NO. HHB CV15-5016760S	:	STATE OF CONNECTICUT
JAMES TORLAI	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION	:	JUNE 27, 2016

Memorandum of Decision

The plaintiff, James Torlai, appeals from the decision of the defendant freedom of information commission (commission) dismissing his complaint against the defendant state department of emergency services and public protection (department) concerning its response to his request for arrest records. Based on the discussion that follows, the court affirms the commission's decision and dismisses the appeal.

I

On May 3, 2013, the plaintiff mailed a request to the department under the freedom of information act (act); General Statutes § 1-200 et seq.; seeking information about all driving under the influence (DUI) arrests made or processed by Connecticut State Police Troop L in June, 2012. The request sought the name and address of each person arrested, a list of all charges, a report of the arrest, and all test results related to the DUI charge. (Return of Record (ROR), p. 161.)

On June 21, 2014, the department provided the plaintiff with a list of twenty-one arrests by case number. The department also provided criminal information summaries or "press releases" regarding six arrests. The department withheld information on the remaining cases because the information had become subject to erasure under state law. (ROR, pp. 11-23, 29,

102, 222-23, 267.)[1]

On July 14, 2014, the plaintiff filed a complaint with the commission. The department provided some supplemental disclosure up through the hearing date of May 5, 2015. (ROR, pp. 29, 97, 221.) On July 10, 2015, the commission released its final decision finding that the department did not violate the act.

The plaintiff appeals.

II

Under the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., judicial review of an agency decision is "very restricted." (Internal quotation marks omitted.) *MacDermid, Inc. v. Dept. of Environmental Protection*, 257 Conn. 128, 136-37, 778 A.2d 7 (2001). Section 4-183 (j) of the General Statutes provides as follows: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Stated differently, "[j]udicial review of an administrative agency decision requires a court to determine

[1]Apparently, the department discovered three other cases during the process, bringing the total to twenty-four. (ROR, pp. 17, 228, 267.)

whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable." (Internal quotation marks omitted.) *Schallenkamp v. DelPonte*, 229 Conn. 31, 40, 639 A.2d 1018 (1994). "It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion." (Internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

Our Supreme Court has stated that "[a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts. . . ." (Internal quotation marks omitted.) *Longley v. State Employees Retirement Commission*, 284 Conn. 149, 163, 938 A.2d 890 (2007). "Even for conclusions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse if its discretion. . . . [Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been

subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation. . . . [When the agency's] interpretation has not been subjected to judicial scrutiny or consistently applied by the agency over a long period of time, our review is de novo." (Citation omitted; internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission,* 310 Conn. 276, 281-83, 77 A.3d 121 (2013).

III

At the time of the plaintiff's request for records from the department, the governing statute was General Statutes (Rev. to 2015) § 1-215, which was part of the act.[2] Section 1-215 provided as follows: "(a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1–212 and subsection (a) of section 1–210, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1–210. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested. (b) For the purposes of this section, 'record of the arrest' means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report,

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[2]Public Acts 2015, No. 15-164, § 1 made significant changes to § 1-215, but no party claims reliance on them. Therefore, references to § 1-215 will refer to the 2015 revision of the statute.

news release or other similar report of the arrest of a person." General Statutes § 1-215 (Rev. to 2015).[3]

The plaintiff first contends that the commission erred by concluding that the department did not violate the act when, on June 21, 2014, the department provided some arrest records to the plaintiff in response to his May 3, 2013 request but failed to disclose to him information regarding the arrest of Joseph Betlinski (CFS or Case # 1200317537.) It is not clear that the commission specifically addressed this contention. Nonetheless, the record supports the commission's implicit rejection of it. The record discloses that, on June 21, the department provided the plaintiff with a case incident list of twenty-one DUI arrests made by Troop L during the month of June, 2012 (ROR, p. 12.) In addition, the department disclosed to the plaintiff the criminal information summaries regarding six of those arrests. (ROR, pp. 11-23, 267.) The criminal information summary, which is a "news release" or "press release" under § 1-215 (b), contains the name and address of the person arrested, the charges, the date, time and place of the arrest, and a summary of the incident. (ROR, pp. 13-18, 96, 112.) A department attorney did not include within this group a criminal information summary concerning Betlinski because neither the court nor the State Police Bureau of Identification had any information on his arrest, which indicated to the attorney that the arrest was probably erased. (ROR, pp. 94, 134-137.) The attorney did not receive further information on the case until after October 21, 2014, on which date erasure of the information took effect. (ROR, pp. 134-37.)

