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FREEDOM OF INFORMATION



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Kimberly Ciprian

Complainant(s)

against

Commissioner, State of Connecticut, Department of
Revenue Services; and State of Connecticut, Department
of Revenue Services

Respondent(s)

Notice of Meeting

Docket #FIC 2024-0840

December 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.

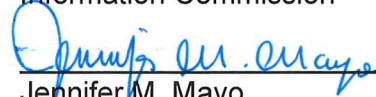
This will notify you that the Commission will consider this matter for disposition at its special meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **1:00 p.m. on Wednesday, December 17, 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 December 15, 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 December 15, 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 December 15, 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: Kimberly Ciprian
Attorney Louis P. Bucari

FIC# 2024-0840/ITRA/VDH//NAS/JMM/2025-12-4

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Kimberly Ciprian,

Complainant

against

Docket #FIC 2024-0840

Mark D. Boughton, Commissioner,
State of Connecticut, Department of
Revenue Services; and State of Connecticut,
Department of Revenue Services,

Respondents

December 2, 2025

The above-captioned matter was heard as a contested case on April 30, 2025, July 28, 2025, August 22, 2025, and October 29, 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, on August 25, 2023, the complainant filed a written complaint of discrimination with Penny Potter, the respondent department's Equal Employment Opportunity Manager (the "EEOM"). It is further found that Ms. Potter informed the complainant that when her investigation was completed, the complainant would be entitled to receive a copy of her investigation report.
3. It is found that, on or around March 5, 2024, Ms. Potter informed the complainant that she was finalizing her investigation report.
4. It is found that, on April 23, 2024, Mark Boughton, the Commissioner of Revenue Services¹, informed the complainant that the investigation was concluded and that the complainant could now request a copy of Ms. Potter's report.
5. It is found that, by email dated May 8, 2024, the complainant requested a copy of the report from Ms. Potter, as follows:

¹ The hearing officer has amended the case caption in this matter to add the Commissioner of Revenue Services' full name before his title.

As I understand the investigation has concluded. Commissioner Boughton stated I could request a copy from you. As such, I would like to respectfully request a copy of the investigation.

It is found that, later that same day, the complainant sent Ms. Potter a clarifying email concerning her request, in which she stated: "I just want to be clear that I am looking for a summary of the investigation that was performed in response to my complaint." (Emphasis supplied) (the "first request").

6. It is found that, by email dated May 8, 2024, Ms. Potter forwarded the complainant's request to Commissioner Boughton, and Louis Bucari, First Assistant Commissioner and General Counsel for the respondents.

7. It is found that on May 20, 2024, while the complainant was in a meeting with John Biello, the Deputy Commissioner of Revenue Services, she inquired about the status of her request. It is found that, at such time, Deputy Commissioner Biello informed the complainant that the report was still in draft form.

8. It is found that, by email dated November 7, 2024, the complainant again requested a copy of the report, as follows:

I am looking for a summary of the investigation that was performed in response to my complaint. I asked for this back in May and to date I have not received a response. Do we have any updates on this information?

(The "second request"). It is further found that the complainant sent the second request to Ms. Potter, Commissioner Boughton and Attorney Bucari.

9. It is found that, by email dated November 14, 2024, the complainant again requested a copy of the report from Deputy Commissioner Biello, as follows:

...I am following up on my May 8, 2024 request for [a] summary of the investigation that was performed in response to my complaint.

As you know, I requested a copy on May 8th. When we last spoke you had stated that the report was in draft form. In reviewing the FOI regulations Section 1-210 Access to public records and Section 1-206 Denial of Access to public records or meeting...it states that when a request is made in writing I should receive a response within 4 business days and according to the FOI reg[ulations] failure to receive a response shall be interpreted as a denial. I may have misunderstood when

you said the report was in draft form, were you denying my request?

I consider my email of November 7, 2024, a new request and today is the fifth business day. Could you let me know as I want to make sure that I am following the FOI regulations....

(The "third request").

10. It is found that, by email dated November 14, 2024, Deputy Commissioner Biello acknowledged the complainant's third request, stating:

...To avoid any confusion, please accept this email as the Department's acknowledgement of your FOIA request that was made in an email to Penny Potter on November 7, 2024.

11. It is found that, by email dated December 6, 2024, Deputy Commissioner Biello sent the complainant a 2-page letter dated December 6, 2024. It is found that such letter, which was signed by Commissioner Boughton, states, in relevant part, that:

As explained more fully below, please be advised that the Department does not maintain any record responsive to your request. As set forth [in your request], you are seeking "a summary of the investigation that was performed in response to [your] request." While you reference a "complaint," you do not provide any further details. However, given that your request is directed to Penny Potter, the Department is operating under the reasonable belief that your request pertains to a complaint you filed with Ms. Potter. Assuming that to be correct, said complaint was fully addressed by me some several months ago.

...Ms. Potter made me aware of a discrimination complaint that you filed with her. As the Commissioner of Revenue Services, it is my responsibility to address all such complaints immediately, and to take all actions necessary to mitigate even the perception of discrimination. Consistent therewith, and as you recall, Deputy Commissioner Biello and I met with you to discuss your concerns, which pertained to your allegations against your manager and supervisor in the Appellate Subdivision. During this conversation, I offered you the opportunity to work in the Department's Audit Unit....

[Deputy Commissioner Biello] personally met with you to address your questions [about the Audit Unit]. At said meeting, you informed Deputy Commissioner Biello that...you wanted to continue to work in the Appellate Subdivision. Subsequently, you requested that I hold a reconciliation with the manager of the Appellate Subdivision. In response, I immediately scheduled such a meeting which was held on June 4, 2024.

In said meeting, you were given the opportunity to relay your perspective...At the conclusion of this discussion, you specifically stated that you very much wanted to continue to be a part of and work in the Appellate Subdivision. So as to make certain I considered all of your concerns, I offered you the opportunity to send me an email with any additional thoughts and ideas that you wanted me to address. I never received such an email from you. Given this,...I considered this matter resolved...Consequently, there was no need or basis for Ms. Potter to conduct any further investigation into your complaint, and, therefore, no final report was prepared. Accordingly, there are no records responsive to your request.

