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FREEDOM OF INFORMATION

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Zachery DiPalma
Complainant(s)

against

Secretary, State of Connecticut, Office of Policy & Management; and State of Connecticut, Office of Policy & Management
Respondent(s)

Notice of Meeting

Docket #FIC 2025-0213

March 19, 2026

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, March 25, 2026.**

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 March 24, 2026.*** 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 March 24, 2026.*** **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 March 24, 2026*** 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

Molly Steffes
Acting Clerk of the Commission

Notice to: Zachery DiPalma
Attorney Kara A. T. Murphy
Attorney Gareth D. Bye

FIC# 2025-0213/ITRA/JMM/PSP/RB/MES/2026-03-19

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by	Report of Hearing Officer
Zachery DiPalma,	
Complainant	
against	Docket #FIC 2025-0213
Secretary, State of Connecticut, Office of Policy & Management; and State of Connecticut, Office of Policy & Management,	
Respondents	March 19, 2026

The above-captioned matter was heard as a contested case on July 22, 2025, at which time the complainant and respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. It is found that, by email dated January 9, 2025, following a notification that he had not been selected for a position of employment with the respondents, the complainant requested "a copy of the applicant tracking data chart for this position, so I can better understand what preferred qualifications I did not meet."

3. It is found that, by email dated January 10, 2025, the respondents acknowledged the complainant's request described in paragraph 2, above, and noted that they "will canvass this agency for any responsive documents which are not otherwise exempt from disclosure. . . Please note that Connecticut General Statutes (C.G.S.) §1-212 permits charging no more than twenty-five cents per page for public records . . . We will provide you with an estimate of costs prior to copying."

4. It is found that, by email dated January 11, 2025, the complainant requested:

> "[A]ll documentation that can be released under the FOIA related to the posting, and selection of the following Job Titles/Bulletin Numbers:

> Information Technology Senior Policy Advisor to the Secretary
> 241015-5571MP-001
>
> Information Technology Senior Policy Advisor to the Secretary
> 240611-5571MP-001
>
> Information Technology Senior Policy Advisor to the Secretary
> 210517-5571MP-001
>
> This includes, but is not limited to applicant names, resumes, interview questions, identification of applicants who received an interview, qualification for receiving an interview, references contacted, references received, interview panelist names, panelist notes, and selection justification. Along with that, I am requesting applicant demographic information, such as applicant ages, race, veteran status, disability status, etc."

The complainant also informed the respondents that he was "willing to pay all reasonable costs to produce the records."

5. It is found that, by email dated January 13, 2025, the respondents sent the complainant the same acknowledgement response as described in paragraph 3, above.

6. It is found that, by email dated January 13, 2025, the complainant asked that the request referenced in paragraph 4, above, also include email correspondence that included the job IDs within his request in either the title or subject of the email.

7. It is found that, by email dated January 13, 2025, the respondents again sent the complainant the same acknowledgement response as described in paragraphs 3 and 5, above.

8. It is found that, by email dated January 29, 2025, the complainant requested an update from the respondents on the requests described in paragraphs 2, 4 and 6, above.

9. It is found that, by email dated January 29, 2025, the respondents replied to the complainant's status request and stated that they were "gathering the documents related to your three FOI requests. . . It is anticipated that the cost of copies of the records will exceed $10.00 or more. As soon as we have an update, we will forward a payment request letter with the estimated cost in accordance with Connecticut General Statutes §1-212(c)."

10. It is found that, by email dated February 24, 2025, the respondents notified the complainant that they had "responsive documents [that] represent partial compliance to your request. In addition, please note that our agency withheld and/or redacted some documents as exempt from disclosure pursuant to Connecticut General Statutes §1-210(b)(2) and our agency redacted personally identifiable information ("PII") from the records. . . Your request yielded 46 pages of responsive documents, at a cost of $0.25 cents per page for a total cost of $11.50 for copying/scanning charges. Please submit a check for this amount. . . Please note that the total

costs of all documents for this request could exceed $100. If you would like to narrow your request terms, please contact OPM[1] Legal Affairs . . ."

