



filing a grievance under this contract, or while the grievance proceeding is in progress, a member seeks to resolve the matter in any other forum, whether administrative or judicial, the Board shall have no obligation to entertain or proceed with this grievance procedure.” Record in Administrative Appeals (Docket Entry #107.00), Item 1, p. 1.

UCONN reviewed the request and searched for any records pertinent to section 10.3 of the UCONN-American Association of University Professors collective bargaining agreement (UCONN-AAUP Collective Bargaining Agreement). On March 29, 2018, UCONN responded to the plaintiff's request noting that UCONN had provided the plaintiff with all non-exempt records responsive to his request but could not provide the plaintiff with records that concern the review and negotiation of the collective bargaining agreement because such records were exempt from disclosure pursuant to General Statutes §§ 1-210 (b) (1) and 1-210 (b) (9).

By e-mail dated April 2, 2018, the plaintiff filed a complaint with FOIC. An administrative hearing was held on October 23, 2018. The hearing officer viewed the withheld documents in camera and found that the withheld records are a draft of a 1977 collective bargaining agreement between UCONN and AAUP, with handwritten notes thereon, which reflect negotiation of the UCONN-AAUP Collective Bargaining Agreement. The hearing officer further found that in withholding the withheld documents, UCONN determined that the public interest in withholding the draft clearly outweighed the public interest in disclosure. In view of the foregoing findings, the hearing officer concluded that the withheld documents were exempt

from disclosure under General Statutes §§ 1-210 (b) (1) and 1-210 (b) (9). Accordingly, the hearing officer recommended that the plaintiff's complaint be dismissed.

On March 27, 2019, FOIC considered the hearing officer's report and recommendation. FOIC unanimously adopted the hearing officer's report and recommendation as its final decision. The plaintiff appeals from the foregoing FOIC final decision. The plaintiff is aggrieved because he has exhausted his administrative remedies and appeals an adverse decision of FOIC allowing UCONN to withhold certain records requested by the plaintiff under FOIA.

**STANDARD OF REVIEW:**

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183.<sup>1</sup> Judicial review of an administrative decision in an appeal under the UAPA is limited. *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). “[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency’s

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<sup>1</sup> Section 4-183 (j) provides in relevant part: “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. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings.”

findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the Supreme Court] nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” (Internal quotation marks omitted.) *Id.*

Although the courts ordinarily afford deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute’s purposes, “[c]ases that present pure questions of law . . . 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.” (Internal quotation marks omitted.) *Dept. of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

**ANALYSIS:**

The plaintiff’s FOIA request arises from his interest in confirming or disproving certain witness testimony from an October 7, 2015 arbitration hearing. The plaintiff was a UCONN professor whose employment was terminated by UCONN. The plaintiff challenged that termination through the grievance process. On October 7, 2015, at an arbitration hearing, a witness named Bannister testified that AAUP proposed the language for section 10.3 of the UCONN-AAUP Collective Bargaining Agreement when it was first negotiated in 1977. The

plaintiff, through his FOIA request, is seeking to test the truthfulness of the foregoing testimony. As a result, the plaintiff submitted a FOIA request seeking “Evidence that it was the AAUP that inserted section 10.3 Resort to Other Procedure into the UConn AAUP Collective Bargaining agreement. . . .” In response UCONN searched for any records pertinent to section 10.3 of the UCONN-AAUP Collective Bargaining Agreement.<sup>2</sup> Among other things, UCONN located a 1977 draft of the agreement that reflected negotiations that were ongoing in 1977. UCONN withheld the draft as either a preliminary draft of an agreement or records of negotiations concerning collective bargaining. Whether exempt or not and whether withheld or not, the plaintiff seeks to have someone confirm his contention that Bannister’s testimony concerning the origins of this contract section was false.<sup>3</sup>

The withheld contract draft is clearly exempt from disclosure under both General Statutes §§ 1-210 (b) (1) and 1-210 (b) (9), which respectively exempt:

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<sup>2</sup> UCONN properly treated this request as one for records pertinent to section 10.3 of the UCONN-AAUP Collective Bargaining Agreement, searched for pertinent records, produced non-exempt records and withheld exempt records. In doing so, UCONN interpreted the plaintiff’s request in the manner most favorable to the plaintiff under FOIA and executed its FOIA obligations.

<sup>3</sup> The plaintiff has argued that “[t]his case is an inversion of a typical FOIA administrative appeal; I am primarily interested in confirmation that the competent evidence I have requested does not exist; the disclosure of the withheld records themselves is only of secondary importance.” Plaintiff’s Brief, Docket Entry #113.00, p. 6. Thus, plaintiff is seeking some evaluation of records by UCONN and a subsequent communication of that evaluation to him. This clearly goes beyond the application and obligations that arise under FOIA.

(1) 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;

(9) Records, reports and statements of strategy or negotiations with respect to collective bargaining;

The withheld record is a 1977 draft of the UCONN-AAUP Collective Bargaining Agreement with handwritten notes. The withheld record was created during, and reflects, the negotiation of the foregoing agreement. The withheld document is clearly an exempt preliminary draft and notes concerning negotiation of the UCONN-AAUP Collective Bargaining Agreement. Further, UCONN has determined that the public interest in withholding the record clearly outweighs the interest in disclosure.<sup>4</sup> Thus, the records are exempt from disclosure under General Statute § 1-210 (b) (1). The withheld document is also clearly a record of the negotiations of the UCONN-AAUP Collective Bargaining Agreement. Accordingly, it is exempt from disclosure under General Statute § 1-210 (b) (9).