...That said, in the event that you have any new concerns, and they pertain to the Appellate Division, please be advised that I will seek an independent investigator to conduct a thorough review of the Appellate Division...

Finally, it is critically important to note that, based on everything that has been presented to me relative to your complaint, I have found no evidence of discrimination. Based on the foregoing, the Department is of the position that it has fully complied with your [FOI] Act request.

(Emphasis supplied).

12. By email dated December 10, 2024 and filed December 19, 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 the requested record.

13. 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.

14. 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.

15. 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.”

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

Communications and Filings Preceding the Contested Case Hearings

17. It is found that in multiple written communications between the parties, and in the respondents’ Pre-Hearing Memorandum, the respondents focused on the fact that the complainant described the requested record as a “summary of the investigation.” See ¶ 5, above.

18. For example, it is found that in a February 20, 2025 email from Commissioner Boughton to the complainant, the Commissioner states, in relevant part, as follows:

I am replying on behalf of the DRS to the recent FOI requests that you filed. In an effort to fully respond to your requests, I prepared the attached summary/report in connection with the issues that you raised to the Department’s EEOM.

As you know, you specifically requested a “summary of the investigation” related to the complaint you filed with the Department’s EEOM. In response, the DRS explained to you that it did not maintain any records responsive to your

request. Although the DRS is not under any obligation to provide you with an explanation, the reason [the] DRS responded was because no such “summary” existed. In other words, and stated simply, the DRS could not produce a record that did not exist.

In reply to the DRS’ response, you submitted another FOIA request. In your request, you ask for documents related to the “summary.” Again, your request relates to a document that doesn’t exist. However, rather than denying your request again on the grounds that no records exist and in an effort to be as transparent as possible, the DRS decided to prepare a summary/report of the steps the DRS took with regard to your complaint and is providing it to you with this email. As you will see, I personally prepared [the] summary/report.

As set forth in the attached summary/report, I found no evidence of any discrimination against you....

(Emphasis supplied).

19. It is found that attached to Commissioner Boughton’s February 20, 2025 email referenced in paragraph 18, above, is a 4-page document entitled, “Summary of Findings,” which sets forth the Commissioner’s findings and determinations regarding the complainant’s discrimination complaint (the Commissioner’s “Final Decision”).

20. In addition, it is found that in their Pre-Hearing Memorandum, filed April 29, 2025, and in the affidavit of Commissioner Boughton attached to such memorandum, dated April 29, 2025, the respondents remained steadfast in their position that they do not maintain a record prepared by Ms. Potter entitled a “summary of the investigation,” and, as such, the complainant’s appeal to the Commission in this case is confusing and moot:

Page 1 of the Memorandum: Although the specific facts of the complaint that underlies Docket #FIC 2024-0840 is unclear to the Commissioner, it appears that the Complainant...is not satisfied with the response she received from the Commissioner to a [FOI Request] she submitted....That said,...the fact will show that the Commissioner himself coordinated the Department’s response to the Complainant’s very specific and narrow request and promptly informed the Complainant that the Department did not maintain any records responsive to the request.... [Therefore]...the Commissioner submits that Docket #FIC 2024-0840 had been rendered moot....

Page 2 of the Memorandum: [T]he Complainant specifically requested a “summary” of the investigation.

Page 3 of the Memorandum: Given that the Commissioner conducted the Department's investigation into the Complainant's internal complaint, he was fully aware of and in possession of all documents relevant to such request. Given that he did not prepare the type of document that the Complainant was seeking, he knew that the Department did not maintain any records responsive to the Complainant's very specific and narrow request.... Although the Department did not maintain a "summary of the investigation" at the time of the request, the Commissioner nonetheless made the effort to outline in detail the steps that were taken to address the Complainant's complaint and set forth the conclusions he reached....As noted above, it is unclear to the Commissioner what the basis of the Complainant's complaint is....

Page 3 of the Memorandum, Footnote 1: So as to be clear, the Department did not maintain a "summary" of the investigation.

Page 4 of the Memorandum: Knowing that he had not prepared a summary of his investigation of the Complainant's internal complaint, the Commissioner promptly notified the Complainant that the Department did not maintain any records responsive to her specific complaint....

Page 5 of the Memorandum: As set forth herein, through her email of November 7, 2024, the Complainant specifically requested a "summary of the investigation" related to an internal complaint she filed. Although the Commissioner could not produce a record that did not exist, he nonetheless provided the Complainant with a detailed explanation of the steps that were taken to address her internal complaint and the conclusions he reached with regard thereto....

Commissioner Boughton's Affidavit, Page 2, ¶ 7: In said request, the Complainant requested a "summary of the investigation."

Commissioner Boughton's Affidavit, Page 2, ¶ 9: Given that I conducted the Department's investigation into the Complainant's internal complaint and that I did not prepare the type of document that she was seeking, I knew that the Department did not maintain any records responsive to the

Complainant's very specific and narrow request.

(Emphasis in original).

21. Throughout the hearings on this matter and in their various filings and motions, the respondents took issue with the words that the complainant used to describe the record she was requesting—that is, the “summary of the investigation,” repeatedly contending that they do not maintain any such record. See ¶¶ 23, 25, 27, and 29, below.

The First Contested Case Hearing On April 30, 2025

22. At the first contested case hearing on this matter, the complainant testified that, although she had been informed by Ms. Potter that her investigation report was completed, had been informed by Commissioner Boughton that she could now request a copy of Ms. Potter's report, and had in fact requested a copy of the report on three separate occasions, the respondents now contended they did not maintain a “summary of the investigation.” See ¶¶ 5, 11. Since the complainant believed that the respondents maintain a report prepared by Ms. Potter entitled a “summary of the investigation,” she contended that the respondents' claim that they did not maintain such a record is disingenuous, at best. The complainant further contended that because she is entitled to a copy of the “summary of the investigation,” the respondents violated both the disclosure provisions and the promptness requirements of the FOI Act when they refused to provide her with such copy.