11. It is found that, by email dated February 24, 2025, the complainant requested clarification on the records withheld and the basis for withholding such records. The complainant also requested that copies of the records be produced in electronic format, and not paper copies. The complainant also asked if "[t]he purely digital hiring process only has physical records?"

12. It is found that, by email dated March 3, 2025, the complainant again asked for clarification of the exemptions claimed and advised that if he did not receive a response by the end of the week, he would file a complaint with the Freedom of Information ("FOI") Commission.

13. It is found that, by email dated March 3, 2025, the respondents stated that they had only redacted PII from the responsive records, as referenced in paragraph 10, above. The respondents reiterated that "the cost for additional non-exempt records may exceed $100. . ." The respondents also informed the complainant that he could inspect and "photograph or scan" the records without a fee.

14. It is found that, by email dated March 4, 2025, the complainant thanked the respondents for "confirming that the PII exemption is the only [exemption] that applied . . ." The complainant also stated that "[w]hile I have no problem paying reasonable fees, and have sent the check[2] so that the records can be released, electronic records are meant to be provided at little to no cost. OPM converting electronic records to physical records to charge fees is not something FOIA permits, unless you can't reasonably provide them in digital format and converting digital records to physical adds an unnecessary barrier to obtaining public records. . ." The complainant asked the respondents to confirm that the requested records were in digital format and would be released without being converted to physical copies.

15. It is found that, by email dated March 5, 2025, the respondents summarized for the complainant the following options for production of the requested records:

> [i] providing paper copies at $0.25 per page as "the more economical option;"
>
> [ii] scanning the records (to be done by the complainant) at no cost; or
>
> [iii] pay "[a]n 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. . ."

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[1] "OPM" is the acronym for the Office of Policy & Management.

[2] It is found, however, that the complainant did not send a check to the respondents.

16. It is found that, by email dated March 5, 2025, the complainant thanked the respondents for confirming that they are required to provide records in the format requested. The complainant also informed the respondents that he would prefer to have the records in a digital, searchable format and asked the respondents to provide a quote to produce the requested records in electronic format.

17. It is found that, by email dated March 12, 2025, the respondents stated the following:

[i] They were not required to provide the records in electronic format and that it was solely within their discretion to determine the type of copy to be provided, whether in paper or electronic format;
[ii] Nevertheless, given that the complainant requested a cost estimate for the records in electronic format, OPM calculated a new estimate based upon §§1-211 and 1-212(b), G.S.;
[iii] Despite the calculation of a new estimate for costs for electronic records, OPM is permitted to request prepayment of fees and costs in excess of $10.00 or more; and
[iv] OPM has not received the check for $11.50 and would refrain from further working on the complainant's requests until such payment is received.

18. It is found that, by email dated March 12, 2025, the complainant informed the respondents that he disagreed with their interpretation of §1-211(a), G.S., as referenced in paragraph 17, above, and that he would have to pay for electronic records.

19. By letter of complaint dated March 30, 2025, and received and filed by the Commission, on March 31, 2025, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with a copy of the records requested, in the electronic format requested, as described in paragraphs 2, 4 and 6, above, and improperly charging him fees associated with computer-stored records.

20. It is found that, by letter dated June 12, 2025, the respondents wrote to the complainant that:

> "Following the fee schedules set forth in Conn. Gen. Stat. §§1-211 and 1-212(b), the prepayment request below is based upon: (1) the hourly salary rate for non-attorney and attorney staff to review, redact, and process electronic records to produce non-exempt records, so long as such labor is necessary to satisfy the request, with rates varying between $37.00 per hour (non-attorney) and $51.00 per hour or more (attorney); and (2) Everlaw storage fees in the amount of $15.00 per GB per month. The prepayment request does not include search and retrieval time by OPM staff. OPM uploaded the documents into Everlaw, an e-discovery software

