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FREEDOM OF INFORMATION
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Adam Osmond
Complainant(s)

against

Daniel O'Keefe, Commissioner, State of Connecticut, Department of Economic and Community Development; and State of Connecticut, Department of Economic and Community Development
Respondent(s)

Notice of Meeting

Docket #FIC 2024-0517

August 4, 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, August 13, 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 5:00 p.m. on August 12, 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 5:00 p.m. on August 12, 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 5:00 p.m. on August 12, 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: Adam Osmond
Assistant Attorney General John Langmaid

FIC# 2024-0517/ITRA/PSP/PVA/RB/JMM/2025-08-4

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Adam Osmond,

Complainant

against

Daniel O'Keefe, Commissioner,
State of Connecticut, Department of
Economic Community Development;
and State of Connecticut, Department
of Economic Community Development,

Respondents

Report of Hearing Officer

Docket # FIC 2024-0517

August 4, 2025

The above-captioned matter was heard as a contested case on February 7, 2025, at which time the complainant and the respondents appeared and presented testimony, exhibits, and argument on the complaint.

Subsequent to the hearing, the complainant and the respondents submitted after-filed exhibits, which have been marked as follows: Complainant's Exhibit O (after-filed): Email set dated September 26, 2024 through October 31, 2024; Respondents' Exhibit 4 (after filed): Affidavit of Loretta Boggan plus excel spreadsheet table, dated February 14, 2025; Respondents' Exhibit 5 (after-filed): Email from the respondents to the complainant, dated February 23, 2024 at 3:35p.m.; Respondents' Exhibit 6 (after-filed): Email from the complainant to the respondents, dated February 25, 2024 at 1:10p.m.; Respondents' Exhibit 7 (after-filed): Email from the respondents to the complainant, dated February 29, 2024 at 11:57a.m.; Respondents' Exhibit 8 (after-filed): Email from the complainant to the respondents, dated February 29, 2024 at 8:06p.m.; Respondents' Exhibit 9 (after-filed): Email from the complainant to the respondents, dated April 11, 2024 at 9:25p.m.; Respondents' Exhibit 10 (after-filed): Email from the respondents to the complainant, dated April 15, 2024 at 8:52a.m.; Respondents' Exhibit 11 (after-filed): Email from the respondents to the complainant, dated May 2, 2024 at 2:58p.m.; Respondents' Exhibit 12 (after-filed): Email from the respondents to the complainant, dated July 15, 2024 at 5:06p.m.; and Respondents' Exhibit 13 (after-filed): Email from the respondents to the complainant, dated July 16, 2024 at 1:17p.m.

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 February 18, 2024 ("February 18 Request"), the complainant requested that the respondents provide him "access to and copies of records related to me, Adam Osmond, for the period from April 1, 2013, to the current date, February 18, 2024," and as outlined below:

a. All emails (including all attachments) sent or received by Kathy Woodward, Susan Shellard, Joyce Heriot, Cheryl Bocwinski, and any other individuals within the Legal Unit, Human Resource Unit, or the offices of the Commissioner and Deputy Commissioner; and

b. Any memos, notes, text messages, records of phone calls, Microsoft TEAMs meetings, TEAMs chats, and TEAMs meeting transcripts generated by or involving the aforementioned individuals and units.

The complainant also requested that the records be provided in an electronic format and advised the respondents to contact him if they needed further information or clarification to facilitate the processing of the February 18 Request.

3. It is found that, by email dated February 23, 2024, the respondents acknowledged the February 18 Request. The respondents also informed the complainant that they were unable to search for emails "'related to me, Adam Osmond' and will search 'Adam' and 'Osmond' within…the timeframe and individuals you specified…." The respondents further informed the complainant that there were 22 records requests ahead of his at that time.

4. It is found that, by email dated February 25, 2024, the complainant informed the respondents that his February 18 Request was for "any public documents about me, regardless of whether the document used my first name, last name, or any other information about me." The complainant also expressed concerns regarding the timeframe for responding to his February 18 Request and that he expected a prompt response.

5. It is found that, by email dated February 29, 2024, at 11:57a.m., the respondents thanked the complainant for clarifying his February 18 Request and outlined the steps to be taken by the respondents to search for, compile and provide records responsive to such request.