23. In response, the respondents contended that they did not maintain a record responsive to the complainant's request. In fact, the respondents contended that the record that the complainant requested in this case and the records that actually exist are two different matters because:

...[T]here is no proof or evidence—and we don't have any record of there being a draft report—that's where everybody is starting from this fundamentally flawed premise that there is document because Ms. Potter said there was one...just to be clear, there was no exemption claimed [in this case] because there [is] no [responsive] document...

24. Commissioner Boughton appeared and testified at the first and third hearings on this matter on behalf of the respondents.

25. At the first hearing on this matter, Commissioner Boughton testified that although Ms. Potter sent him “a couple of memos,” she never provided him with anything entitled the “summary of the investigation” concerning the complainant's discrimination complaint. When questioned by the hearing officer as to whether Ms. Potter sent him one memorandum or two, the Commissioner changed his testimony, stating that Ms. Potter sent him “emails basically.” Later in the hearing, Commissioner Boughton testified that although Ms. Potter sent him some “stuff,” she never issued a report of any kind: “I never got one.” Finally, in response to a question posed by the hearing officer as to whether he informed the complainant in a meeting

that took place on April 23, 2024 that Ms. Potter's investigation was concluded and that the complainant could now request a copy of the report, Commissioner Boughton testified that: "the investigation was concluded I believe so, but there was no report."²

Orders and Motions Following The First Contested Case Hearing

26. The respondents' testimony and counsel's legal argument at the first contested case hearing were very convincing that the respondents did not maintain a record drafted by Ms. Potter entitled the "summary of the investigation." However, because the hearing officer was unclear as to what records that the respondents maintained in connection with Ms. Potter's investigation and wanted to assure the complainant that the respondents did not maintain the record she requested, on May 14, 2025, the hearing officer:

- (a) Served notice on the parties that a continued contested case hearing had been scheduled for July 28, 2025;
- (b) Ordered that the respondents appear at the continued hearing with Equal Employment Opportunity Manager Ms. Potter, who would be called upon to testify at said hearing under oath; and
- (c) Ordered the respondents to submit to the Commission for in camera inspection by July 21, 2025, any writing, report or email drafted by Ms. Potter in connection with the complainant's discrimination complaint, which was filed with the respondent department on August 25, 2023.

27. The Commission notes that the May 14, 2025 Order, referred to in paragraph 26.c, above, provided the respondents with two months and seven days to submit the records at issue (if any) to the Commission for in camera inspection, which amount of time seemed more than sufficient given that Commissioner Boughton had made it very clear that he was very familiar with the records created in connection with the underlying investigation. See Affidavit of Commissioner Boughton, dated April 29, 2025, at ¶ 9 ("Given that I conducted the Department's investigation into the Complainant's internal complaint and that I did not prepare the type of document that she was seeking, I knew that the Department did not maintain any records responsive to the Complainant's very specific and narrow request....").

28. By Motion dated July 16, 2025, the respondents requested an extension of time to submit the records to the Commission for in camera inspection and requested that the July 28, 2025 continued contested case be postponed because Commissioner Boughton was unavailable. The Commission notes that at the time said motion was filed, two months and

² The Commission notes that Deputy Commissioner Biello also appeared and testified at the first contested case hearing. The Commission further notes that in response to a question posed by the hearing officer as to whether he informed the complainant in a meeting that took place on May 20, 2024 that Ms. Potter's report was in draft form, Deputy Commissioner Biello testified: "I don't recall...." See ¶ 7, above.

two days had elapsed since the hearing officer had issued the May 14, 2024 in camera order described in paragraph 26.c, above.

29. In the motion referenced in paragraph 28, above, the respondents faulted the hearing officer for misconstruing the scope of the underlying request and for failing to recognize that the complainant's appeal to the Commission had no merit:

...In advance of the hearing, the Respondents submitted a Pre-Hearing Memorandum, wherein they outlined both their position as to the merits of the subject complaint and the steps they took to comply with the Complainant's underlying FOIA request.

Consistent therewith, Mark D. Boughton, who is the current Commissioner of Revenue Services, appeared at said hearing and testified as to the steps the Respondents took to address the Complainant's FOIA request.

Despite the foregoing, the Hearing Officer determined at said hearing that the underlying request was broader than its actual words. In other words, although the Complainant specifically sought only a "summary of the investigation," the Hearing Officer concluded that said request also included within its scope other documents, such emails and other writings.

...

...Although Commissioner Boughton has begun the process of searching for and compiling responsive records, due to the press of other matters he will be unable to complete said process and provide such records to his counsel for review prior to July 21, 2025....³

30. By Order dated July 18, 2025, the hearing officer granted the respondents' motion for additional time to submit the records at issue to the Commission (stating that "the respondents may submit such records to the Commission prior to the start of the continued contested case hearing scheduled for July 28, 2025"), and, by implication, denied the respondents' motion to postpone the July 28, 2025 hearing.

31. Rather than comply with the hearing officer's order, by filing dated July 25, 2025, which was one business day before the date of the continued hearing scheduled to receive Ms. Potter's testimony, the respondents filed a second affidavit of Commissioner Boughton, dated

³ The Commission notes that the respondents continue to be fixated on the language the complainant used to describe the requested report. See Motion at 2, ¶ n.1 ("As set forth in [the request], the Complainant specifically requested a "summary of the investigation.") (Emphasis in original).

July 23, 2025.