> program in the routine and normal course of business for large volume FOI requests.
>
> In accordance with Conn. Gen. Stat. §§1-211, 1-212(b), and 1-212(c), OPM requests prepayment of $500.00 for non-exempt records, as calculated above. OPM cannot estimate the fees due to the hourly time necessary to review, redact, and process the electronic records to produce non-exempt records. In the event that the hourly time, plus Everlaw fees, are less than $500.00, OPM will refund the difference to you. If, however, the hourly fees and Everlaw fees exceed $500.00, OPM will bill you for the balance for the costs of the records. . ."[3]

21. The Commission takes administrative notice of its recent final decisions in Adam Osmond v. Daniel O'Keefe, Commission, State of Connecticut, Department of Economic Community Development, et al., Docket #FIC 2024-0517 (August 13, 2025) ("Osmond I") (finding the respondents' demand for approximately $41,000 in fees for computer-stored records and related labor costs was not permitted pursuant to the FOI Act); Adam Osmond v. Attorney General, State of Connecticut, Office of the Attorney General, et al., Docket #FIC 2024-0756 (November 20, 2025) ("Osmond II") (finding the respondents' position regarding prepayment of fees for computer-stored records which included fees for legal review, redactions and communications was not permitted pursuant to the FOI Act); and Nathaniel Clark v. William Tong, Attorney General, State of Connecticut, Office of the Attorney General, et al., Docket #FIC 2025-0042 (January 14, 2026) ("Clark"),[4] (finding the respondents' request for prepayment of fees for computer-stored records which included fees for legal review, redactions and communicating with colleagues was not permitted pursuant to the FOI Act), wherein the Commission was presented with substantially similar issues to those presented in this matter.

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

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

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

> [e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency,

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[3] The complainant, in response to the respondents' June 12, 2025 letter, wrote that he would pay $16.99 for the cost of a flash drive.

[4] The Commission takes administrative notice that Osmond I, Osmond II, and Clark are all currently pending appeal in Connecticut Superior Court.

> whether or not such records are required by any law or any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours … (3) receive a copy of such records in accordance with section 1-212.

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

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

26. At the hearing on this matter, the complainant alleged that the respondents violated the FOI Act by failing to provide him with the requested records in electronic format and charging fees not permitted under the FOI Act for computer-stored records.

27. The respondents contended that they have not denied the complainant's requests as they are permitted to request prepayment, which the complainant declined to pay. They also contended that they offered him the opportunity to inspect the records, which he declined to do. In addition, the respondents contended that they did not violate the FOI Act as they are permitted to charge an hourly fee to review, redact and process computer-stored records in order to produce non-exempt records responsive to records requests.

28. Accordingly, the Commission now turns to whether the respondents' request for prepayment included fees that were "permitted" under the FOI Act.

29. Section 1-212(c), G.S., limits a public agency's ability to request prepayment of fees to *only* those fees that are *required or permitted* under the FOI Act. See §1-212(c), G.S. ("[a] public agency may require prepayment of any fee ***required or permitted under the [FOI] Act***, if such fee is estimated to be ten dollars or more.") (Emphasis added).

30. 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….

31. It is found that the requested records are computer-stored records within the meaning of §1-211(a), G.S.

32. Section 1-212(b), G.S., provides:

> 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 printout which exists at the time that the agency responds to the request for such copy, an agency may include only:
>
> (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. . .

33. It is found that the labor costs that the respondents factored into their request for prepayment, included employee time spent: (a) entering the responsive records into the state's contracted document management system, Everlaw; (b) conducting a legal review to identify possible exemptions; (c) redacting the information they deem to be exempt from such records; and (d) the digital storage fees associated with using Everlaw.

34. The respondents contend that the fee provisions contained in §1-212(b)(1), G.S., permit agencies to charge a fee for all labor costs associated with processing the complainant's requests, see paragraph 33, above, except for those attributable to search or retrieval of such records. Accordingly, the respondents assert that they could: (a) charge the complainant for the labor costs described in paragraph 33, above; (b) use those costs as a basis for estimating prepayment; and (c) the failure to pay the estimated fees as justification to cease all work on the complainant's request.