6. It is found that, by email dated February 29, 2024, at 8:06p.m., the complainant stated in relevant part, "I am not dictating how you should perform your duties or search for public data. However, I request that any public data I have requested through the FOI Act be provided promptly."

7. It is found that, by email dated April 11, 2024, the complainant requested that the respondents provide him with a status update on his February 18 Request and inform him if there was any additional information that he could provide to assist in the search for responsive records.

8. It is found that, by email dated April 15, 2024, the respondents informed the complainant that there were 14 records requests ahead of his February 18 Request.

9. It is found that, by email dated May 7, 2024 ("May 7 Request"), the complainant requested the following records from the respondents:

a. Metadata for all emails sent or received by Kathy Woodward and Susan Shellard during their tenures at Department of Economic Community Development ("DECD"), including:

(i) Sender and recipient email addresses
(ii) Date and time stamps
(iii)Subject lines
(iv)Information on attachments (file names and types)
(v) Sizes of the emails
(vi)IP addresses
(vii) Routing information.

b. All emails (including all attachments) sent or received by Kathy Woodward and involving the following email addresses: (i) kkayward2@gmail.com and (ii) David.Thomas.ar@gmail.com.

10. It is found that, by email dated May 7, 2024, the respondents acknowledged the May 7 Request and informed the complainant that there were 19 records requests ahead of such request.

11. It is found that, by email dated June 23, 2024, the complainant requested that the respondents provide him with a status update on the February 18 Request.[1]

12. It is found that, by email dated June 24, 2024, at 3:14p.m., the respondents informed the complainant that there were 11 requests ahead of his February 18 Request and two additional records requests ahead of his May 7 Request. They also informed the complainant that they were unable to provide a firm date for the production of responsive records.

13. It is found that, by email dated June 24, 2024, at 10:36p.m., the complainant again expressed his concern about potential delays in responding to his records requests and informed the respondents that he would be filing a complaint with the Commission.

14. It is found that, by email dated June 25, 2024, at 9:17a.m., the respondents asked that the complainant wait until the following week to file his complaint as a supervisor would be back at that time and could address his concerns.

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[1] It is unclear from the administrative record whether the complainant's June 23, 2024 email, described in paragraph 11, above, also concerns his May 7 Request.

15. It is found that, by email dated June 25, 2024, at 8:40p.m., the complainant informed the respondents that he would wait until the following week before filing a complaint.

16. It is found that, by email dated July 15, 2024, the respondents informed the complainant that his February 18 Request yielded approximately 70,000 documents, and asked him whether he would be willing to refine the list of names to be searched.

17. It is found that, by email dated July 16, 2024, the respondents reiterated to the complainant that the February 18 Request yielded approximately 70,000 documents, and the results were "being de-duplicated but still will likely yield more than 40,000 documents."

18. It is found that, by email dated July 24, 2024 at 5:00p.m., the respondents informed the complainant that they had completed gathering records responsive to his February 18 Request and that the search (after de-duplicating) returned over 37,117 documents consisting of 167,773 pages. The respondents also informed the complainant that pursuant to §1-212, G.S., "the total fee for copies might be as large as 25 cents times 167,773, or $41,943.25 (although there will be no charge, of course, for any public records we ultimately withhold pursuant to statutory FOI exemptions)." The respondents further informed the complainant that "since the estimated cost of copies is over $10, [the respondent] is exercising its right, pursuant to the FOI Act, §1-212, G.S., to require prepayment."

19. It is found that, by email dated July 24, 2024, at 5:51p.m., the complainant challenged the respondents proposed fees to fulfill his February 18 Request and contended that such fees were excessive for documents that are already in electronic format, effectively amounting to a denial of access to public records. The complainant contended that he should only be charged for the cost of the storage device and requested that any responsive records be provided on a flash drive.

20. It is found that, by email dated July 26, 2024, at 8:49p.m., the complainant informed the respondents that he was willing to remove some names from the February 18 Request "to expedite the process" and listed 12 names to remove.

21. It is found that, by email dated July 26, 2024, at 9:11p.m., the complainant narrowed his May 7 Request to include only "Kathy Woodward's data" and "emails and documents that specifically pertain to me for the two emails," referenced in paragraph 9, above. The complainant again asked the respondents to let him know if there was anything else that he could do to streamline the process. It is found that, by email dated October 31, 2024, the complainant narrowed his May 7 Request further to exclude "Kathy Woodward's medical files or any communications that would legally constitute an invasion of her privacy."

