FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Kristin Norton,

Complainant

against Docket #FIC 2021-0631

Town Manager, Town of South Windsor; Office of the Town Manager, Town of South Windsor; and Town of South Windsor,

Respondents October 26, 2022

The above-captioned matter was heard as a contested case on July 11, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Spec. Sess.), as amended by §1 of Public Act No. 22-3.

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 letter dated October 7, 2021, the complainant requested that the Town Manager provide her with copies of the following records:

> For the period covering January 1, 2019 to the present, copies of all emails received from the law firms of (1) Updike, Kelly & Spellacy, P.C., (2) McGivney, Kluger & