first evidence in this case of the respondents’ attempt to gather records responsive to the request set forth in paragraph 2, above. *The Commission notes that, as of January 15, 2025, 258 days had elapsed since the complainant made her request for records in this case and the respondents had yet to provide her with a copy of any of the requested records.*

40. It is found that, on January 22, 2025, the respondents provided the complainant with 222 pages of records. It is found that approximately nine of the records provided to the complainant were records that the complainant had not previously received. It is further found that the remainder of the records were those that the complainant had already received through

the federal discovery process or were not responsive to the request. For example, it is found that the respondents provided the complainant with pages from a deposition transcript that the complainant's counsel had taken in 2024. Based on the nature of the request set forth in paragraph 2, above, particularly the date range contained in paragraph 2.a, above, and the testimony of Attorney Ingraham at the first hearing on this matter, it is found that the relevant date range of the request is 2017 through 2021. It is therefore found that the pages from a 2024 deposition that the complainant's counsel took are not responsive to the request, and likely already in the complainant's possession.

41. At the second hearing on this matter, the complainant contended that, as of such late date, the respondents had still failed to provide her with all records responsive to the request.⁶

42. Based upon the testimony of Town Attorney Luzzi, it is found that it is the Town's policy that all FOI requests received by any public agency within the town, except those received by the Town's Police Department, are to be forwarded to Town Attorney Luzzi for processing and compliance. It is found that, upon receipt, Town Attorney Luzzi will generally review the request and forward it to the individuals within the public agency or agencies whom he believes would likely maintain responsive records. Thereafter, it is found that the public agency or agencies are supposed to search for and gather all responsive records and forward them to Town Attorney Luzzi for review and redaction, if necessary, and disclosure. It is found, however, that the aforementioned process is not the process that was followed in the case.⁷

43. Rather, it is found that, after Town Attorney Luzzi acknowledged the request on May 7, 2024, he forwarded it to Attorney Ryan (who began to process the request on January 15, 2025). It is further found that Town Attorney Luzzi also forwarded the request to Attorney

⁶ In this regard, Attorney Kirby testified that in a December 12, 2024 status conference that took place in the context of the pending federal action referred to in paragraph 23, above, Attorney Ryan represented to the presiding federal district judge that the Town of East Haven maintained records responsive to the complainant's FOI request that had not been provided to the complainant either through the FOI process or through the federal discovery process. See Ex. 3 (Federal District Judge Sarala V. Nagala's order following status conference, in which she states: "Finally, the Plaintiff reported some asserted concerns regarding Defendant's discovery compliance and a related, ongoing FOI proceeding before another tribunal. The parties shall engage in a good faith meet and confer on or before January 15, 2025 regarding possible discovery non-compliance in this matter. As part of the meet and confer process, Defendant must be prepared to represent how many documents are responsive to the Plaintiff's FOI request but were not produced in discovery....").

⁷ While Town Attorney Luzzi testified that he initially forwarded the FOI request to the Fire Department respondents and the Civil Service Commission respondents with instructions that they search for and gather all records responsive to the request and forward such records to Attorney Ryan, Attorney Ryan's statements and arguments at the first contested case hearing, the affidavit he filed on December 13, 2024, as well as Town Attorney Luzzi's own cross-examination testimony (wherein he testified that he did not know if the Fire Department respondents or Civil Service Commission respondents ever received an email regarding the request prior to Attorney Ryan's email of January 15, 2025) contradict such testimony. See ¶¶ 15, 18, 23, 32, 35, above. Accordingly, the Commission does not find Town Attorney Luzzi's testimony in this regard credible.

Christopher F. Wanant and Attorney Jeffrey W. Kennedy, who had been retained by the Town to attempt to settle the federal litigation (“settlement counsel”). Town Attorney Luzzi contended that the FOI request was forwarded to settlement counsel so that they could “assist” in the resolution of the complainant’s allegations of non-compliance concerning her request for public records. While there is no evidence in the record to establish when Town Attorney Luzzi forwarded the instant request to settlement counsel, it is found that the earliest date that could have happened is December 12, 2024, the date on which the Town retained such counsel.

44. It is found that, on or about December 28, 2024, which is two weeks after the Commission issued notice that it was going to consider the imposition of a civil penalty against Town Attorney Luzzi, settlement counsel offered to conduct a search for records responsive to the complainant’s request. It is found, however, that settlement counsel have access to only those records that were disclosed to them in the context of the federal civil action. In fact, Town Attorney Luzzi conceded that there may be records in the possession of the town respondents that are responsive to the request, which are not in the possession of settlement counsel. Nonetheless, it is found that, on or about February 6, 2025, four days prior to the second hearing on this matter, the complainant sent thirty or so search terms to settlement counsel and requested that such terms be run in the database of records to which they had access.⁸

45. It is further found that, on or about February 6, 2025, Town Attorney Luzzi, at the Town’s expense, engaged NexGen, an independent contractor, to conduct a search for responsive records on the Town’s and the Fire Department’s electronic records systems in order to satisfy the complainant’s request in this case.⁹

46. It is found that the preparatory steps that the respondents took on or about February 6, 2025, which are discussed in paragraphs 44 and 45, above, constitute reasonable precursors to a productive search (or searches) for responsive records being conducted in this case. It is found, however, that, at the time of the second contested case hearing, neither settlement counsel nor Nex Gen had conducted a search for responsive records. The Commission notes that Town Attorney Luzzi testified that such searches would be conducted “soon.” *The Commission further notes that, at the time of the second contested case hearing, 284 days had elapsed since the complainant made her request for records and the respondents had yet to conduct a thorough search for responsive records in this case.*

The In Camera Submission and the Respondents’ Claim of Exemption

47. As discussed above, on December 19, 2024, the respondents submitted one three-page record to the Commission for in camera inspection. See ¶¶ 13-21, 25, 30.

⁸ It is also found that, on the morning of February 10, 2025, the complainant sent additional search terms to settlement counsel.

⁹ Based on Town Attorney Luzzi’s testimony, it is found that the search terms that the complainant crafted and sent to settlement counsel would be the same terms that NexGen will run on the Town’s and the Fire Department’s electronic records systems.

48. The respondents contended that the in camera records are exempt from disclosure pursuant to the provisions of §1-210(b)(10), G.S., which section permits an agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.”

49. With regard to the claim of exemption pursuant to the attorney-client privilege, §52-146r(b), G.S., provides that “[i]n any civil or criminal case or proceeding or in any legislative or administrative proceeding, all confidential communications shall be privileged, and a government attorney shall not disclose any such communications unless an authorized representative of the public agency consents to waive the privilege and allow disclosure.”

50. Section 52-146r(a)(2), G.S., defines “confidential communications” to mean:

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.

51. In Maxwell v. Freedom of Info. Comm’n, 260 Conn. 143, 149 (2002), the Connecticut Supreme Court held that §52-146r, G.S., “merely codif[ies] the common law attorney-client privilege as this court previously defined it.” The Court further stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client and relate to legal advice sought by the agency from the attorney.” Id.

52. The Supreme Court has adopted a four part test to determine whether communications are subject to the attorney client privilege: “(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.” Shew v. Freedom of Info. Comm’n, 245 Conn. 149, 159 (1998). “The burden of establishing the applicability of the privilege rests with the party invoking it.” Harrington v. Freedom of Info. Comm’n, 323 Conn. 1, 12, (2016) (“Harrington”). If it is clear from the face of the records, extrinsic evidence is not required to prove the existence of the attorney-client privilege.” Lash v. Freedom of Info. Comm’n, 300 Conn. 511, 516-17 (2011).

53. Moreover, in Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice. . . . The privilege fosters full and frank communications between attorneys and their clients and thereby promote[s] the broader public

interests in the observation of law and [the] administration of justice.” PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329–30 (2004).

54. Upon careful in camera inspection, it is found that the in camera records are communications between public officials or employees of a public agency acting in the performance of their duties or within the scope of their employment and government attorneys. It is further found that such records relate to legal advice sought by the public agency clients, and that the legal advice provided has not been waived. It is therefore found that the in camera records are communications privileged by the attorney-client relationship.

55. It is concluded that the respondents did not violate the disclosure requirements of §§1-210(a) and 1-212(a), G.S., when they declined to disclose the in camera records to the complainant.

Promptness and Consideration of the Imposition of a Civil Penalty

56. With regard to whether the respondents have acted promptly in complying with the instant request, this Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

57. Despite the fact that the respondents were provided with *countless* opportunities to gather, review and disclose all non-exempt public records to the complainant during the course of this case and were ordered to do so on three occasions, see ¶¶ 24, 27, and 29, above, it is found that, even as of the date of the Report of Hearing Officer, they failed to conduct a thorough search for responsive records. It is further found that the respondents did not act in good faith at the October 16, 2024 conference referenced in paragraph 20, above, when they essentially held records responsive to the request hostage and attempted to extract a withdrawal from the complainant.

58. It is further found that, at the same time, the respondents represented to this Commission that they were engaged in meaningful settlement negotiations. The respondents filed misleading motions; refused to follow orders; made conflicting representations; provided less than candid testimony during the course of the proceedings; and generally availed themselves of every opportunity to frustrate the complainant's FOI rights. It is further found that it was only when this Commission informed the respondents that it was going to consider the imposition of a civil penalty against Town Attorney Luzzi that the respondents purported to conduct a search for responsive records.