22. By email dated August 23, 2024,[2] the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by:

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[2] Section 1-21j-15 of the Regulations of Connecticut State Agencies provides that the computation of any period of time "begins by first counting the day after the day one which the precipitating event occurs,

a. Imposing excessive and unreasonable fees;

b. Failing to provide prompt access to public records;

c. Unequal treatment of FOI requesters;

d. Denying access to public records by imposing prohibitive fees; and

e. Failing to provide records in electronic form, as requested.

In his complaint, the complainant requested that the Commission impose a civil penalty against the respondents in this case.[3]

23. It is found that, from the date of the filing of the complaint in this matter through the date of the hearing in this matter, the parties exchanged numerous email communications concerning the: i) potential narrowing of the scope of the complainant's requests; ii) prepayment of certain FOI fees and the calculation(s) thereof; iii) desired delivery format of any responsive records (e.g., electronic or paper); iv) delivery of the responsive metadata; and v) exclusion of certain personnel and/or medical files from the scope of the requests.

24. It is found that, on September 15, 2024 at 8:50a.m., counsel for the respondents emailed the complainant, stating that "[i]f you request a particular digital format…and a particular digital media…for computer-stored records, then...I agree the 25 cents per page thing is completely irrelevant to the final (and as-yet unknowable) cost." Respondents' counsel also informed the complainant, for the first time, that there would be labor costs associated with providing the requested records and demanded prepayment of fees. Specifically, with respect to the February 18 Request, the complainant was informed that "DECD still *estimates* that there would be significant fees, primarily in the nature of 'an amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record'…." [Emphasis in original].

25. It is found that, by email dated September 20, 2024 at 1:18p.m., counsel for the respondents informed the complainant that they were still demanding prepayment of the fees and could not say with certainty what those costs will amount to. Respondents' counsel also informed the complainant, for the first time, that they were maintaining the results of the search

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and ends on the last day of the period so computed. The last day of the period is to be included unless it is a day on which the principal office of the commission is closed, in which event the period shall run until the end of the next following business day." (Emphasis added.) Although the Commission stamped the complaint as received and filed on August 26, 2024, such complaint was sent to the Commission on August 23, 2024. Given the computation of time as set forth in Section 1-21j-15 Regs. Conn. State Agencies, the complaint is timely.

[3] In his post-hearing brief, the complainant also contends that the respondents' counsel's active role in advising the respondents on the fee calculations for production of electronic records responsive to his requests and then subsequently also defending these actions before the Commission in this matter relating to the same requests, raises concerns about potential conflicts of interest or procedural impropriety, and their impacts on access. The complainant further contends that the respondents' counsel's actions related to his requests are also grounds for the imposition of a civil penalty against the respondents in this matter.

and retrieval for the February 18 Request in their document management system for storage and maintenance of digital files and that the associated use of such system may result in potential charges to the complainant.[4]

26. It is found that on or about September 25, 2024, October 29, 2024, and October 30, 2024, the respondents provided the complainant with metadata responsive to his May 7 Request. On October 29, 2024, respondents counsel also informed the complainant that there would be no charges for the metadata provided since "no DECD employee time was spent engaged in providing these metadata records" and the "files were being delivered by Sharepoint."

27. It is found that, by email dated September 26, 2024 at 8:24a.m., counsel for the respondents informed the complainant again that no further work would be done on providing records responsive to the February 18 request until he prepaid, and that the extended storage of such records may incur charges for which he would be responsible. Respondents' counsel also informed the complainant that the search and retrieval for records responsive to the July 26 narrowed request was complete, resulting (after de-duplicating) in 22,054 documents.

28. It is found that, by email dated November 25, 2024 at 2:06p.m., counsel for the respondents informed the complainant that the total cost of production for records responsive to the May 7 Request and July 26 narrowed request, which production involved "necessary preparation, collation, review, and partial redaction of the records" was $214.59. It is found that the respondents arrived at such fees by using the hourly salary ($47.686875) of the DECD employees who worked on the records requests.