35. The provisions of §1-212, G.S., set forth all permissible fees that an agency may charge in connection with providing *copies* of public records. See §1-212(a), G.S., ("[t]he fee for

any ***copy*** provided in accordance with the [FOI] Act.") (Emphasis added); see also §1-212(b), G.S., ("[t]he fee for any ***copy*** provided in accordance with subsection (a) of section 1-211. . . .") (Emphasis added).

36. In the context of non-computer-stored records (i.e. paper records), the explicit terms of §§1-212(a)(A) and (B), G.S., limit permissible fees to copying fees of twenty-five cents per page for state agencies and fifty cents per page for all other public agencies.

37. It is clear, therefore, that the fees a public agency may charge for paper records are solely derived from the costs attributable to providing the records in the prescribed medium. As an agency would not be able to provide original versions of paper records to requestors, they must make *physical copies* of such records to *provide* them to requestors. In the case of paper records, the *physical copy* is the prescribed medium in which the agency is obligated to *provide* records. Notably, nothing in §1-212(a), G.S., would permit the respondents to charge a fee for (or predicate their fee estimate on) any of the labor costs identified in paragraph 33, above.

38. As with §1-212(a), G.S., the fee provisions in §1-212(b), G.S., also specifically refer to fees for producing *copies*. See e.g., §1-212(b), G.S. ("In determining such costs for a ***copy***....") (Emphasis added). However, unlike paper records, in which a copy necessarily means a physical reproduction of the record, the meaning of the word "copy" with respect to computer-stored records is not self-evident, and the statute does not provide a contextual definition. Therefore, pursuant to §1-1, G.S.,[5] the Commission has defined the term "copy" in accordance with its commonly approved usage. See Osmond II, ¶ 27 ("to duplicate information and reproduce it in another part of a document, in a different file, or memory location, or ***in a different medium***.... Similarly, files ***can be copied from one disk or directory to another***, and data can be copied from the screen to a printer or to a data file.") (Emphasis in original).

39. Based upon the definitions of "copy" identified in paragraph 38, above, and as more thoroughly analyzed in Osmond II, this Commission has held that the use of the term "copy" in §1-212(b), G.S., refers to the reproduction or duplication of the computer-stored public record from one location or format to another. The legislature's consistent use of the word "copy" across §§1-212(a) and (b), G.S., evidences a clear intent to address the same issue in both instances – the cost associated with the production of a public record in a *given medium*. The reason why §1-212(b), G.S., has more categories of permissible charges as compared to §1-212(a), G.S., is clearly attributable to the nature of computer-stored records, which may exist in varying file formats with varying degrees of interoperability across different computer systems.[6]

40. The Commission's interpretation of the legislature's intent is also consistent with how Connecticut courts have interpreted the provisions of §1-212(b), G.S. For instance, in Taconic Data Corp. v. Town Clerk, Town of Suffield et al., judicial District of New Britain, 1998 WL 323437 ("Taconic Data Corp."), the court held that the Town Clerk improperly calculated fees for providing computer-stored public records as such fees were derived from "the content of the

[5] Section 1-1, G.S., requires that "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired peculiar and appropriate meaning in the law, shall be construed and understood accordingly."

[6] The Commission notes that this was particularly true in 1991, when the language codified in §1-212(b), G.S., was enacted. See Osmond II, n. 7.

electronic diskette as if produced on paper, and charged a corresponding $1.00 per page fee." In doing so, the court in Taconic Data Corp. noted that:

> Prior to the enactment of Public Act 91-347, §1-19a [now codified as §1-211, G.S.], required only that 'Any agency which maintains its records in a computer stored system ***shall provide a printout*** of any data properly identified. ***The 1991 amendment added the obligation to provide this nonexempt data in 'disk, tape, or any other electronic storage device or medium requested by that person . . .'***
>
> The Freedom of Information Act expresses a strong public policy in favor of the open conduct of government and ***free public access to government records***. Allowing the town clerks to charge ***thousands of dollars more than their costs in providing a copy of an electronic disk containing public information is highly offensive to the 'strong public policy' of 'free public access to government records.'*** The information in electronic disk format is available as a matter of right. There is no evidence to support the claim that §7-34a(a) [a statute providing for fees of paper copies of the same records] expresses a stronger public policy regarding town clerks', or towns', income. The contrary priority of policy is reflected in Glastonbury v. Freedom of [Info. Comm'n], 234 Conn. 704, 714 . . . (1995) [("Glastonbury")], which held: "***[a]lthough the legislature's narrowly tailored approach to the FOIA exclusions and exemptions may add a layer of complexity to agency administration, the legislature implicitly has decided that the associated costs are outweighed by the benefits derived from open government.***"
>
> . . .
>
> Sections 1-15 [now codified as §1-212, G.S.] and 1-19 [now codified as §1-210, G.S.] are provisions of the FOIA. 'The general rule under the Freedom of Information Act is disclosure with exceptions to the rule being narrowly construed.' New Haven v. FOIC, 205 Conn. 767, 774 . . . (1988); Superintendent v. FOIC, 222 Conn. 621, 626 . . . (1992); Perkins v. FOIC, 228 Conn. 158, 167 . . . (1993).
>
> Section 7-34a(a) is an exception to the FOIA, and must thus be narrowly and strictly construed. Limiting its application to paper copies gives full expression to the statutory language and carries out the strong public policy of free (or no more than cost) access to public records.
>
> . . .
>
> The fee to the plaintiff for copies of [the requested records] in electronic format ***may not exceed the towns' reasonable costs in providing the copies in that format.***

(Emphasis added).

41. As found in paragraph 33, above, the respondents included in their fee estimate the time entering responsive records into Everlaw, conducting legal review to identify possible exemptions, redacting the information they deem to be exempt and prepping them for upload to Everlaw, which the respondents testified that they use "in routine and normal course of business for large volume FOI requests." It is found that none of those tasks are attributable to the "computer-stored" nature of the requested records. Outside of paying the fees for Everlaw, the respondents would have to perform those same tasks regardless of whether such records were paper records or computer-stored records. The respondents use of Everlaw as a tool to assist in e-discovery was their business decision and not one of necessity to extract documents as contemplated in §1-212(b)(4), G.S.

42. The respondents do not appear to assert, nor could they reasonably do so, that they are permitted to charge for time spent on legal review and redactions if such records were paper records pursuant to §1-212(a), G.S. Therein lies the absurdity of the respondents' interpretation of §1-212(b), G.S. Accepting such interpretation necessarily requires the conclusion that, in passing the language now codified in §1-212(b), G.S., the legislature meant to create two parallel fee provisions wherein fees for the *exact* same work were prohibited for requests for paper records but permitted simply if the requested records were stored in a computer.

43. Additionally, the respondents ignore the fact that §1-212(b), G.S., specifically excludes from its provisions "a printout which exists at the time that the agency responds to the request for such copy . . . ." Although the term "printout" is not defined in the FOI Act, the Commission has held that, in the context of computer-stored records, it means a "[f]orm of computer system output, printed on a page by a printer..." (i.e. a "printout" or "hardcopy"). See Osmond II, ¶ 32. By its own terms, §1-212(b), G.S., excludes those records that, while stored on a computer, are maintained by the agency in physical form at the time of the request. This exclusion further underscores that the fee provisions of §1-212(b), G.S., are designed to address the costs associated with providing a computer-stored record in a particular format or medium because, if a record already exists as a printout, any costs associated with *providing* that record stem from making a copy for the requestor.

44. Just as it would be absurd for the legislature to prohibit or permit fees for the exact same work based on whether such records are paper records or computer-stored records, it is even more absurd to assume that the legislature intended to condition such fees on whether a public agency has previously printed out a computer-stored record. As noted in paragraph 41, above, any review or redactions are not dependent on whether such records are paper records or computer-stored records. Such tasks are entirely dependent on the *contents of the records* and are not contingent on the medium on which the requestor seeks such records.

