

DOCKET NO. HHB-CV24-5037203-S	:	SUPERIOR COURT
IAN T. COOKE	:	JUDICIAL DISTRICT OF
Plaintiff	:	NEW BRITAIN
v.	:	AT NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION,	:	JULY 29, 2026
ET AL.,	:	
Defendants		

MEMORANDUM OF DECISION

The plaintiff has appealed from a final decision of the freedom of information commission (the Commission).¹

The record may be summarized as follows.

On April 11, 2019, the plaintiff requested that DESPP (the department) conduct a search of the email accounts of various current and former employees for certain specified time periods for all emails containing any of a list of keywords. The plaintiff sought copies of these emails. The results of this search are at issue.

On May 24, 2019, the department performed the requested search and found 304 pages of responsive records. The department redacted some pages under General Statutes § 1-210 (b) (2) (invasion of privacy exemption) and (b) (10) (attorney-client privilege), and omitted others because they had been pulled from an email account over which the department did not have

¹ The plaintiff has been denied certain records of the defendant department of emergency services and public protection and is therefore aggrieved. Conn. Gen. Stat. § 4-183 (a).

*Electronic notice sent to counsel of record:
1) S. Barry (DESPP) and 2) P. Arce (FOIC).
mailed to Pl. Cooke. A. Jordanopoulos, et al.
7/29/26*

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authority, ultimately providing the plaintiff with seventy-two pages. The plaintiff challenged the redactions, and a case hearing was held by a Commission hearing officer on August 25, 2020. The department submitted the unredacted records for in camera review.

After the conclusion of the first hearing, the department performed a second search and provided the plaintiff with 740 pages of additional nonexempt records. This led to a second case hearing on February 17, 2021, at which the hearing officer ordered the plaintiff to provide the department with a list of the pages he believed were missing. The department was ordered to submit for in camera review unredacted copies of all records the department believed were exempt from disclosure.

A third hearing on April 26, 2021, followed. The issue before the hearing officer was the extent and applicability of the department's claimed exemptions to certain records, including communications between the department's counsel and the Commission's ombudsman. The department claimed exemptions under General Statutes § 1-210 (b) (4) (pending claims and pending litigation), (b) (10) (attorney-client privilege), and (b) (18) (safety and security within a correctional institution).

On January 25, 2022, the hearing officer issued a proposed final decision. Based on his findings, the hearing officer concluded that parts of the records were protected by attorney-client privilege, but that the department had violated the Freedom of Information Act with regards to other parts, and ordered the department to disclose all nonexempt records.

The Commission held an initial meeting on February 23, 2022, regarding the proposed decision. At this meeting the department argued that the final decision should find more

documents, including the emails to the Commission's ombudsman, exempt, and the plaintiff countered that the department had waived attorney-client privilege on certain subjects when it disclosed particular records relating to those subjects. The Commission remanded the case back to a second hearing officer to address the parties' arguments. Subsequently, the plaintiff withdrew his complaint as it related to the department's communications with the ombudsman.

Upon remand, the department agreed to conduct another search, which resulted in 740 pages of responsive records, all of which were provided to the plaintiff, barring some redactions. The second hearing officer issued a proposed decision finding that, by disclosing one email protected by attorney-client privilege, the department had waived the privilege only with respect to any "identical copies" of that email, but not to different documents relating to the same subject matter. The second hearing officer further found that a large portion of the records were protected as attorney work product.

The second hearing officer recommended, and the Commission unanimously adopted, a final decision directing the department to disclose two identical copies of the attorney-client email previously disclosed to the plaintiff and the two records that were not prepared in anticipation of litigation and therefore not protected as attorney work product. All other findings and conclusions from the first proposed order remain unchanged, except to the extent they concerned claims that had been withdrawn.

The plaintiff now appeals this final decision. He raises two issues. He disagrees with the Commission's ruling regarding the department's waiver of the attorney-client privilege. He also objects to the Commission's application of the work product exception to certain requested

documents.

The issues raised by the plaintiff in his appeal are reviewed under the following standard, taken from *Chief of Police v. FOIC*, Superior Court, judicial district of New Britain, Docket No. HHB-CV-23-6081763-S (2025):

“Our resolution 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.

“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). *Id.*, 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). *Id.* 660-61."

At the oral argument of July 27, 2026, the plaintiff made clear the following. As to the two documents that the Commission released on the theory that they had previously been disclosed in another Commission proceeding, the plaintiff disagrees with the Commission's rationale.

The plaintiff contends that the exception from the attorney-client privilege should be broader, extending to more documents. He claims an unfair advantage to prosecutors affecting his pending habeas corpus petition.

The court agrees with the Commission, however. The Commission at pages 577-578 correctly found that the exception covers only "actual disclosure." See *Town Manager, Town of Groton and Town of Groton v. Freedom of Information Commission*, judicial district of New Britain, Docket No. HHB-CV24-6088967-S (2026). The two documents were actually disclosed in a previous case before the Commission.

The court also agrees with the Commission, finding 33, page 577, that the narrow disclosure did not give other parties an unfair advantage or was intended to give other parties to his other legal actions an unfair advantage.

The plaintiff further contends that the Commission had originally allowed disclosure of documents, but, on remand, had now allowed disclosure solely based on the "work product" doctrine.

The court agrees with the Commission that the state legislature in 2011 had agreed to the expansion of the "work product" privilege. The revised final decision correctly made use of this amending legislation.

Therefore, the administrative appeal is dismissed.

So Ordered.

A handwritten signature in cursive script, appearing to read "Henry S. Cohn".

Henry S. Cohn, JTR