32. Upon review of the second affidavit generally and the following paragraphs specifically, it appeared to the hearing officer that the respondents might not appear at the scheduled continued hearing with the records that had been ordered to be submitted to the Commission for in camera inspection; it also appeared that there had been a significant shift in the respondents' previous, steadfast position that they did not maintain a "summary of the investigation" to a new position that Ms. Potter had no authority to issue a report relative to the complainant's internal discrimination complaint:

(11) In accordance with the Department's [discrimination] Complaint Procedures, the Complainant filed her complaint with Ms. Potter. Ms. Potter notified me of the receipt of the complaint. Consistent with the Department's Complaint Procedures, Ms. Potter was to "conduct an ***informal investigation*** of the discrimination complaint." ... At that point, I authorized Ms. Potter to begin her informal review of the complaint and specifically directed her to keep me apprised of her efforts. To be clear...Ms. Potter has no authority to take any formal action with regard to the resolution of an internal complaint.... (Emphasis in original).

(12) ...Ms. Potter sent me what I considered to be a ***summary of her notes*** of the various meetings she held and documents she may have collected during her informal review of the Complainant's complaint. Upon review, I had several questions and concerns regarding Ms. Potter's notes. I related these questions and concerns to Ms. Potter. (Emphasis supplied).

(13) ...However, and despite these discussions, Ms. Potter never made a required finding during her informal review. Accordingly, Ms. Potter's informal review was essentially of no help to me in either resolving the complaint or rendering a formal decision....I determined that I had no choice but to investigate the Complainant's complaint myself.

(14) ...I reviewed all of the information provided to me by Ms. Potter (including the summary of her notes described above)....Based on this review, I found no evidence of discrimination toward the Complainant....

(24) ...While I certainly have no issue searching for and gathering any such records [as requested by the complainant], the record must be clear and accurately reflect

that Ms. Potter has no authority to issue a formal summary/report relative to the Complainant's internal complaint.

(25) ...To be clear, and as expressly reflected in the Department's Procedures, Ms. Potter has no authority to take any formal action with regard to the resolution of an internal complaint....

(26) ...While Ms. Potter may have documents that pertain to the Complainant's complaint, the record must clearly and accurately reflect that Ms. Potter has no authority to issue a summary/report....

33. To clarify that the respondents remained under an obligation to comply with the in camera order, on July 25, 2025, the hearing officer issued the following additional order:

As the continued hearing scheduled for Monday, July 28, 2025, is slated to begin at 11:00 am, the respondents should arrive fifteen minutes prior to the start of the hearing so that the undersigned Hearing Officer can receive and review the in camera records....

While the respondents are certainly permitted to claim exemptions to disclosure..., this Commission not only has the authority to review such records, it also has an obligation to do so....

The undersigned Hearing Officer notes that this is the third order that has been issued in this case, directing the respondents to submit to the Commission for in camera inspection the records that Equal Employment Opportunity Manager Ms. Potter created in connection with the complainant's August 15, 2023 discrimination complaint.

34. By email dated July 25, 2025, the respondents filed the following response to the hearing officer's July 25, 2025 order:

...Respectfully, the Department is confused by said order...The Department is preparing to and plans to submit the subject records to you for inspection in advance of Monday's hearing.... As such, the Department is unclear as to the purpose of your order of today. In fact, the tone of said order is quite concerning to the Department and seems to call into question your objectivity in this matter....

Moreover, the underlining [of the word “third”] in the [third paragraph of your order] is also troubling. It too intimates that you [are] not pleased with the Department, and you relay that displeasure by emphasizing that this is the “third” order you have had to issue....[It] is unclear why you issued that order other than to make your frustration and displeasure with the Department known...Despite the clear indications to the contrary, it is the Department’s hope that you will act in [a] fair and impartial manner.

(Emphasis in original). The respondents’ July 25, 2025 email has been marked into evidence as Respondents’ Post-Hearing Ex. 5.

The Second Contested Case Hearing On July 28, 2025

35. On July 28, 2025, prior to the start of the second contested case hearing, the respondents submitted twenty-two separate records to the Commission for in camera inspection. All of the records in the submission, except for the fifth record, are fairly described as emails or email chains, between one and three pages long. The fifth record in the submission is fairly described as a seventeen-page report. Based upon a review of the in camera records, it is concluded that only the fifth record is responsive to the request at issue in this case and that the Commission only has jurisdiction to determine whether such record is subject to disclosure. Such record shall be referred to as IC-2024-0840-1 through IC-2024-0840-17.

36. Ms. Potter appeared and testified at the second contested case hearing on this matter.

37. It is found that Ms. Potter has been the EEOM for the respondent department for 25 years. It is further found that prior to her employment with the respondent department, Ms. Potter was the EEOM for the Connecticut Military Department.

38. It is found that, on August 25, 2023, Ms. Potter received the underlying discrimination complaint and conducted a six-month-long investigation into the allegations contained therein.

39. It is found that Ms. Potter completed her investigation into the complainant’s discrimination complaint in March 2024.

40. It is found that, on or about March 12, 2024, Ms. Potter emailed a sixteen-page report⁴ containing her findings and determinations regarding the discrimination complaint to Commissioner Boughton. The Commission notes that Ms. Potter testified that the

⁴ The Commission notes that the fifth document in the in camera submission is seventeen pages, which includes Ms. Potter’s sixteen-page report along with the complainant’s one-page statement attached at the end of the report.

investigation report she produced in connection with the underlying discrimination complaint was one of the most complex reports that she had ever drafted in her 25-year tenure with the respondent department.

41. Ms. Potter testified, and it is found, that she drafts a report each time she receives and investigates a complaint of discrimination, regardless of her ultimate findings and conclusions.

42. It is found that it is Ms. Potters' practice to refer to the report that she produces after investigating a complaint of discrimination as her "summary of the investigation." In accordance with her practice, it is found that Ms. Potter referred to the final report that she produced and provided to Commissioner Boughton in connection with the complainant's complaint as her "summary of the investigation." It is further found that IC-2024-0840-1 through IC-2024-0840-17 is Ms. Potter's summary of the investigation report (hereinafter the "summary of the investigation report" or the "report").

43. Ms. Potter testified, and it is found, that after she submitted her summary of the investigation report concerning the underlying matter to Commissioner Boughton, he informed her that he agreed with her findings and determinations. It is found, however, that, by email dated May 14, 2024, Commissioner Boughton requested that Ms. Potter change her findings and determinations. It is found that Ms. Potter provided Commissioner Boughton with further clarification to substantiate her findings and determinations but refused to change them.