45. It is found that, as with the improperly calculated fees in Taconic Data Corp., the respondents' interpretation of §1-212(b), G.S., is "highly offensive to the strong public policy of

free access to government records" and, therefore, must be rejected. (Internal quotation marks omitted). Taconic Data Corp., 1998 WL 323437, at *2-3.[7]

46. The Commission recognizes that the process of providing a copy of a computer-stored record in a specific format or medium can be time intensive and may require an agency to expend funds it otherwise would not have to. Section 1-212(b), G.S., clearly permits fees to cover these costs. It does not, however, afford public agencies *carte blanche* to charge for an entirely separate category of fees simply because the records were stored on a computer as opposed to paper.

47. At the hearing on this matter, the respondents further contended that it would be necessary to perform formatting or programming in order to provide non-exempt records responsive to the complainant's requests.

48. The respondents testified that the "formatting or programming" function included marking responsive records as either exempt, or not, and flagging for further review.

49. This Commission has defined the term "formatting," as used in the context of computers and computer-stored records, to refer to the underlying structure and arrangement of data for a given computer-stored file or record, independent of the contents of such file or record. See Osmond II, ¶¶ 46 through 50. Conversely, this Commission has also held that redactions are content-based edits to records. See Osmond II, ¶ 52.

50. Accordingly, it is found that because "formatting" has no bearing on a document's content, and redactions are content-based edits, redactions cannot, and no not, constitute "formatting" within the meaning of §1-212(b)(1), G.S. See also Osmond II, ¶¶ 54 through 57.

51. The respondents, in arguing that redactions constitute "formatting," ignore the crux of §1-212(b)(1), G.S., that any "formatting" must be *necessary* to the provision of the copy "on paper, disk, tape, or any other electronic storage device or medium ***requested***." (Emphasis added) See §1-211(a), G.S. In doing so, the respondents render the phrase "as requested" superfluous, and such interpretation must be rejected. Connecticut Podiatric Medical Ass'n v. Health Net of

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[7] The respondents also argue that there was no "denial" of the complainant's request, because the complainant was required to prepay the fees quoted by the respondents, but did not. This argument presumes the fees that form the basis for such estimate were proper. For the reasons set forth in paragraphs 35 through 44, above, the Commission rejects the respondents' argument. The Commission further notes that fees, such as the kind the respondents propose:

> would have the practical effect of denying the [public] access to records, that by statute, must be made available to the public. Such 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.

Hartford Courant Co. v. Freedom of Info Comm'n, 261 Conn. 86, 100 (2002) ("Hartford Courant") (concluding that Department of Public Safety improperly calculated a fee of $20,375,000 for the complainant's request for "a digital copy of all of the fields of information typically produced on a Bureau of Identification rap sheet for every adult in the database" on either a tape or CD-ROM. The Court concluded, for various reasons, that such fee conflicted with §1-212(b), G.S.)

Connecticut, Inc., 302 Conn. 464, 474 (2011) ("[i]t is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . .[I]n construing statutes, we presume that there is purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . .").

52. The Commission has long held that public agencies cannot charge a fee for the time spent redacting public records, and the Commission's position, as described in paragraphs 50 and 51, above, is consistent with both case law and its prior decisions.

53. Kozlowski v. Freedom of Info. Comm'n, Docket No. CV-96-0556965, 1997 WL 435860 (Conn. Super. Ct. July 29, 1997) ("Kozlowski"), is the only court case to consider the assessment of fees in relation to redactions. Kozlowski involved a request to the Department of Motor Vehicles ("DMV") to inspect records of work permit applications submitted to the department by motorists whose operator's licenses had been suspended or revoked. See Id., at *1. The DMV responded that it would permit access to inspect such records, but that the requestor would need to pay associated fees.