The plaintiff complains that the department had no authority to withhold the Betlinski

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[3]The reference to chapter 961a includes provisions such as General Statutes § 54-142a, which is entitled "Erasure of Criminal Records." See notes 5, 10 infra. The references to §§ 1-210 and 1-212 refer to other parts of the act, which the court will discuss below.

records from the public based on the mere possibility that they might be subject to erasure.[4] But here the department had a reasonable belief that the Betlinski records might be erased because it could find no other information on them. One of the principle erasure statutes, General Statutes § 54-142a (e) (1), makes clear that "[t]he clerk of the court . . . or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section . . . ."[5] Nothing in the act requires the department to risk violation of the erasure statute merely to respond to the plaintiff's request. The erasure statutes serve an important purpose that could be thwarted if the department acts prematurely. See *State v. Anonymous*, 237 Conn. 501, 516, 680 A.2d 956 (1996) (the "fundamental purpose of the records erasure and destruction scheme embodied in § 54-142a is to

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[4]The plaintiff raises this issue more generally with regard to all of the erased records later in his appellate brief. For the sake of clarity, the court has followed the plaintiff's organization of the issues and will address the Betlinski records separately.

[5]In full, § 54-142a (e) (1) provides as follows: "(e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain."

erect a protective shield of presumptive privacy for one whose criminal charges have been dismissed."). For this reason, the commission, to the extent that it reached this issue, reasonably concluded that there was no violation of the act, thus satisfying the standard of review on appeal. See *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission,* supra, 310 Conn. 281.

The plaintiff makes a related request that the court find that Betlinski's DUI breath test results are not subject to erasure. As defined in § 1-215 (b), "record of the arrest" does not appear to encompass breath alcohol test results. In any case, the plaintiff's principal brief contains no citations to the record as to whether and when he raised this issue and no analysis of the erasure statute and how it applies in this context. Under these circumstances, this issue is not properly before the court. See *Dragan v. Connecticut Medical Examining Board,* 223 Conn. 618, 632, 613 A.2d 739 (1992) ("A party to an administrative proceeding cannot be allowed to participate fully at hearings and then, on appeal, raise claims that were not asserted before the board."); *Raynor v. Commissioner of Correction,* 117 Conn. App. 788, 796-97, 981 A.2d 517 (2009), cert. denied, 294 Conn. 926, 986 A.2d 1053 (2010) ("Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly . . . .") [Internal quotation marks omitted.][6]

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[6]The commission found that the plaintiff raised three issues at the hearing: that the provision of the records was not prompt; that the department retroactively applied the erasure statute ; and that the records were illegible. (ROR, p. 267.) There is no indication that the plaintiff claimed before the commission that the breath test strips were not subject to erasure.

The plaintiff's reply brief contains some analysis of the issue. However, it is improper for the appellant to brief an issue for the first time in a reply brief, because the appellees – here the defendants – do not have an opportunity to respond in writing. See *Perry v. State,* 94 Conn. App. 733, 740 n.5, 894 A.2d 36, cert. denied, 278 Conn. 915, 899 A.2d 621 (2006).

II

The plaintiff next argues that the commission erred in the findings set forth in paragraph sixteen of its decision. Paragraph sixteen states: "It is further found that three other records were outstanding at the time of the hearing in this matter. Specifically, it is found that arrest record identified as CFS #1200372619 was provided to the [plaintiff] at the hearing in this matter, and that [the department] do[es] not maintain the records responsive to the [plaintiff's] request with respect to the arrest records identified as CFS #1200366329 and 1200317964." (ROR, p. 267.)