59. Moreover, with respect to the respondents' continued assertion that they have previously disclosed the records at issue in this case to the complainant, case law makes clear that a public agency is not absolved of its obligations to provide a requester with public records simply because the requester previously requested and/or received the same records. See, e.g. Mayor v. Freedom of Info. Comm'n, Docket No. CV-01-0511803-S, 2002 WL 523086, at *4 (Conn. Super. Ct. Mar. 19, 2002) ("There is nothing in the Connecticut FOIA that bars repeating a request to a public agency. Indeed, a complainant may seek to start an appeal period over again by asking for a record again, or a complainant may have lost the document after the first request. The FOIA simply provides that '[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any records....' Unless, exempt, all records are public records, and 'every person shall have the right to receive a copy of such records in accordance with the provisions of Section 1-212....[T]he general rule under the [FOIA] is disclosure....'").

60. It is abundantly clear, and it is therefore found, that the respondents did not provide the complainant with public records promptly and refused to follow the law.

61. It is therefore concluded that the respondents violated both the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S., by failing to conduct a thorough search for responsive records and to provide responsive records to the complainant.

62. As noted in paragraph 29, above, the Commission, on its own accord, informed Town Attorney Luzzi that it would consider the imposition of a civil penalty against him.

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

upon a finding that a 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.¹⁰

64. As found in paragraph 42, above, pursuant to the Town's policy, Town Attorney Luzzi is the official responsible for acknowledging and overseeing compliance with FOI requests, such as the instant request.

65. It is found that Town Attorney Luzzi advises and counsels the Town, and its agencies, boards and officers on legal matters, including FOI matters. It is further found that,

¹⁰ 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.

based on his testimony, Town Attorney Luzzi is familiar with and understands the requirements and obligations under the FOI Act.

66. As found in paragraphs 2 and 3, above, on May 2, 2024, Town Attorney Luzzi received the request at issue, and, on May 7, 2024, he informed the complainant that the following process would take place:

- a. The Town would search for and gather all public records responsive to the request;
- b. The Town would complete such retrieval process;
- c. Attorney Luzzi would then review all of the records that the Town had gathered;
- d. Upon completion of his review, Attorney Luzzi would contact the complainant; and
- e. Finally, the Town would then provide the complainant with all responsive, non-exempt public records.

67. As found in paragraph 5, above, other named respondents in this case understood that Town Attorney Luzzi was the point person for FOI compliance and thus directed the complainant to “go through Attorney Luzzi” when she raised concerns about the processing of her request.

68. It is found that the respondents made representations to this Commission in their motion to postpone the first contested case hearing that were neither reasonable nor forthright. See ¶¶ 14, 18, 23, above.

69. It is found that the respondents made representations to this Commission in their renewed motion to postpone the first contested case hearing that were neither reasonable nor forthright. See ¶¶ 15, 18, 23, above.

70. It is found that the respondents’ conduct during the October 16, 2024 “settlement” conference with Attorney Ingraham referenced in paragraph 20, above, was not reasonable.

71. It is found that the fact that the respondents maintained records responsive to the request but had yet to gather or review any such records at the time of the first contested case hearing, which was postponed and rescheduled at the respondents’ request, was not reasonable. See ¶ 23.

72. It is found that the fact that the respondents did not comply with any of the in camera orders that were issued in this case was not reasonable. See ¶¶ 24, 27, and 29, above.

73. It is found that the respondents' initial search for responsive records, conducted 258 days after receiving the request, was deficient and not reasonable. See ¶¶ 2, 37-40.

74. It is found that the fact that the respondents were just beginning to devise reasonable searches at the time of the second contested case hearing, which was 284 days after they received the request in the case, was not reasonable. See ¶¶ 44-45, above.

75. It is therefore concluded that the complainant's 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 a civil penalty is warranted.

76. It is found that Attorney Luzzi, as the Town Attorney and a public agency in his own right, is the individual directly responsible for the violations set forth in paragraph 61, above.

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

1. Within forty-five (45) days of the date of the Notice of Final Decision in this matter, the respondents shall complete the searches referenced in paragraphs 44 and 45 of the findings, above, and provide the complainant with all responsive records, free of charge.
2. Within fourteen (14) days of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's public education officer to schedule a training session regarding the requirements of the FOI Act.
3. Respondent Town Attorney Michael J. Luzzi, as the official directly responsible for the denials herein, shall remit to the Commission, within forty-five (45) days of the Notice of Final Decision in this matter, a civil penalty in the amount of two thousand, five hundred dollars (\$2500.00).
4. Henceforth, the respondents shall strictly comply with the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S.



Valicia Dee Harmon
as Hearing Officer