44. Finally, without a question being posed to her, Ms. Potter testified that this was the first time in her twenty-five-year tenure with the respondent department that a commissioner had overturned her findings and determinations with regard to a discrimination complaint or that a commissioner had conducted his or her own investigation in the wake of her completing a written summary of the investigation.

45. Finally, Ms. Potter testified that in her twenty-five-year tenure with the respondent department, this is the first time that an individual who filed a written complaint of discrimination with her and subsequently submitted a FOI request for a copy of her completed summary of the investigation report had been denied a copy of such record.

46. As noted above, after Ms. Potter issued her summary of the investigation report on or about March 12, 2024, Commissioner Boughton issued his own written, independent Final Decision on February 20, 2025 concerning the underlying discrimination complaint. See ¶¶ 18-19, 40, above.

47. It is found that, by email dated February 26, 2025, the complainant appealed Commissioner Boughton's Final Decision. It is further found that, by email dated February 28, 2025, Commissioner Boughton informed the complainant that he was hiring outside counsel "to look into [her] concerns."

The Third Contested Case Hearing On August 22, 2025

48. At the third contested case hearing on this matter, the respondents contended that IC-2024-0840-1 through IC-2024-0840-17 is exempt from disclosure pursuant to (1) §1-210(b)(1), G.S., (preliminary drafts and notes); (2) §1-210(b)(2), G.S., (invasion of personal privacy); (3) §1-210(b)(10), G.S., (prohibiting the disclosure of taxpayer return information); (4) §1-210(b)(13), G.S., (records of an investigation) and (5) §46a-68, G.S., (providing a temporal exemption from disclosure for records compiled by an EEOM in connection with an investigation concerning allegations of discrimination).

49. In response, the complainant requested that the Commission consider the imposition of a civil penalty against respondent Commissioner Boughton.

Section 1-210(b)(1), G.S., Preliminary Drafts and Notes

50. First, the respondents contended that IC-2024-0840-1 through IC-2024-0840-17 are exempt from disclosure in their entirety pursuant to §1-210(b)(1), G.S., because such records are merely a summary of Ms. Potter's notes. See ¶ 32.12, above.

51. Section 1-210(b)(1), G.S., provides that nothing in the FOI Act shall be construed to require disclosure of:

preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure[.]

52. Section 1-210(e)(1), G.S., additionally provides in relevant part that:

(e) Notwithstanding the provisions of subdivisions (1) . . . of subsection (b) of this section, disclosure shall be required of:

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

53. Upon careful in camera inspection, it is found that IC-2024-0840-1 through IC-2024-0840-17 comprise a single report containing Ms. Potter's findings and conclusions regarding the underlying discrimination complaint. It is further found that it is neither reasonable nor accurate to characterize IC-2024-0840-1 through IC-2024-0840-17 as merely a

summary of notes. Rather, it is further found that IC-2024-0840-1 through IC-2024-0840-17—or the “summary of the investigation,” as Ms. Potter referred to it—is a comprehensive, final and well-organized investigation report.

54. It is concluded that IC-2024-0840-1 through IC-2024-0840-17 do not constitute preliminary notes and are therefore not exempt from disclosure pursuant to the provisions of §1-210(b)(1), G.S.

55. Moreover, even if Ms. Potter’s summary of the investigation report could somehow be deemed to be a preliminary draft, which characterization would likewise not be reasonable or accurate, it is found that for the reasons set forth in paragraphs 56 through 57, below, such record would still be subject to disclosure pursuant to the provisions of §1-210(e)(1), G.S.

56. In this regard, it is found that throughout the first and third hearings on this matter and in both of his affidavits, respondent Commissioner Boughton testified that he was the final decision maker regarding the complainant’s discrimination complaint. It is further found that, after reviewing Ms. Potter’s report, respondent Commissioner Boughton issued what he termed as an independent and final decision regarding the underlying discrimination complaint. See ¶ 19, above.

57. In accordance with the Appellate Court’s decision in Lindquist, it is found that even if the summary of investigation report could be construed to be a preliminary draft, once Commissioner Boughton reviewed such report and thereafter produced a contrary final decision, the summary of the investigation report constituted a “report comprising part of the process by which governmental decisions and policies are formulated,” within the meaning of §1-210(e)(1), G.S. See Lindquist v. Freedom of Info. Comm’n, 203 Conn. App. 541, n.9 (2021) (“To the extent we consider the health center’s policy argument that requiring disclosure of the final comments and ratings by committee members will chill the discussion that is a necessary part of the peer review process and discourage faculty members from serving on the committee, we are not persuaded. The health center can protect from disclosure the comments and ratings by the committee members by choosing not to disclose them to the [ultimate decision maker], and [accordingly]...the committee members could discuss freely their views of the person they are evaluating, without worry that their comments and ratings would be made public.”).

58. It is therefore concluded that IC-2024-0840-1 through IC-2024-0840-17 are not exempt from disclosure pursuant to the provisions of §§1-210(b)(1) and (e)(1), G.S., as a preliminary draft.

Section 1-210(b)(2), G.S., Invasion of Personal Privacy

59. Next, the respondents contended that IC-2024-0840-1 through IC-2024-0840-17 are exempt from disclosure in part pursuant to §1-210(b)(2), G.S., because in her report, Mr. Potter identifies five individual employees by name. Specifically, the respondents contended that they should be permitted to redact such names from the report before providing it to the complainant.

60. It is found that the individuals mentioned by name in Ms. Potter's report are the employees of the respondent department who had or who exercised supervisory authority over the complainant, and such individuals' managers. It is further found that the employees of the respondents' department who had or who exercised supervisory authority over the complainant are the individuals who the complainant alleged discriminated against her.

61. Section 1-210(b)(2), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require disclosure of "... personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy...."

62. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Info. Comm'n, 228 Conn. 158, 175 (1993) ("Perkins"). The claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

63. Section 1-214, G.S., provide in relevant part that:

(b)(1) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (A) each employee concerned....

(b)(2) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files, and the agency reasonably believes that the disclosure of such records would not legally constitute an invasion of privacy, the agency shall first disclose the requested records to the person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(b)(3) Nothing in this section shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an

invasion of personal privacy.

(c) A public agency which has provided notice under subdivision (1) of subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206. Notwithstanding any provision of this subsection or subsection (b) of section 1-206 to the contrary, if an employee's collective bargaining representative files a written objection under this subsection, the employee may subsequently approve the disclosure of the records requested by submitting a written notice to the public agency.

64. It is found that the respondents did not "immediately" notify the employees who were named in Ms. Potter's summary of the investigation that the complainant had requested a copy of such record, as required under §1-214(b)(1), G.S. In fact, at the time of the second contested case hearing on this matter, which took place 1 year, 2 months and 22 days after the complainant made her first request for a copy of the summary of the investigation report and 257 days after the complainant made her third request for a copy thereof, the respondents proffered no evidence that they had given notice to such individuals that the complainant had requested a copy of such report.

65. At the third contested case hearing on this matter, the respondents conceded that none of the individuals to whom they ultimately provided notice of the request (which notice appears to have occurred after the second contested case hearing on this matter) had filed a written objection within the meaning of §1-214(c); G.S.

66. Nonetheless, it is found that Ms. Potter's summary of the investigation report constitutes a "personnel" or "similar" file within the meaning of §1-210(b)(2), G.S.

67. However, with regard to whether disclosure of the names of the respondents' employees would constitute an invasion of personal privacy, it is found that there is a legitimate public interest in how a public agency investigates a complaint of discrimination filed by and against one or more of its employees. Moreover, it is found that such interest is heightened in a case such as this where a Commissioner of a state agency requests that the agency's EEOM change her findings and determinations regarding the claims of discrimination, and, when the EEOM refuses to make such changes, the Commissioner reverses the EEOM's findings and determinations by issuing his own final decision—an action that Ms. Potter described as "unprecedented" in her twenty-five year tenure with the department.

68. Moreover, as the Connecticut Supreme Court made clear:

...when a person accepts public employment, he or she becomes a servant of and accountable to the public. As a result, that person's reasonable expectation of privacy is diminished.... The public has a right to know not only who their public employees are, but also when their public employees are and are not performing their duties.

Perkins, 228 Conn. at 177.

69. Finally, the respondents did not proffer any evidence as to why the disclosure of the names of the respondents' employees who had or who exercised authority over the complainant or the disclosure of the names of such individuals' managers would be highly offensive to a reasonable person.

70. It is therefore found that the respondents failed to prove that disclosure of the summary of the investigation without redactions would constitute an invasion of personal privacy within the meaning of §1-210(b)(2), G.S.; and it is therefore concluded that such portions of the records are not exempt from disclosure pursuant thereto.

Section 1-210(b)(10), G.S., Taxpayer Return Information

71. Next, the respondents contended that IC-2024-0840-1 through IC-2024-0840-17 are exempt from disclosure in their entirety pursuant to §1-210(b)(10), G.S., because the summary of the investigation report contains "taxpayer information."

72. Section 1-210(b)(10), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require disclosure of:

[r]ecords, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship, marital

relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or any other privilege established by the common law or the general statutes, including any such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes[.]

73. Section 12-15(a), G.S., prohibits the disclosure of “return information.”

74. Section 12-15(h)(2), G.S., defines “return information” to mean:

a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax underreportings, tax overreportings, or tax payments, whether the taxpayer's return was, is being, or will be examined or subjected to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense. “Return information” does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards or the disclosure of the identity of a confidential informant, whether or not a civil or criminal tax investigation has been undertaken or completed.

(Emphasis supplied).

75. Upon careful in camera inspection, it is found that IC-2024-0840-1 through IC-2024-0840-17 comprise a single report concerning findings and conclusions regarding a discrimination complaint. It further found that such report is essentially a personnel record, which does not identify, directly or indirectly, any taxpayers, or otherwise contain “return information” as such term is defined in §12-15(h)(2), G.S.

76. Moreover, while the respondents’ counsel contended that information within the report identified taxpayers and/or otherwise contained “return information,” other than submitting the report for in camera inspection, the respondents presented no evidence as to what specific information within the report identified, directly or indirectly, a taxpayer, or how

such information could be construed as “return information” within the meaning of §12-15(h)(2), G.S.

77. It is therefore concluded, based on the face of the in camera records and the absence of other evidence, that IC-2024-0840-1 through IC-2024-0840-17 are not exempt from disclosure pursuant to the provisions of §1-210(b)(10), G.S.

Section 1-210(b)(13), G.S., Records of an Investigation Under the Provisions of §§4-61dd or 4-276, G.S.

78. Next, the respondents contended that IC-2024-0840-1 through IC-2024-0840-17 are exempt from disclosure in their entirety pursuant to §1-210(b)(13), G.S. Specifically, the respondents contended that records of “any” investigation conducted by a state agency are exempt from disclosure in their entirety pursuant to this provision, including an EEOM’s final investigation report concerning a complaint alleging discrimination.

79. The Commission notes that prior to October 1, 2023, §1-210(b)(13), G.S., provided that, nothing in the FOI Act shall be construed to require the disclosure of:

Records of an investigation or the name of an employee providing information under the provisions of section 4-61dd [i.e., the Whistleblower Statute] or sections 4-276 to 4-280 [i.e., CT False Claims Act], inclusive[.]