With respect to CFS #1200372619, the plaintiff acknowledges, and the record confirms, that the plaintiff did receive the criminal information summary concerning this arrest at the May 5, 2015 commission hearing in this case. The plaintiff nonetheless complains that the department did not provide the DUI test results. (Plaintiff's brief, p. 7; ROR, pp. 103, 199.) Again, the plaintiff provides no citation to the record to show that he raised this claim before the agency or any analysis in his principal brief to demonstrate why the commission erred in failing to order disclosure. Therefore, the claim is not properly before the court. See *Dragan v. Connecticut Medical Examining Board,* supra, 223 Conn. 632; *Raynor v. Commissioner of Correction,* supra, 117 Conn. App. 796-97; *Perry v. State,* supra, 94 Conn. App. 740 n.5.

Although the plaintiff does not acknowledge it, the department provided the second criminal information summary, which was for CFS # 1200317964, at the May 5 hearing. (ROR, p. 15.) The third and remaining record is CFS #1200366329 and concerns a person with the surname of Cushing. Again, the commission found that the "department do[es] not maintain the records responsive to [this] request . . . ." At the commission hearing, there was testimony that there was no press release or criminal information summary prepared by the trooper involved in

the Cushing case. (ROR, pp. 103, 112-13, 125.) The commission was fully entitled to credit this testimony. See *Briggs v. State Employees Retirement Commission*, 210 Conn. 214, 217, 554 A.2d 292 (1989). Thus, there was substantial evidence to support the commission's factual finding that there was no arrest record for the third case. See *Schallenkamp v. DelPonte*, supra, 229 Conn. 40.

At oral argument of this appeal, the plaintiff asserted that § 1-215 (b) (1) required the department to provide basic demographic information concerning the Cushing arrest even if there was no written criminal information summary or press release.[7] The plaintiff's brief, however, does not provide any analysis of the complete statute or provide any authority for the proposition that the act may essentially require an agency to create a record that does not otherwise exist. Without providing this basic analysis to the court and to the defendants, the plaintiff cannot fairly expect the court to adjudicate the issue. Accordingly, the court finds the plaintiff's argument to be abandoned. See *Raynor v. Commissioner of Correction*, supra, 117 Conn. App. 796-97.[8]

[7]As discussed, § 1-215 (b) provides: "(b) For the purposes of this section, 'record of the arrest' means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person."

[8]As the department explained during the May 5, 2015 hearing, because Cushing's arrest resulted in a conviction, the plaintiff may obtain information about the case by ordering the full police report in accordance with General Statutes § 29-10b. (ROR, pp. 112-13, 125-28.) Section 29-10b provides: "The Commissioner of Emergency Services and Public Protection shall charge the following fees for the item or service indicated:(1) Each search of the record files made pursuant to a request for a copy of an accident or investigative report which results in no document being produced, sixteen dollars.(2) Each copy of an accident or investigative report, sixteen dollars." In view of the discussion above, the court does not need to address the question of whether the availability of a record under § 29-10b statute satisfies the requirements of the act.

III

In response to the plaintiff's complaint that the department sent him illegible copies, the commission made the following finding: "The [department] provided the [plaintiff] with copies of the requested records as they were reproduced by the copying machine without any intention to provide him with illegible records and it is concluded that the [department] did not violate the disclosure provision of the FOI Act in that regard." (ROR, p. 268.) The plaintiff takes issue with this finding.

The copies that formed the basis of the plaintiff complaint at the hearing were of breathalyzer test strips. The record shows that even the original strips were of generally poor quality because of the thermal paper used to generate them. (ROR, pp. 19-23, 133, 153-54, 184.) At the time of the hearing, the department acknowledged that some of the copies were illegible and agreed to try to get better copies. (ROR, pp. 132, 154.). Further, as part of its July 8, 2015 order, the commission noted that the department "agreed to manipulate the settings on the copying machine in [an] effort to produce more legible copies of those records . . . ." (ROR, p. 268.) The plaintiff makes no claim that the department failed to honor its promise and send him more legible copies.