The foregoing exemptions and conclusions make sense and are reasonable. The withheld document is a draft of the 1977 UCONN-AAUP Collective Bargaining Agreement. The draft document reflects the ongoing negotiations at the time. The draft shows how the agreement

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<sup>4</sup> UCONN is the appropriate entity to make this determination. See *Van Nostrand v. Freedom of Information Commission*, 211 Conn. 339, 345, 559 A.2d 200 (1989). UCONN's determination in this regard is reviewed on an abuse of discretion basis. The Commission found no abuse of discretion, and this court agrees.

changed through negotiation. The withheld document also has handwritten notes on it that reflect the negotiations and the strategy thereof. The withheld record contains cross-outs and edits of the agreement evidencing their preliminary nature and the negotiation process itself. It is in the public interest to withhold documents such as these from disclosure because disclosure would inhibit the negotiation process and could undermine fair negotiations going forward. See *Wilson v. Freedom of Information Commission*, 181 Conn. 324, 332-33, 435 A.2d 353 (1980). Although these particular negotiations are dated, this agreement in a modified form continues today and there are continuous ongoing negotiations concerning it between UCONN and its union. Allowing one side to obtain insight in the thinking of the other side would unfairly tip the scales in future negotiations. As such, the legislature has exempt documents such as these from disclosure under FOIA.<sup>5</sup>

The plaintiff appears to seek more than copies of the documents. The plaintiff appears to seek some form of evaluation of the documents and a confirmation of whether the documents are evidence that AAUP inserted section 10.3 in the UCONN-AAUP Collective Bargaining Agreement. This pursuit by the plaintiff goes beyond the reach of FOIA. FOIA allows the plaintiff to obtain copies of public records provided they are not exempt from disclosure under

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<sup>5</sup> There is an expectation of privacy in the negotiation process. Obviously, exchanging drafts in the negotiation process is normal. The exchange of drafts between the two sides of the negotiation does not undermine the statutory exemption.

FOIA. FOIA does not provide the plaintiff with a basis to request an evaluation of requested documents from the corresponding public agency, whether the documents are disclosable or not. See *Wildin v. Freedom of Information Commission*, 56 Conn. App. 683, 686-87, 746 A.2d 175 (2000). FOIA places no obligation on UCONN to perform a legal analysis concerning records or to evaluate them, no matter how rudimentary the plaintiff believes such analysis or evaluation is,<sup>6</sup> other than to produce non-exempt responsive records, and that is exactly what UCONN has done here. The non-exempt responsive records have been produced, and that ends the obligation under FOIA. Accordingly, the plaintiff's request to have UCONN confirm whether or not the requested documents are evidence of which party inserted section 10.3 in the UCONN-AAUP Collective Bargaining Agreement is not a proper request under FOIA.

The plaintiff argues that the hearing below was unfair and did not afford him due process. However, the plaintiff has made no showing of how an irregularity in the hearing below prejudiced the result.<sup>7</sup> Further, the plaintiff failed to raise any issue concerning the conduct of the hearing with FOIC. The plaintiff could have objected then, sought to reopen the hearing or to

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<sup>6</sup> In his reply brief, the plaintiff argues at page 3 that: "The determination that the withheld records do not and could not corroborate Bannister's testimony would not be a subtle legal judgment requiring research and careful weighing of evidence; it would be clear on the face of it." Such is clearly not the case. However, whether it is or not, the request clearly exceeds any obligation that arises under FOIA.

<sup>7</sup> The plaintiff here has the burden of establishing that the hearing below was somehow fundamentally unfair and must additionally establish that any alleged unfairness caused a substantial prejudice to his rights in this matter. The plaintiff has clearly not carried his burden.



present additional evidence, or moved for reconsideration. The plaintiff did not give FOIC an opportunity to address any of the procedural issues that the plaintiff raises now for the first time before this court. Accordingly, the plaintiff failed to exhaust his administrative remedies concerning the procedural issues that he now raises with this court. Further, the court has reviewed the withheld documents and has determined that they are properly exempt from disclosure under FOIA, and as a result, no substantial prejudice to the plaintiff's rights has occurred. Lastly, the plaintiff's primary concern of obtaining a confirmation of which party inserted section 10.3 in the UCONN-AAUP Collective Bargaining Agreement is clearly beyond the scope of FOIA and outside the authority of FOIC. Given the foregoing, the court finds that the plaintiff's arguments concerning procedural issues at the hearing below are unavailing.

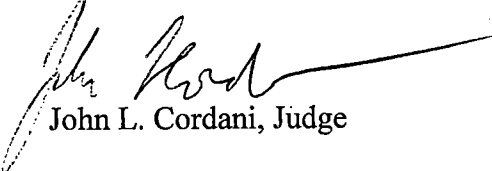
The plaintiff has failed to establish on appeal that the final decision by FOIC was (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of 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. As such, the court will respectfully dismiss this appeal.<sup>8</sup>

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<sup>8</sup> The court notes that the plaintiff filed in this appeal, in addition to his brief and his reply brief, a supplemental brief that was not authorized to be filed. Said supplemental brief contained allegations far outside of the record in this matter, and was not relevant to the proper issues in this appeal. Further, the brief contains allegations and opinions

**ORDER:**

The appeal is dismissed.



John L. Cordani, Judge

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that are completely inappropriate in this appeal. In fact, on page two of the supplemental brief, the plaintiff explicitly admits that his supplemental brief "introduces evidence that would not be admissible in an administrative appeal." As such, the court respectfully strikes the plaintiff's supplemental brief.