80. In David Collins, et al. v. Auditors, State of Connecticut, Auditors of Public Accounts, et al., Docket #FIC 2029-0710 (May 11, 2022) (“Collins”), which involved a request for a copy of a whistleblower complaint about misuse of funds at the Connecticut Port Authority, the Commission noted that the Superior Court had examined the meaning of §§1-210(b)(13) and 4-61dd, G.S., and concluded that “[t]he unambiguous language of §1-210(b)(13)...provides two exemptions from disclosure for ‘records or an investigation’ and ‘the name of an employee providing information’ under §4-61dd.” State of Connecticut, Office of the Attorney General v. Freedom of Info. Comm’n, 2011 WL 522872, at *5 (Conn. Super. Ct. Jan. 20, 2011).

81. In Collins, after conducting an in camera review of two whistleblower complaints filed by one individual and a third whistleblower complaint filed anonymously, the Commission determined that, given the nature of the allegations, merely redacting the individual’s name from the two complaints would not protect the identity of the first whistleblower and further given the nature of the allegations submitted anonymously, the third complaint could not be disclosed without revealing the identity of the second whistleblower, in contravention of the provisions of §§1-210(b)(13) and 4-61dd, G.S. See Collins, ¶¶ 20-21. In dismissing the complaint, the Commission noted:

Nothing herein shall be construed as a conclusion that all whistleblower complaints are exempt from disclosure pursuant to §§1-210(b)(13) and 4-61dd, G.S. Such

determinations will necessarily be made on a case-by-case basis.

Collins, at Order 2.

82. In 2023, and in response to the Collins decision, the legislature amended the provisions of §1-210(b)(13), G.S., to its current version, which now provides that nothing in the FOI Act shall be construed to require the disclosure of:

Records of an investigation, including any complaint or the name of a person providing information under the provisions of section 4-61dd or sections 4-276 to 4-280, inclusive[.]

See Pub. Act 2023-197, § 1.

83. Issues of statutory interpretation are governed by § 1-2z, G.S., which provides:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

84. Considering the provisions of the statute as they existed prior to October 1, 2023, in relationship to the amendments made in 2023 in response to the Collins decision, as well as the case law construing the statute, it is found that the meaning of the current text of §1-210(b)(13), G.S., is not plain and unambiguous. Accordingly, it is further found that it is appropriate to consult the legislative history of the 2023 amendment.

85. On January 30, 2023, the Auditors of Public Accounts submitted the following recommendation to the General Assembly:

The General Assembly should consider amending Section 1-210(b)(13) of the General Statutes to clarify that complaints filed under Section 4-61dd are exempt from disclosure under the [FOI] Act.

See 2022 Annual Report to the Connecticut General Assembly, State of Connecticut, Auditors of Public Accounts, at 34 (the “Recommendation”).

86. On March 6, 2023, State Auditor John Geragosian testified before the Government Administration & Elections (“GAE”) Committee in support of the Recommendation, as follows:

...a recent [FOI] case sought the public release of a whistleblower complaint, arguing that it's not a record of investigation.

In May of 2022, the Commission dismissed the matter, finding that the whistleblower complaint was not releasable. However, the Commission did not extend its ruling to all future cases.

...Currently, whistleblowers can publicly reveal their complaints, and they often do. More often, complainants fear retribution. This section is to protect the identity of whistleblowers and the reputations of innocent parties.

...We believe that releasing these complaints would have a chilling effect on the process.

See Pub. Hearing Testimony on S.B. 1154, *An Act Implementing the Recommendations of the Auditors of Public Accounts*, S.B. 1154, before the GAE Committee, 2023 Sess.

87. After the hearings on Senate Bill 1154 concluded, the legislature enacted Public Act 23-197 § 1, which codified the current language contained in §1-210(b)(13), G.S. See ¶ 82, above.

88. It is concluded that the provisions of §1-210(b)(13), G.S., are meant to provide a permissible exemption for records of an investigation conducted under the provisions of §4-61dd or §§4-276 to 4-280, G.S., inclusive, including any complaint or the name of person providing information under such provisions.

89. It is further concluded that records of investigations, other than whistleblower investigations conducted pursuant to the provisions of §4-61dd, G.S., or false claims investigations conducted pursuant to the provisions of §§4-276 to 4-280, G.S., inclusive, are not contemplated or addressed by §1-210(b)(13), G.S.

90. It is found that the investigation of the underlying discrimination complaint was not conducted pursuant to the provisions of §4-61dd or §§4-276 to 4-280, G.S. It is therefore concluded that IC-2024-0840-1 through IC-2024-0840-17 are not exempt pursuant to the provisions of §1-210(b)(13), G.S.

Section 46a-68, G.S., records compiled by an EEOM in connection with an investigation concerning allegations of discrimination

91. Finally, the respondents contended that IC-2024-0840-1 through IC-2024-0840-17 are exempt from disclosure in their entirety pursuant to §46a-68, G.S., which section provides in relevant part:

(b)(1) Each state agency, department, board or commission shall designate a full-time or part-time equal employment opportunity officer. If such equal employment opportunity officer is an employee of the agency, department, board or commission, the executive head of the agency, board or commission shall be directly responsible for the supervision of the officer.

...

(b)(4)(A) Each person designated by a state agency, department board or commission as an equal employment opportunity officer shall ... (ii) investigate all complaints of discrimination made against the state agency, department, board or commission...., (iii) report all findings and recommendations upon the conclusion of an investigation to the commissioner... for proper action. An equal employment opportunity manager shall not disclose witness statements or documents received or compiled in conjunction with the investigation of a complaint of discriminatory conduct with the agency... until the conclusion of such investigation....

(Emphasis supplied).

92. It is clear from the text of the statute that the non-disclosure provisions are temporal in nature and the “investigation” referred to in §46a-68(b)(4)(A), G.S., is the equal employment opportunity officer’s investigation, which in this case is the investigation conducted by the respondents’ EEOM, Ms. Potter. It is found, based upon the overwhelming evidence presented in this case, that Ms. Potter concluded her investigation in March 2024. See ¶¶ 39-40.

93. Moreover, even if, as the respondents contended, the respondent Commissioner has the authority to “conduct his own investigation” in the wake of Ms. Potter’s investigation (which contention is not supported by the language of the statute), the respondent Commissioner likewise concluded his “investigation” and issued his “independent and final determination” concerning the complainant’s discrimination complaint long before the complainant made her first request for a copy of Ms. Potter’s summary of the investigation report. See ¶¶ 5, 19, above.