The act provides that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record." General Statutes § 1-212 (a). Thus, at a minimum, the act suggests that a person requesting a copy of public records receive legible copies. However, the law cannot expect an agency to do something impossible and make legible copies from illegible originals. In this situation, the commission has discretion as to whether to find a violation of the act and what remedy to impose. See General Statutes § 4-

183 (j). Here the department, rather than adopting an attitude of defiance or indifference, acknowledged the problem and agreed to take steps to remedy it. The commission now states in its brief that "[the department's] concession and self-correction ought to be commended and encouraged, as the purpose of the entire FOI administrative process is to encourage and educate, and not to be punitive." (Commission brief, p. 28.) Given these circumstances, the commission did not abuse its discretion in declining to find a violation of the act and instead encouraging the department to do better in the future.[9]

IV

The plaintiff's next claim is that the commission sanctioned the department's "pre-erasure" of arrest records whereby the department withheld them until they became subject to erasure under § 54-142a. The plaintiff notes that, of the twenty-four arrests in question, the department ultimately withheld the records of at least fourteen of them due to erasure.[10]

The commission found that, at the time of the plaintiff's May 3, 2013 request, none of the requested records had been erased.[11] It also found, after examining all the evidence and despite the two year period between the original request and the initial hearing, that the department "[had] not unduly delayed compliance with the [plaintiff's] request in this case . . . ." The

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[9]Alternatively, as discussed above, the plaintiff has not shown why the test strips, even if they could be made legible, are subject to disclosure under the act.

[10]As discussed above, the Betlinski records are an example of records initially withheld for the purpose of determining whether they are subject to erasure and then because they were in fact erased.

[11]But the plaintiff filed his request for June, 2012 records in May, 2013, almost a year after many of the arrests occurred. Several cases became subject to erasure shortly after he filed. (ROR, pp. 106-07, 267.) The plaintiff could have avoided or minimized the problem had he not delayed filing his request.

commission concluded that the records that had become subject to the erasure statute in the interim – undoubtedly because of dismissals or findings of not guilty – were thus properly withheld under the erasure statute. (ROR, pp. 267-68.)[12]

The commission relied on this court's decision in *Wood v. Freedom of Information Commission,* No. 14-5015956S, 2015 WL 601517 (Conn. Super Ct. January 21, 2015). In *Wood,* the court held that the commission acted reasonably in declining to order disclosure of criminal justice information – there pardon applications – that had become erased during the administrative process, even though the state agency in charge of keeping the records had erroneously denied a request to disclose the records before they had become subject to erasure. The court found that it was reasonable to conclude that there are other remedies that can address an agency's failure to disclose records upon request without taking away the benefits of erasure to those people entitled to receive them.

The circumstances here are similar, if not more compelling in favor of erasure. In *Wood,* the court dealt with a board of pardons and paroles that had "wrongfully denied" the plaintiff's request for records because, as of the time of the request, the records were available and not subject to erasure. Id., *4. The present case, unlike *Wood,* is not one in which the department intentionally or wrongfully withheld compliance with requests for records until the records

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[12]General Statutes § 54-142a (a) provides: "(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect."

became erased. In the present case, in contrast, the commission found, as mentioned, that the department "[had] not unduly delayed compliance . . . ."

Under these circumstances, ordering disclosure of erased records would do no good and instead would cause harm. As stated, there is no wrongful agency conduct for the commission to deter. Further, here, as in *Wood,* ordering disclosure of erased records would "[eviscerate] the policies behind the erasure statute"; id., *4; and destroy the "protective shield of presumptive privacy for one whose criminal charges have been dismissed." *State v. Anonymous,* supra, 237 Conn. 516.

The commission retains authority to enter orders enforcing the act and ultimately to impose civil penalties against an agency for noncompliance. See General Statutes § 1-206 (b) (2).[13] "These remedies are narrowly tailored to address the problem of noncompliance by the [agency] with the act without impairing the functioning of the erasure statute." *Wood v. Freedom of Information Commission,* supra, 2015 WL 601517, *4. Here, however, there was no need for further orders. The commission did not abuse its discretion in declining to order disclosure of the erased records or impose any other sanctions. General Statutes § 4-183 (j).

