

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Tom Arras,

Complainant

against

Docket #FIC 2019-0503

First Selectman, Town of Woodbury;  
Board of Selectmen, Town of Woodbury; and  
Town of Woodbury,

Respondents

July 14, 2021

The above-captioned matter was heard as a contested case on October 28, 2019, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. A Report of Hearing Officer was issued on January 25, 2021. At its regular meeting of April 28, 2021, the Commission unanimously voted to remand the Report of Hearing Officer to staff for further action.

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. By letter of complaint filed August 13, 2019<sup>1</sup>, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for copies of certain public records.
3. It is found that the complainant made a July 18, 2019 request to the respondents for the following:

The total costs charged to the Town of Woodbury, its agencies, boards, commissions, and Town officials, for legal fees, of any kind and for any and all issues, matters, actions, legal actions, communication, or discussions, by any and all attorneys, regarding any and all signs on the property of Thomas Arras, 76 Main Street

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<sup>1</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains subject matter jurisdiction.

South, during the time period from 1 January, 2016, up to and including 13 June, 2019[; and]

Copies of all invoices and other documents of any kind indicating, for the town of Woodbury, its agencies, boards, commissions, and Town officials, the amount of legal fees, of any kind and for any and all issues, matters, actions, legal actions, communication, or discussions, by any and all attorneys, regarding any and all signs and/or artwork, on the property of Thomas Arras, 76 Main Street South, during the time period from 1 January, 2016 up to and including 13 June, 2019.

4. It is found that the respondents provided legal invoices responsive to the request on or about July 18, 2018, but with the dates of services, descriptions of services, hours billed for the services, and itemized amounts billed for the services all redacted from the invoices (leaving only the total monthly amount billed unredacted).

5. 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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

[e]xcept 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 inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., 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.”

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

9. On November 6, 2019, the respondents submitted the records responsive to the request, described in paragraph 3, above, for in camera inspection, along with an in camera Index. Such in camera records shall be identified herein as IC-2019-0503-1 through IC-2019-0503-30.<sup>2</sup>

10. On the in camera index, the respondents contended that all of the information redacted from the in camera records is exempt from disclosure pursuant to §§1-210(b)(10) and 1-210(b)(4), G.S.

11. With respect to the respondents' claim that the redacted portions of the in camera records contain information exempt from disclosure pursuant to §1-210(b)(10), G.S., such statute permits a public agency to withhold from disclosure records of "communications privileged by the attorney-client relationship."

12. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

13. Section 52-146r(2), G.S., defines "confidential communications" as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

14. The Supreme Court has also stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra, 260 Conn. 149.

15. In the context of an attorney's billing records, the Commission notes that it is generally accepted that an attorney billing statement and time records are protected by the attorney-client privilege *only to the extent* that they reveal litigation strategy and/or the nature of the services performed. See Bruno v. Bruno, FA0540049006S, 2009 WL 2451005, at \*2 (Conn. Super. Ct. July 10, 2009). "[T]he identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are

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<sup>2</sup> In submitting the records for in camera inspection, the respondents erroneously numbered two separate pages as page "13". To avoid confusion, Commission staff renumbered those pages as "13" and "13A" respectively.

usually not protected from disclosure by the attorney-client privilege.... However, . . . bills . . . and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege.” *Id.* at \*2. In Bruno, “[m]ost of the billing records of Cohen & Wolf, P.C., in question merely refer to conferences with client or e-mails to and from client or others as well as appearances at hearings. None of that information falls within the attorney-client privilege.” *Id.* at \*3. In City of New Haven v. FOIC, et al, 4 Conn. App. 216, 220 (1985), the trial court found, after conducting an in camera review of the billing records, that there was nothing in such records to suggest they came within the purview of the attorney-client privilege. “Questions as to where and when a client had conversations with his attorney have been found not to be within the attorney-client privilege...nor have questions propounded to an attorney seeking the client’s name and the capacity in which the attorney was employed been held to fall within the attorney-client privilege.” *Id.* at 220. See also Docket #FIC 2014-240; Suzanne Carlson and the Hartford Courant v. Executive Director, East Hartford Housing Authority; and East Hartford Housing Authority (March 25, 2015) (the Commission concluded that the date of service, initials of attorney, hours and rate and amount billed were not exempt from disclosure pursuant to either the attorney-client privilege or §1-210(b)(4), G.S.); Docket #FIC 2011-619; Joseph Sargent v. Office of the Corporation Counsel, City of Stamford; and City of Stamford (October 10, 2012) (the Commission concluded that those sections of billing records that reveal how many hours were worked by each attorney and the cost of such work were not exempt from disclosure pursuant to either the attorney-client privilege or §1-210(b)(4), G.S.).