29. 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.

30. 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

[4] The Commission reminds the respondents that §1-211(c), G.S., provides that: "[B]efore any public agency acquires any computer system, equipment or software to store or retrieve nonexempt public records, it shall consider whether such proposed system, equipment or software *adequately provides for the rights of the public under the Freedom of Information Act at the least cost possible to the agency and to persons entitled to access to nonexempt public records* under the Freedom of Information Act…" [Emphasis added].

> 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.

31. 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."

32. It is concluded that the requested records, to the extent that they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

Jurisdiction

33. At the hearing in this matter, the respondents contended that the complainant's appeal was not filed within thirty days of the FOI violation, and therefore the Commission lacked jurisdiction.

34. Section 1-206, G.S., provides, in relevant part:

> (a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.
>
> (b)(1) Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial.... [Emphasis added].

35. In addition, our Supreme Court has held that the FOI Act "does not bar successive requests, nor does it bar successive denials, nor does it require an appeal within thirty days of the denial of any particular request." Board of Education v. Freedom of Information Comm'n, 208 Conn. 442, 451(1988); *See also* Sedensky v. Freedom of Information Comm'n, No. HHB-CV13-6022849S, 2013 WL 6698055 (Conn. Super. Ct. 2013); Town of West Hartford v. Freedom of Information Comm'n, 218 Conn. 256 (1991). Such a rigid requirement "would frustrate the 'strong legislative policy in favor of the open conduct of government and free public access to

government records.' Wilson v. Freedom of Information Comm'n, [181 Conn. 324, 328, 435 A.2d 353 (1980)]." Id.

36. It is found that the complainant's July 26, 2024, emails, described in paragraphs 20 and 21, above, constituted a renewal of his records requests. Therefore, it is concluded that the Commission has jurisdiction over the August 23, 2024 complaint, which was filed less than 30 days after the alleged denials, within the meaning of §1-206(b), G.S.

Due Process Claim

37. At the hearing and in their post-hearing brief, the respondents contend that the scope of the contested case hearing was unclear and that the hearing officer's denial of their January 21, 2025 Application for a More Definite and Detailed Statement violated their due process rights under the Uniform Administrative Procedure Act.

38. Section 4-177, G.S., provides that:

> (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. (b) The notice shall be in writing and shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted. If the agency or party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

39. Contrary to the respondents' contentions, however, the parties were provided with the required notice when the Notice of In-Person Hearing and Order to Show Cause was sent to the parties on January 14, 2025. Such notice includes, among other information, a copy of the complaint outlining the alleged violations of the FOI Act. A more definite and detailed statement is not warranted.

40. At the contested case hearing, a paralegal specialist in the legal department of the respondents appeared and testified on behalf of the respondents.

Fees

41. With respect to the allegations set forth in paragraphs 22.a. and 22.d., above, the complainant contends that the respondents imposed excessive and unreasonable fees in violation of the FOI Act (initially totaling $41,943.25; however, the respondents' counsel indicated that additional fees may be charged) and that the imposition of such prohibitive fees was effectively a denial of his February 18 Request and May 7 Request.

42. The respondents maintain that they have not denied the complainant access to the requested records and that the complainant was simply asked to prepay the fees associated with providing responsive records.[5] The respondents contend that in calculating such fees under the FOI Act they may charge 25 cents per page for printing the copies, as well as labor costs for employees' time reviewing and redacting exempt information from the requested records.

43. Section 1-211(a), G.S., provides:

> Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, *a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made*. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212.

44. Section 1-212(a)(A), G.S., provides, in relevant part:

> The fee for any copy provided in accordance with the Freedom of Information Act…
>
> By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, *shall not exceed twenty-five cents per page*….

45. Section 1-212(b), G.S., further provides, in relevant part:

> The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a

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[5] In their post-hearing brief, the respondents contend that the prepayment of fees demanded of the complainant is a "retainer" and that "[a] retainer estimate is not a bill, and cannot violate the FOI Act." A retainer is "a fee paid in advance to someone, especially an attorney, in order to secure or keep their services when required." *See Oxford English Dictionary*, Oxford University Press, 2025. Accordingly, the Commission finds that the prepayment fees demanded by the respondents under the FOI Act in this matter are not a retainer.

