

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Christopher Peak and  
New Haven Independent,

Complainants

against

Docket #FIC 2019-0748

Superintendent, New Haven  
Public Schools; and New Haven  
Public Schools,

Respondents

February 23, 2022

The above-captioned matter was heard as a contested case on February 19, 2021, at which time complainant Christopher Peak and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.<sup>1</sup> Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.<sup>2</sup>

By transmittal dated November 23, 2021, the Commission issued the Report of Hearing Officer dated November 15, 2021 (the "hearing officer's report"). At its regular meeting on December 15, 2021, the Commission considered the hearing officer's report. After entertaining legal argument from the parties, the Commission remanded this case to the hearing officer for the purpose of reviewing three additional records in camera.

By order dated January 3, 2022, the hearing officer directed the respondents to submit the three records to the Commission for in camera inspection or, in the alternative, to disclose the three records to the complainants.

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<sup>1</sup> At the contested case hearing, complainant Christopher Peak appeared to prosecute the complaint. The respondents moved to default the New Haven Independent because counsel did not appear to prosecute the complaint on behalf of the New Haven Independent and because Mr. Peak, as a pro se party, could not represent the New Haven Independent. The hearing officer did not rule on the respondents' motion for default at the contested case hearing. However, the hearing officer informed the respondents that they could file a legal brief on this issue after the hearing and that the motion would be considered prior to the issuance of the hearing officer's report. No briefs were submitted to the Commission following the hearing, and the claim is therefore considered abandoned. Therefore, the Commission declines to further consider this matter.

<sup>2</sup> On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

On January 18, 2022, the respondents submitted the affidavit of Attorney Elias A. Alexiades in which he averred that the three records at issue were disclosed to the complainants on January 18, 2022. Such affidavit has been marked as the respondents' post-hearing Exhibit 1.

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. It is found that, by email dated August 7, 2019, the complainants requested that the respondents provide them with copies of the following records related to alleged misconduct by Daniel Bonet Ojeda, the Principal of John C. Daniels School:
  - a. Any written findings of fact from the investigation;
  - b. Any witness statements, whether written or recorded; and
  - c. Any reports of discipline imposed or penalties for future infractions.
3. It is found that, by email also dated August 7, 2019, the respondents acknowledged the request.
4. It is found that, by multiple emails between August 23, 2019 and October 16, 2019, the complainants inquired into the status of their request.
5. It is found that on September 13, 2019 and October 23, 2019, the complainants resubmitted their request for records to the respondents.
6. It is found that, by email dated October 25, 2019, the respondents disclosed a one-page reinstatement letter that the city's director of human resources had sent to Principal Ojeda on August 22, 2019.
7. It is found that, by email dated October 25, 2019, the complainants replied to the respondents' disclosure, indicating that they believed there should be more responsive records.
8. It is found that, on October 28, 2019, at the request of the respondents' counsel, the complainants resubmitted their request to the respondents.
9. It is found that, by email dated November 13, 2019, the respondents informed the complainants that they had located additional responsive records, and that they would notify the complainants once they had determined whether the records were exempt from disclosure.
10. It is found that, by email dated November 22, 2019, the respondents disclosed two additional pages of responsive records to the complainants.

11. By email dated December 19, 2019 and filed December 20, 2019<sup>3</sup>, the complainants appealed to this Commission, alleging that the respondents had violated the Freedom of Information (“FOI”) Act by failing to provide them with all requested records.

12. At the time of the request, §1-200(5), G.S., provided:

“[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.<sup>4</sup>

13. 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 (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.

14. 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.”

15. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

16. It is found that the complainants requested records concerning alleged misconduct of a former elementary school principal at a public school in New Haven. The complainants acknowledged that they had received some responsive records, but

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<sup>3</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 through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

<sup>4</sup> Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped”.

challenged the withholding of the remaining responsive records.

17. The respondents contended that the remaining responsive records are exempt from disclosure pursuant to §1-210(b)(10), G.S., which permits an agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.”

18. The respondents submitted the records to the Commission for in camera inspection. The records are fairly described as a 1-page email, a 1-page blank sheet following the email, and a 6-page memorandum. It shall be referred to herein as IC-2019-0748-1 through IC-2019-0748-8.

19. 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.

20. 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. . . .

21. The Supreme Court has 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, 260 Conn. at 149.

22. The Commission recognizes that “[w]here legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived.” Rienzo v. Santangelo, 160 Conn. 391, 395 (1971), see also Olson v. Accessory Controls & Equipment Corp., 254 Conn. 145, 159, 757 A.2d 14 (2000). Moreover, in Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice. . . . The privilege fosters full and frank communications between attorneys and their clients and thereby promote[s] the broader public interests in

the observation of law and [the] administration of justice.” PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329–30 (2004).

23. In this case, it is found that the city hired attorneys from Shipman & Goodwin LLP because it sought legal advice. See Shew v. FOI Comm’n, 245 Conn. 149, 160 (1998).

24. After careful in camera inspection, it is found that the in camera records described in paragraph 18, above, consist of two written communications (that is, an email and a memorandum) transmitted in confidence from an attorney to a public official acting within the performance of her duties for a public agency. It is further found that the in camera records contain legal advice sought by the public agency client from the attorney. Finally, it is found that there was no evidence that would tend to show that the legal advice contained in the in camera records has been waived.

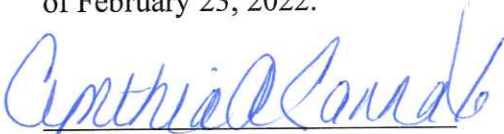
25. Accordingly, it is found that in camera records contain a communication protected by the attorney-client privilege within the meaning of §1-210(b)(10), G.S.

26. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they declined to disclose the in camera records, described in paragraph 18, above, to the complainants.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 23, 2022.



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:

**CHRISTOPHER PEAK, AND NEW HAVEN INDEPENDENT**, 138 Linden Blvd,  
Floor 2, Brooklyn, NY 11226

**SUPERINTENDENT, NEW HAVEN PUBLIC SCHOOLS; AND NEW HAVEN  
PUBLIC SCHOOLS**, c/o Attorney Elias A. Alexiades, Office of the Corporation  
Counsel, 165 Church Street, New Haven, CT 06510



Cynthia A. Cannata  
Acting Clerk of the Commission