54. The records in Kozlowski were *paper records*[8] that contained certain sensitive information that the DMV was required, by law, to redact. In determining what fees could be assessed for access to such records, the Court reasoned that:

> [In order to permit the requestor to inspect the records], the department would have to ***copy the records***, redact the prohibited names and addresses, and only then allow [the requestor] to inspect the redacted copies of the information he desired. Thus, under the unique circumstances of this case, ***compliance with the complainant's request to inspect records necessarily required the department to make copies of those records***.
>
> . . .
>
> Since [the requestor's] request to inspect public records in this case ***required the department to make copies of those records*** in order to comply with the law, the department was entitled to charge [the requestor] any fees that applicable statutes permit. ***Of course, [the requestor] would be entitled to keep the copies for his own use.***

(Emphasis added). Id. at *2-3.

55. The court in Kozlowski clearly understood that, because the records at issue were paper records, the DMV would have to make another *copy* of such records, in order to redact the pertinent information. The only alternative would be for the DMV to redact the *original versions* of the record, which would destroy the original records, rendering them useless to the DMV.

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[8] This is clear from the DMV's assertion that "***there is no computerized index of work permit applications***." Kozlowski, 1997 WL 435860, at *1.

56. Kozlowski centers on the cost of providing access (in that case through inspection) to a public record in a prescribed medium. Because such records were paper records, that prescribed medium, pursuant to §1-212(a), G.S., is a physical reproduction of the record (i.e., a paper copy). Nothing in the court's analysis remotely suggests that the DMV could also charge for the *time* it would take them to redact those copies after they were made.

57. The Commission in Jessica Stedman v. Paul Vogel, Superintendent of Schools, Regional School District #1, et al., Docket #FIC 2018-0293 (February 13, 2019) ("Stedman") applied Kozlowski, when the Regional School District #1 (the "District") charged a requestor $.75 per page for redacted copies of records.

58. Unlike Kozlowski, however, the requestor in Stedman, requested computer-stored records (e.g., emails), and also requested that "***any copies be provided to her electronically via email***." Id. at ¶ 3.

59. In Stedman, the Commission found that:

> the superintendent printed out the potentially responsive emails ***because it was easier for her to read them that way, rather than on her computer***, and because she believed that some of the emails might need to be redacted. Although the Commission appreciates that it may be easier for some people to review emails when they are in printed form, as opposed to reading them on a computer screen, ***the FOI Act does not permit a public agency to charge a fee for a copy of a nonexempt electronic record, when the requestor has asked that such record be provided electronically. The Commission takes administrative notice of the fact that there is no cost associated with transmitting a record electronically.***

(Emphasis added). Id. at ¶ 18.

60. The Commission's conclusion in Stedman, turned on whether it was *necessary* for the public agency to print out computer-stored records to make redactions. In Stedman, the Commission recognized that the records at issue were printed out as a matter of convenience for the respondent, as opposed to being necessary to make mandatory redactions. Id. at n. 2. ("The Commission notes, however, 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 requestor the statutory fee for that copy.") (Emphasis in original).

61. Additionally, such records were requested to be produced in an electronic format (specifically, email). Therefore, the District was not required to print out the records to provide them in the medium requested. Id. ("Accordingly it is concluded that the respondents violated §§1-211(a) and 1-212(b), G.S., by charging the complainant a copy fee of $.25 per page for unredacted ***paper copies, rather than providing them to her electronically, free of charge as she requested***.") (Emphasis added).

62. Notably, the District in Stedman,

> Conceded at the hearing in [that] matter, that they violated §1-212, G.S., by charging a flat 'redaction fee' for the redacted records in addition to the copying fee, which resulted in the complainant being charged $.75 per page for redacted copies. At the second hearing in [that] matter the respondents represented that they had refunded the complainant the amount of this redaction fee.

Id. at ¶ 20 (citing Kozlowksi).

63. The Commission concluded in Osmond II, that the respondents' request for prepayment of fees was improperly predicated on costs not associated with providing copies of computer-stored records in a requested format as required by §1-211(a), G.S.

64. The Commission notes that the respondents' assertion that they can charge for redactions appears to directly conflict with the legislature's own understanding of the matter. Specifically, as noted in Osmond I:

> [T]he 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-Worn 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.

See Osmond I at ¶ 55. See also Osmond II at ¶¶ 71 and 72.