V

The plaintiff's final claim is that the commission erred in finding no violation of the promptness provisions in the act stemming from the department's delay in completing its

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[13]Section 1-206 (b) (2) provides in pertinent part: " "In addition, upon the 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 a 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 one thousand dollars."

response to the plaintiff's records request. The plaintiff's claim stems from the fact that, in response to the plaintiff's May 3, 2013 request, the department did not provide records to the plaintiff until between June 21, 2014 and May 5, 2015. (ROR, p. 266.) The court finds no error.

There are two promptness provisions in the act. The first is in General Statutes § 1-210 (a), which provides in part that "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 (1) inspect such records promptly during regular office or business hours . . . ."[14] The other provision is in General Statutes § 1-212 (a), which 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."[15]

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[14]In full, § 1-210 (a) provides: "Except 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 (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein."

[15]Section 1-212 (a) provides in full: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy. The fee for any copy provided in accordance with the Freedom of Information Act."

The commission made extensive findings on this issue. It found: "all records requests are complied with by the legal affairs unit of the respondent department; the breadth of the legal unit's responsibilities is vast and includes providing legal support to approximately 1,700 managers and employees, the Office of the Attorney General and private counsel handling agency matters as well as responding to hundreds of records requests it receives a year; the legal unit is understaffed (a total of 7 when fully staffed) for the amount of work it has; the staff was overwhelmed with requests and special projects related to the Sandy Hook tragedy during the time it was working to comply with the complainant's request; and the complainant himself made 42 other records requests during those years to which the legal affairs unit was working to respond." (ROR, pp. 267-68.) The commission also found: "the legal affairs unit has to rely on other units or divisions to search for and forward responsive records to it and that it began its efforts [in this case] to compile the records from those other agencies as early as May 20, 2013." (ROR, p. 268.)

The commission then interpreted the word "promptly" in the act to mean "'quickly and without 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 record; 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.'" (ROR, p. 268). The commission concluded: "Weighing all the factors related to the request, it is found that the [department has] not unduly delayed compliance with the [plaintiff's] request in

this case and that they did not violate the promptness provisions of [General Statutes] §§ 1-210(a) and 1-212(a) . . . , as alleged by the [plaintiff]." (ROR, p. 268.)

In reaching this conclusion, the commission did not in any way act "unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . ." (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, supra, 310 Conn. 281–82. There is no dispute of its factual findings. Although the plaintiff does dispute the commission's reliance on its own definition of "promptly," that reliance was proper. The definition comes from a 1982 opinion of the commission entitled *FOI Commission Advisory Opinion # 51* (Jan. 11, 1982). (ROR, p. 268.) The Superior Court has relied on this definition. See *Smith v. Freedom of Information Commission,* No. CV12-5015684, 2013 WL 3316216, *3 (Conn. Super. Ct. June 7, 2013). The commission has applied this definition in over 100 decisions since 1982. Therefore, because the commission's definition of "promptly" has been "been subjected to judicial scrutiny [and to] . . . a governmental agency's time-tested interpretation," it is entitled to deference. (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, supra, 310 Conn. 282.

It was thus entirely proper for the commission to weigh all the factors and consider the practical realities of complying with the plaintiff's request. Essentially, the plaintiff lodged a time-consuming, complex request for records with an overburdened and understaffed compliance unit. The plaintiff has never stated a reason why he needed more immediate compliance, which is a valid factor for the commission to consider under its advisory opinion. Further, the plaintiff's brief is noteworthy for the plaintiff's complete lack of acceptance of responsibility for

any part of the problem. Complying with the plaintiff's current request was in itself a large undertaking. But the plaintiff filed an astonishing 42 other records requests with the department during this two year period. (ROR, pp. 118, 268.) This sort of deluge cannot help but overwhelm a state agency. The plaintiff cannot expect a state agency to ignore all its other important functions and cater to his own requests, especially when the plaintiff expresses no valid reason for more immediate compliance. Given the difficult circumstances that the plaintiff helped to create, the commission reasonably and correctly determined that the department acted promptly.

VI

The court affirms the commission's decision and dismisses the appeal.

It is so ordered.

Schuman, J.

Carl J. Schuman
Judge, Superior Court