> printout which exists at the time that the agency responds to the request for such copy, an agency may include *only*:
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> (1) An amount equal to the hourly salary attributed to all agency employees *engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection*;
>
> (2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;
>
> (3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and
>
> (4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost thereof to the public agency, as determined pursuant to this subsection, whichever is less. The Department of Administrative Services ("DAS") shall provide guidelines to agencies regarding the calculation of the fees charged for copies of computer-stored public records to ensure that such fees are reasonable and consistent among agencies.

46. Further, §1-212(c), G.S., provides that:

> (c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.

47. With respect to the respondents' initially proposed imposition of a charge of 25 cents per page for printed copies and demand for prepayment of $41,943.25 for copies of the requested records in response to the February 18 Request, as described in paragraph 18, above, it is found that the per page fees set forth in §1-212(a)(A), G.S., apply in circumstances where an individual has requested a paper copy.

48. Since a printout of the requested records did not exist at the time of the requests and

the records were instead "computer-stored" within the meaning of §1-211(a), G.S., it is concluded that the fee provisions contained in §1-212(b), G.S., govern the fees that may be assessed for the provision of such records, not the per page fees set forth in §1-212(a)(A), G.S. [6]

49. It is further concluded that the respondents violated the provisions of §§1-211 and 1-212, G.S., by conditioning receipt of the requested records on the complainant's prepayment of exorbitant fees, at the cost of 25 cents per page, for a total of $41,943.25.[7]

50. With respect to the respondents' contention that the fee provisions in §1-212(b), G.S., are not exhaustive and by their terms permit them to charge for employees' time reviewing and redacting public records, the Commission disagrees, for the reasons set forth in paragraphs 51 through 58, below.[8]

51. First, as set forth in paragraph 45, above, it is found that §1-212(b), G.S., specifically, contains language limiting what fees may be assessed in the provision of computer-stored records, by its inclusion of the word "only" ("In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include *only*....").

52. Second, it is found that §1-212(b)(1), G.S., consists of two specific lists, setting forth what costs attributed to an employee's time engaged in providing computer-stored public records can be passed on to the requester (i.e., their time performing formatting or programming functions) and what costs cannot (i.e., their time for search or retrieval).

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[6] The Commission notes that if a public agency receives a request for a copy of, or to inspect, a record that contains information that is *required by law* to be redacted, and the public agency must make a copy of the record in order to redact such information, the public agency may charge the requester the statutory fee for that copy. *See Kozlowski v. Freedom of Information Commission*, superior court, docket number CV-960556965 (judicial district of Hartford-New Britain at New Britain), July 29, 1997. In the instant matter, the respondents have halted their review of the responsive records and therefore it is unknown whether any of these records contain information that is required by law to be redacted.

[7] The conclusion in paragraph 49, above, is consistent with the reasoning of the Supreme Court in *Hartford Courant Co. v. Freedom of Information Comm'n*, 261 Conn. 86, 101 (2002), wherein the Court ruled: "Were we to hold otherwise, the fee for the plaintiff's request would be $20,375,000, a result that would have the practical effect of denying the plaintiff access to records that, by statute, must be made available to the public. *Such a result would be inconsistent both with the act's broad policy favoring the disclosure of information and with the well established canon of statutory construction 'that those who promulgate statutes or rules do not intend to promulgate statutes or rules that lead to absurd consequences or bizarre results.*'" [Emphasis added].

[8] At this time, the Commission is unaware of any other contested case brought before it, wherein the respondent agency has claimed that the provisions of §1-212(b)(1), G.S., permit the kinds of fee calculations that the respondents seek to impose in this case, since the passage of such provisions in 1991 *See* Public Act, 91-347, *An Act Concerning Computer Stored Records*. In the absence of any such claim, the Commission infers that public agencies generally understand the scope and limitations of the fee provisions set forth therein relative to computer-stored records.

53. Moreover, §1-212 (b)(1), G.S., only permits fees for the cost of "providing the computer-stored public record", as requested. It is found that review and redaction of public records does not constitute a cost of "providing" a copy of the computer-stored public record, as requested, within the meaning of §1-212(b)(1), G.S. Rather, the Commission believes that review and redaction of public records are part of an agency's duty to promptly disclose all non-exempt records under the FOI Act. *See Commissioner, State of CT, Dept. of Emergency Services and Public Protection, et. al. v. FOI Commission, et al.*, Docket No. HHB-CV18-6047741-S (2020) ("An agency's FOIA duty is a statutory duty or command. As such, it is not second class to any other statutory duty or command.").

54. In addition, the Commission has previously concluded that no provision of the FOI Act permits a public agency to charge for time taken to review public records to ascertain whether they contain any information that is exempt from disclosure. *See* Docket # FIC 2010-369, *Pamela Walsh, v. Chief, Police Department, City of New London; and Police Department, City of New London* (May 11, 2011).

55. Finally, the Commission takes administrative notice of the many legislative proposals introduced since 2023 seeking to allow law enforcement agencies to charge a redaction fee under certain circumstances for the disclosure of a record created by police body-worn recording equipment and dashboard cameras. *See* Senate Bill 1222, *An Act Concerning Fees for Copying, Reviewing and Redacting Records Created by Police Body-Worn Equipment & Dashboard Cameras* (2023); Senate Bill 431, *An Act Concerning Fees for Copying, Reviewing and Redacting Records Created by Police Body-Worn Recording Equipment Dashboard Cameras* (2024); Senate Bill 973, *An Act Permitting Redaction Fees for the Disclosure of Records Created by Police Body-Worn Recording Equipment or Dashboard Cameras under the Freedom of Information Act* (2025); and Senate Bill 1229, *An Act Concerning Fees for Copying, Reviewing and Redacting Records Created by Police Body-Work Recording Equipment and Dashboard Cameras* (2025). The Commission further notes that if the respondents' interpretation of §1-212, G.S., were correct, there would be no need for a statute governing redaction of, and fee structure for, the disclosure of body-worn camera and dashboard camera records.

56. Therefore, the logical conclusion to the statutory construction of the two lists contained in §1-212(b)(1), G.S., is that both are exhaustive, detailing what may be charged for the provision of computer-stored records and do not include costs for review and redaction, as claimed by the respondents. To read §1-212, G.S., as broadly as the respondents assert in this instance, would lend itself to an untenable construction of two non-exhaustive lists, which lists each would necessarily include an unlimited set of overlapping services (i.e., services beyond the "formatting or programming functions" and the non-attributable "search or retrieval costs" may be delineated in both the list of services that may be charged for, as well as in the list of services that cannot be charged for). The Commission believes the legislature did not intend such an untenable outcome.

57. To the extent the respondents' arguments can be construed as a claim that redaction of public records constitutes "programming or formatting," the Commission has previously concluded that the redaction of public records does not constitute "formatting or programming"

for which fees may be assessed pursuant to §1-212(b)(1), G.S. *See* Docket # FIC 2022-0176, *David Collins and The Day, v. Chief, Police Department, City of New London; Police Department, City of New London; Mayor, City of New London; and City of New London* (April 12, 2023).

58. It is found that the review and redaction tasks associated with the provision of the requested records in this case do not constitute "formatting or programming functions", within the meaning of §1-212(b)(1), G.S.; and it is concluded therefore that the hourly fee charged by the respondents for the review and potential redaction of the requested records is not permitted under §1-212(b)(1), G.S.

59. It is further concluded therefore that the respondents violated §§1-210(a) and 1-212, G.S., by conditioning the fulfillment of the requests on the complainant's prepayment of fees, in an amount equal to the respondents' employees' time reviewing the records for exempt information and potentially redacting certain information therein.

60. The respondents rely upon *Pictometry Int'l Corp. v. Freedom of Info. Comm'n*, 307 Conn. 648, 683-686 (2013); however, such reliance is misplaced. In *Pictometry,* the Supreme Court held that the Department of Environmental Protection was not barred from passing on to the requester a $25 per image fee that the Department was required to pay Pictometry to reproduce *copyrighted* aerial photographs. The Supreme Court held that:

> [T]he $25 per image copying fee is not a fee for the disclosure or copying of 'public records in a computer storage system' and, therefore, is not governed by §§1-211(a) and 1-212(b)(3), [G.S.]. Rather, it is a fee for copying a *copyrighted* public record.... The $25 per image fee provided for in the licensing agreement is not...a fee for the mechanical, material or labor costs of reproducing copies of the copyrighted materials. Rather, it is a *licensing* fee, i.e., a fee for the use of another entity's private property. Nothing in §1-212, [G.S.] suggests that it was intended to prohibit state agencies from passing on licensing fees." [Emphasis in original; citations omitted].