94. Based on the clear language of §46a-68, G.S., the complainant was entitled to a copy of Ms. Potter’s report upon the “conclusion of the investigation.” Since Ms. Potter’s investigation had concluded before the complainant requested a copy of the report, it is concluded that IC-2024-0840-1 through IC-2024-0840-17 were no longer exempt from disclosure pursuant to the provisions §46a-68(b)(4)(A), G.S.

Promptness and Consideration of the Imposition of a Civil Penalty

95. 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.

96. Because the complainant made three separate requests over a very long period of time for a copy of the same single report, the respondents had *countless* opportunities to provide her with such record. Instead, the respondents chose to vigorously and unreasonably report to the complainant and this Commission that they maintained no such record.

97. In fact, during the first contested case hearing and beyond, respondent Commissioner Boughton's unwavering testimony was that Ms. Potter never provided him with a record that constituted or was referred to as the "summary of the investigation." See ¶ 25, above. See also ¶¶ 18, 20, 23, and 32, above, and therefore that no responsive record existed.

98. It is found that the testimony referenced in paragraph 97, above, is not credible.

99. By order dated October 21, 2025, the hearing officer informed the respondents that a fourth hearing would be convened on October 29, 2025, to consider the imposition of a civil penalty against Commissioner Boughton. By email dated October 22, 2025, the respondents responded, in relevant part, that:

The Respondents, Commissioner Mark Boughton and Department of Revenue Services ("Department"), hereby notify the Commission that they intend to disclose [to the complainant] the document that is the subject of the above-referenced matter.

The Respondents' October 22, 2025 email has been marked as Respondents' Post-Hearing Ex. 6.

100. It is found that, by email dated October 26, 2025, the respondents provided the complainant with a copy of Ms. Potter's summary of the investigation report.⁵

⁵ In addition to notifying the Commission that they had provided the complainant with a copy of Ms. Potter's report, the respondents also stated:

101. The Commission notes that, at the time of the email referenced in paragraph 100, above, one year, five months and eighteen days had elapsed since the complainant made her first request for a copy of the report. See ¶ 5, above.

102. It is concluded that the respondents violated the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S., by failing to provide a copy of the requested record to the complainant in a prompt manner.

103. On October 29, 2025, the Commission convened a civil penalty hearing on this matter.

104. 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.⁶

105. It is found that Commissioner Boughton was the official directly responsible for responding to the request in this case. See ¶¶ 11, 20, above.

106. It is further found that, based on his testimony, Commissioner Boughton is familiar with and understands the requirements and obligations under the FOI Act.

In light of this disclosure, the respondents are unclear as to the need for the [civil penalty] hearing in this matter that is scheduled for October 29, 2025. As such the respondents are hopeful that the Commission will provide clarity as to the status of said hearing in light of the disclosure of the subject document.

The Respondents' October 26, 2025 email has been marked as Respondents' Post-Hearing Ex. 7. By Order dated October 27, 2025, the hearing officer informed the respondents that the purpose of the hearing scheduled for October 29, 2025 was to consider the imposition of a civil penalty against the Respondent Commissioner. By motion received and filed October 27, 2025, the respondents requested that the civil penalty hearing be postponed due to the unavailability of the Respondent Commissioner. Such motion has been marked as Respondents' Post-Hearing Ex. 8. By Order dated October 27, 2025, the respondents' motion to postpone the civil penalty hearing was denied. The Commission notes that the Respondent Commissioner appeared and testified at the October 29, 2025 civil penalty hearing on this matter.

⁶ 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.

107. It is found that the fact that Commissioner Boughton maintained the record responsive to the complaint's request but informed her on multiple occasions that no such record existed was not reasonable. See ¶¶ 11, 18, 25, above.

108. It is found that the fact that Commissioner Boughton testified under oath that he did not maintain the record that the complainant requested was not reasonable. See ¶ 25, above.

109. It is found that the fact that Commissioner Boughton averred multiples times in his first affidavit that Ms. Potter never provided him with a summary of her investigation is not reasonable. See ¶ 20, above.

110. It is found that the fact that Commissioner Boughton averred in his second affidavit that Ms. Potter's 17-page investigation report was merely a summary of her notes was not reasonable. See ¶ 32.12, above.

111. It is found that the fact that the respondents argued to this Commission that this matter was meritless and should be dismissed because the requested record did not exist was not reasonable. See ¶¶ 23, 29, above.⁷

112. It is therefore concluded that the complainant's right to prompt access to a non-exempt responsive public record was denied by the respondents "without reasonable grounds," within the meaning of §1-206(b)(2), G.S., and a civil penalty is warranted.

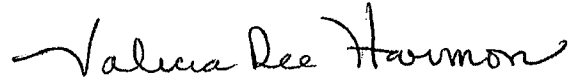
113. It is found that respondent Commissioner Boughton, as the head of the respondent agency and the official who was responsible for responding to and complying with the request at issue, is the individual directly responsible for the violations set forth in paragraph 102, above.

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

1. 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.
2. Respondent Commissioner Mark Boughton, as the official directly responsible for the denials herein, shall remit to the Commission, within forty-five (45) days of the date of the Notice of Final Decision in this matter, a civil penalty in the amount of two thousand, five hundred dollars (\$2,500.00).

⁷ The Commission further notes that at the third hearing on this matter, the respondents' counsel commented to the respondent Commissioner: "...This is what you get here. That's why they have courts." It appeared to the hearing officer that such comments were either in reference to the hearing officer's competence or handling of this matter. Counsel is admonished for his lack of decorum and professionalism before this Commission. See Audio Trans. at 11:25:30 to 11:25:45 (Aug. 22, 2025).

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

A handwritten signature in cursive script that reads "Valicia Dee Harmon".

Valicia Dee Harmon
as Hearing Officer