65. The Commission also notes that in 2026, Senate Bill 225, *An Act Concerning Fees for Copying, Reviewing and Redacting Records Created by Police Body-Worn Recording Equipment and Dashboard Camera*, the legislature is again seeking to allow law enforcement agencies to charge a redaction fee for body-worn and dashboard cameras.

66. Based upon the foregoing, it is found that the plain language of §1-212(b), G.S., does not support the respondents' position that the time spent redacting records constitute permissible charges under the FOI Act.

67. The Commission has previously held that the redaction of public records does not constitute "programming or formatting" for which fees may be assessed pursuant to §1-212(b)(1), G.S. See David Collins and The Day, v. Chief, Police Department, City of New London et al., Docket FIC#2022-0176 (April 12, 2023).

68. Although the respondents' witness testified to spending over two hours "programming and formatting" the complainant's requested records, it is found that she was redacting the records, and was not engaged in "programming or formatting."

69. The Commission's previous conclusions in Osmond I, Osmond II, and Clark do not support the respondents' position that it is permissible to charge a fee for time spent redacting. The Commission reaches the same conclusion with respect to the respondents' contention that they can charge a fee for time spent in anticipation of or preparation for redactions.

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

71. The respondents testified that they use Everlaw to process large FOI requests efficiently. This claim, however, is contradicted by their actual practice. Instead of facilitating the prompt release of records, the respondents use a fee structure that discourages the use of Everlaw through excessive and prohibited charges. In the complainant's case, the respondents explicitly told him to obtain the requested records via paper copies or by scanning the documents himself.

72. While §1-211(a), G.S., requires an agency to develop a program, or contract with an outside entity, to produce records that they *cannot otherwise extract*, it does not, as the respondents would have it, allow for payment of fees for records the respondents could produce, but choose to use a third-party e-discovery provider, like Everlaw, to make the task easier.

73. 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 [FOI] Act at the least cost possible to the agency and to persons entitled to access to nonexempt public records under the [FOI] Act. . ."

74. The Commission also finds the respondents' position unavailing regarding their perceived ability to charge prepayment fees, based upon redacting exempt information—when such fees would, ultimately, need to be waived pursuant to §1-212(d)(2), G.S. Taken to the extreme, the respondents could charge the complainant for $25,000 in fees and then have to return every dollar in the event that every potential record was exempt from disclosure.

75. As the Commission found in Clark, it so too finds here that it is entirely improper for the respondents to request prepayment of estimated fees predicated on costs that would ultimately need to be waived, pursuant to §1-212(d)(2), G.S.

76. It is therefore found that the respondents' request for prepayment of fees was improperly predicated on labor costs not associated with providing copies of computer-stored records in a requested format, as required by §1-212(a), G.S.

77. 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.

78. It is further concluded that the respondents violated §§1-210(a) and 1-212, G.S., by conditioning the fulfillment of the complainant's request on his prepayment of fees for computer-stored records, in an amount equal to the respondents' employees' time "programming or formatting" the records in preparation of their review for potentially exempt records, or portions thereof.

79. Accordingly, it is concluded that the respondents violated the fee provisions of §1-212, G.S.

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

1. Within sixty (60) days of the Notice of Final Decision in this matter, the respondents shall provide the complainant with all computer-stored records responsive to his requests described in paragraphs 2, 4 and 6, of the findings above, free of charge.

2. In complying with paragraph 1 of the order, the respondents may withhold only those records, or portions thereof, for which the respondents are otherwise required, by federal law or state statute (as set forth in §1-210(a), G.S.), to withhold, including the attorney-client privilege, as set forth in §52-146r, G.S., and incorporated in §1-210(b)(10), G.S.

3. If any records are withheld, in whole or in part, pursuant to paragraph 2 of this order, above, the respondents shall submit an affidavit sworn to or attested by a person with the requisite knowledge identifying, and briefly describing, such records, as well the basis in law requiring them to withhold such records, in whole or in part. Such affidavit shall be submitted within sixty (60) days of the Notice of Final Decision in this matter.

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

/s/ Jonathan M. McCann
Jonathan M. McCann
as Hearing Officer