The Court further held that "prohibiting state agencies from passing fees incurred pursuant to federal copyright law on to the person who requested the copy would have the practical effect of barring, or at least drastically limiting, the use of copyrighted materials by state agencies." Id. Here, unlike in *Pictometry,* the applicable fees are set forth in §§1-211 and 1-212, G.S., and not in a separate statutory scheme. In addition, the respondents are not expending any amount of money to acquire or otherwise produce the records to deliver them to the complainant; instead, they seek prepayment in an amount equivalent to the employees' salary for performing a statutory duty.

Promptness

61. With respect to the complainant's claim, set forth in paragraph 22.b., above, that the

respondents failed to provide him records promptly, the Commission has defined the word "promptly," as used in §§1-210(a) and 1-212(a), G.S., to mean "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 the loss of the personnel time involved in complying with the request." *See FOI Commission Advisory Opinion #51* (Jan. 11, 1982). The Commission further explained:

> In weighing these and other factors, common sense and good will ought to be the guiding principles. The Commission believes that if an agency politely explains to a person seeking access to records why immediate compliance is not possible, that person will most likely understand and appreciate the agency's obligation to balance its duties as custodian of public records with its other duties. And as long as it appears to that person that the agency is not trying to unduly delay compliance, or impose unnecessary restrictions, he or she will most likely try to accommodate the agency. Indeed, it has been the Commission's experience that when an agency is sensitive to the needs of the requester, in most cases the agency is able to meet such person's essential requirements in a manner that also permits it to satisfactorily perform its other functions. In the final analysis, it is the Commission's opinion that this rule of reason and courtesy, if implemented, should eliminate the vast majority of potential conflicts between a citizen's right to timely access to public records, and an agency's duty to comply while processing other important business.

62. At the hearing, the complainant acknowledged that the respondents provided him with some records (i.e., metadata) responsive to his May 7 Request but contended that they failed to provide him with all responsive records, and that the records provided were not provided to him promptly.

63. The respondents contend that they have promptly responded to the complainant's requests; and that any delay in fulfilling the requests at issue was attributable, in part, to the complainant's unwillingness to prepay the fees associated with the respondents providing the complainant responsive records.

64. The respondents testified, and it is found, that there are two paralegals and three attorneys that work in the respondents' legal department.

65. The respondents' witness testified that she can review 800-1000 emails in a day, depending on the number of attachments thereto.

66. The respondents testified, and it is found, that the retrieval of metadata is entirely

performed by the Department of Administrative Services ("DAS"); and the search for and retrieval of emails are handled in collaboration with the E-discovery team at DAS.

67. The respondents testified, and it is found, that records requests are processed in the order that they are received. As found in paragraphs 3, 8, 10 and 12, above, on February 23, 2024, there were 22 requests ahead of the February 18 Request; on April 15, 2024, there were 14 requests ahead of the February 18 Request; on May 7, 2024, there were 19 requests ahead of the May 7 Request; and on June 24, 2024, there were 11 requests ahead of the February 18 Request and two additional requests ahead of the May 7 Request.

68. The respondents also testified that they are unable to simply hand over potentially responsive records because they must first review and determine whether any responsive records are exempt from disclosure.

69. It is found that the respondents first provided the complainant with some metadata responsive to the May 7 Request on September 25, 2024, and that 142 days elapsed between the May 7 Request and the production of such records. It is further found that, as of the time of the hearing, no other responsive records had been provided to the complainant, and that the respondents had ceased to conduct any further review until prepayment of the fees was received from the complainant.

70. It is found that the complainant did not provide a specific timeframe by when he needed the responsive records.

71. Based on the foregoing, and under the facts and circumstances of this case, it is concluded that the respondents violated the promptness requirements of §1-212(a), G.S., but only with respect to the outstanding responsive records.

