DOCKET NO.: HHB-CV-22-6073766-S	:	SUPERIOR COURT
ENERGY POLICY ADVOCATES	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	TAX AND ADMINISTRATIVE APPEALS SESSION
FREEDOM OF INFORMATION COMMISSION, ET AL.	:	OCTOBER 26, 2023

MEMORANDUM OF DECISION

The plaintiff, Energy Policy Advocates (EPA), appeals two decisions[1] of the codefendant, the Freedom of Information Commission (commission), exempting from disclosure certain information redacted from documents produced by the codefendant, the Office of the Attorney General (OAG) (hereinafter, the subject records).[2] Because the court concludes that there is substantial evidence in the record supporting the commission's determination that the redacted portions of the subject records are records of strategy with respect to pending litigation, the court dismisses this appeal. Indeed, after reviewing each of the subject records *in camera*, the court concludes that the redacted information in the subject records plainly falls within the meaning of an "agency's consideration of action to enforce or implement legal relief or a legal right." See General Statutes §§ 1-200(9); 1-210(b)(4).

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[1]See Return of Record (ROR), at 314 (Final Decision after Reconsideration, May 25, 2022, Docket No. FIC 2020-0122); ROR, at 627 (Final Decision after Reconsideration, May 25, 2022, Docket No. FIC 2020-0322).

[2]See documents numbered IC2020-0122-001 through -034 and IC2020-0320-001 through -003, lodged with the court for *in camera* review. See Docket Entry Nos. 144.00, 144.10.

Electronic notice sent to: 1) Atty M. Little;
2) FOIC attys McGee + Smith 3) AAG Salton.
A. Ordanopoulos, ct officer 10/26/23

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FACTS

The administrative record before the court demonstrates the following facts as relevant to this memorandum of decision which are not in dispute.

EPA is a "non-profit public policy organization dedicated to informing the public of developments in the area of energy and environmental issues and relationships between governmental and non-governmental entities as they relate to those issues." ROR, at 6. On January 14, 2020, EPA requested that the OAG provide copies of emails and other correspondence from several Assistant Attorneys General and other OAG legal staff and two outside attorneys dealing with environmental and climate change litigation. ROR, at 5-8; see also Docket Entry No. 139.00, at 3, fn. 4. On March 7, 2020, EPA made a related request to OAG for copies of documents related to data delivery standards related to the Securities and Exchange Commission (SEC) and documents related to certain members of the New York Attorney General's Office (NYAG). See ROR, at 327-331.

OAG responded to EPA's two requests within the appropriate time period. OAG produced 178 pages of records in response to EPA's January 14th request. ROR, at 9. OAG also produced an additional 34 pages of redacted documents in response to EPA's January 14th request. ROR, at 87. In response to EPA's March 7th request, OAG produced 10 pages of documents, of which 3 pages included redactions. See ROR, 9; 410-415, 422.

On March 7, 2020 and March 31, 2020, EPA appealed OAG's redactions to the commission. By final decisions dated May 25, 2022, see ROR, at 314-318, 627-632, the commission upheld OAG's redactions finding that, after *in camera* inspection of the subject

records, "it is clear from the face of those records that the redacted information is strategy with respect to pending litigation, as that term is defined in § 1-200(9)(C). . . ." See ROR, at 317, 630.

LEGAL STANDARD

"[R]esolution of [administrative appeals] is guided by the limited scope of judicial review afforded by the Uniform Administrative Procedure Act; General Statutes § 4-166 et seq.; to the determinations made by an administrative agency. We must decide, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily or illegally, or abused its discretion. Even as to questions of law, the court's ultimate duty is only to decide whether, *in light of the evidence*, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Conclusions 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. . . . Although the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given a statute by the agency charged with its enforcement[.]" (Citations omitted; emphasis in original; internal quotation marks omitted). *Rocque* v. *Freedom of Information Commission*, 255 Conn. 651, 658, 774 A.2d 957 (2001).

"Our review of an agency's factual determination is constrained by . . . § 4-183(j), which mandates that a 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 . . . (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . . This limited standard of review dictates that, with regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency. . . . An agency's factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole." (Citations omitted; internal quotation marks omitted). *Rocque*, supra, 255 Conn. 658-59.

"It must be noted initially that there is an overarching policy underlying [the Freedom of Information Act] . . . favoring the disclosure of public records. It is well established that the general rule under the act is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the . . . legislation [comprising the act]. The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." (Citations omitted; internal quotation marks omitted). *Rocque*, supra, 255 Conn. 660-61.

General Statutes § 1-210(b) states that "[n]othing in the Freedom of Information Act shall be construed to require disclosure of: . . . (4) Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is

a party until such litigation or claim has been finally adjudicated or otherwise settled[.]" "Pending litigation" is defined in General Statutes § 1-200(9) as "A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right."

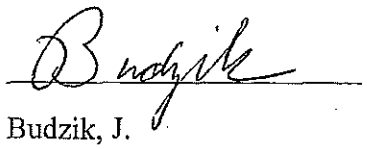
LEGAL ANALYSIS

The court concludes that there is substantial evidence in the record supporting the commission's conclusion that "it is clear from the face of those records that the redacted information is strategy with respect to pending litigation, as that term is defined in § 1-200(9)(C). . . ." See ROR, at 317, 630. The court has reviewed each of the subject records, *in camera*. The court agrees with the commission's determination that, on their face, all of redacted information in the subject records pertains to the OAG's strategy with respect to pending litigation. Generally, each of the records directly relate to OAG's consideration of how to enforce Connecticut's environmental laws.

Finally, EPA raises, in scatter shot fashion, several objections to the procedure employed by the commission in conducting the hearing process. Because the court agrees with the defendants that EPA inadequately briefed those issues, the court declines to consider those arguments. See *State* v. *Buhl*, 321 Conn. 688, 727, 138 A.3d 868 (2016).

CONCLUSION

For all the foregoing reasons, this appeal is dismissed.



Budzik, J.