16. After careful inspection of the in camera records, it is found that the portions of the records identified below consist of *detailed*, dated entries describing the *specific* nature of the services provided:

IC-2019-0503-2 (line 6 (words 8-9));

IC-2019-0503-4 (line 4 (words 4-6), line 5 (words 5-11));

IC-2019-0503-11 (line 1 (word 8));

IC-2019-0503-12 (line 4 (words 6-9));

IC-2019-0503-13 (line 9 (words 4-6), line 10, line 11 (words 4-6), line 12 (words 8-10));

IC-2019-0503-13A (line 2 (words 4-5 and 11-12));

IC-2019-0503-14 (line 3 (words 6-8));

IC-2019-0503-15 (line 3 (word 6), line 5 (word 6));

IC-2019-0503-20 (line 7 (words 3-5), line 9 (words 4-6));

IC-2019-0503-21 (line 2 (words 3-6), line 5 (word 10));

IC-2019-0503-24 (line 3 (words 5-10), line 5 (words 7-9));

IC-2019-0503-25 (line 3 (words 5-7));

IC-2019-0503-27 (line 3 (word 12));

IC-2019-0503-28 (line 1 (word 3), line 2 (words 4-5), line 4 (words 7-8), line 7 (words 9-10), line 8 (word 4));

IC-2019-0503-29 (line 1 (words 3-5)); and

IC-2019-0503-30 (line 4 (words 4 through end), line 5, line 6 (words 8-10), line 11 (word 9), line 13 (words 5-6)).<sup>3</sup>

17. It is found, therefore, that the information described in paragraph 16, above, falls within the protection of the attorney-client privilege and is exempt from disclosure.

18. Accordingly, it is concluded that the respondents did not violate the FOI Act by withholding such information from the complainants.<sup>4</sup>

19. With respect to the remainder of the information claimed to be exempt from disclosure pursuant to §1-210(b)(10), G.S., it is found, based on a careful in camera inspection, that such information consists of dates of services, hours and amounts billed, and other information that does not fall within the protection of the attorney-client privilege and, therefore, is not exempt from disclosure pursuant to §1-210(b)(10), G.S.

20. The respondents also claimed that the remainder of the redacted information is exempt from disclosure pursuant to §1-210(b)(4), G.S., which provides that disclosure is not required of “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.”

21. Section 1-200(8), G.S., defines a pending claim as:

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 in an appropriate forum if such relief or right is not granted.

22. Section 1-200(9), G.S., defines pending litigation as:

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<sup>3</sup> The respondents did not number the lines and words on the in camera records; therefore, Commission staff numbered such lines and words in pencil in order to identify which portion of a particular record is exempt from disclosure.

<sup>4</sup> The respondents also claimed that the information described in paragraph 16, above, is exempt pursuant to §1-210(b)(4), G.S. However, in light of the conclusion in paragraph 17, above, the Commission need not address any further claims of exemption with respect to such records.

(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.

23. Strategy is defined as “a careful plan or method and the art of devising or employing plans or stratagems toward a goal. ... Negotiations is a broad term ... but in general it means the deliberation which takes place between the parties touching a proposed agreement.” (Citations omitted; internal quotation marks omitted.) Bloomfield Education Association v. Frahm, 35 Conn. App. 384, 390, cert. denied, 231 Conn. 926 (1994).

24. After a careful inspection of the remainder of the redacted information in the in camera records, it is found that the respondents failed to prove that such records pertain to “strategy and negotiations” within the meaning of §1-210(b)(4), G.S. Accordingly, it is concluded that such records are not exempt from disclosure pursuant to §1-210(b)(4), G.S.

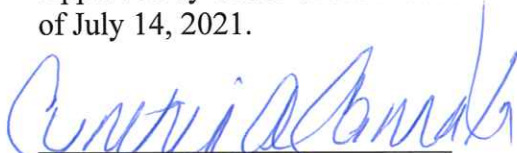
25. Accordingly, it is concluded that the respondents violated the provisions of §§1-210(a) and 1-212(a), G.S., by withholding the remainder of the redacted information in the in camera records.

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

1. The respondents shall forthwith provide copies of the in camera records to the complainants, free of charge, with the exception of those portions of such records specifically determined to be exempt from disclosure in paragraph 16 of the findings, above.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of July 14, 2021.



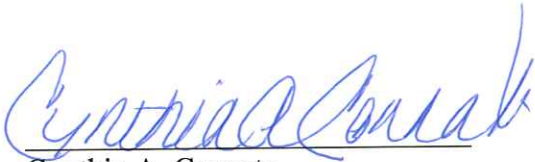
Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**TOM ARRAS**, PO Box 857, Woodbury, CT 06798

**FIRST SELECTMAN, TOWN OF WOODBURY; BOARD OF SELECTMEN, TOWN OF WOODBURY; AND TOWN OF WOODBURY**, c/o Attorney Thomas A. Kaelin, Slavin Stauffacher & Scott LLC, PO Box 323, Woodbury, CT 06798



Cynthia A. Cannata  
Acting Clerk of the Commission