Respondents' Actions - Treatment of Requests

72. With respect to the allegation set forth in paragraph 22.c., above, the complainant, at the hearing and in his post-hearing brief, contends that the respondents' handling of his requests, particularly concerning fees, "deviates starkly from its past practices" with his and other records requests; and that "the unprecedented fee in this matter was arbitrary, punitive, and constitutes the very unequal treatment the FOI Act is meant to prevent."

73. It is found that the respondents have provided the complainant with electronic records in response to prior records requests and at no charge.

74. The respondents testified that they "often" waive fees related to records requests and that there was an "affirmative decision" by the respondents not to do so in this case "after much discussion."

75. However, as found in *May v. Freedom of Info. Comm'n*, No. HHBCV064011456, 2007 WL 1417112, at *3 (Conn. Super. Ct. Apr. 30, 2007), §1-212, G.S., provides that "each agency determines the price for copying of its own records, *subject to certain legislative caps*"

and "that the agency *shall* waive the charge in certain circumstances.... [T]he evident scheme of the statute [§1-212, G.S.] is to leave the matter of collecting and waiving the costs of copying to the agency in question." [Emphasis added].

76. It is concluded that unless required by §1-212(d), G.S.,[9] to waive the fees, the respondents may determine whether and when to charge or to forgo fees that are authorized under §§1-212(a) and (b), G.S.

Request for Records in Electronic Format

77. With respect to the allegation set forth in paragraph 22.e., above, the complainant contends that the respondents failed to provide him with responsive records in electronic format, as he requested, in violation of §1-211(a), G.S.

78. The Commission has found that when "§1-211(a) G.S., and §1-212(b) G.S., are read together, it is clear that, with regard to computer-stored public records, a requester may dictate the specific format of the record, and a public agency must provide the record in said format, if the agency can reasonably make such copy or have such copy made." *See* Docket # FIC 2022-0075, *Calebaugh v. Town of East Granby, et. al.* (January 25, 2023).

79. It is found that the complainant requested that the requested computer-stored records be delivered to him in electronic format on more than two occasions.

80. It is found that the respondents provided to the complainant the requested metadata in electronic format.

81. The respondents testified that with regard to the outstanding responsive records, it was, and is, their intention to provide such records in electronic format upon receipt of prepayment from the complainant.

82. It is concluded that, under the facts and circumstances of this case, the respondents violated §1-211(a), G.S., because they have not provided the vast majority of the requested records to the complainant, in any format.

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[9] Section 1-212(d), G.S., provides that: The public agency shall waive any fee provided for in this section when:

(1) The person requesting the records is an indigent individual;

(2) The records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-210;

(3) In its judgment, compliance with the applicant's request benefits the general welfare;

(4) The person requesting the record is an elected official of a political subdivision of the state and the official (A) obtains the record from an agency of the political subdivision in which the official serves, and (B) certifies that the record pertains to the official's duties; or

(5) The person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a Division of Public Defender Services assigned counsel under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties.

83. The Commission has concerns regarding how the respondents proceeded with the complainant's records requests, particularly since the Commission is unaware of any other contested case since the passage of the electronic records and fee provisions in 1991, wherein §§1-211 and -212, G.S., have been interpreted as to allow public agencies to charge for employees' time reviewing and redacting computer-stored records.

84. Notwithstanding the conclusions in paragraphs 49, 59, 71, and 82, above, under the facts and circumstances of this case, the Commission declines to consider the imposition of a civil penalty.

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

1. Within 14 days of the date of the Notice of Final Decision in this matter, the respondents shall adopt a schedule for prompt and complete compliance with the requests described in paragraphs 2 and 9 of the findings above, and provide a copy of such schedule to the complainant.

2. The respondents shall complete such compliance not later than 90 days from the date of the Notice of the Final Decision in this matter. If the respondents claim exemptions for any of the responsive records, they shall provide to the complainant a privilege log identifying each of the records claimed to be exempt and the legal basis for each claimed exemption. Any records not claimed to be exempt from disclosure shall be provided to the complainant on a rolling basis, free of charge. If the respondents fail to comply with the schedule, described in paragraph 1 of the order, above, or the complainant contests any of the claimed exemptions, the complainant may file an appeal with the Commission and such appeal may be afforded expedited treatment.

3. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-211 and 1-212, G.S.

/s/ Paula S. Pearlman
Paula S. Pearlman
as Hearing Officer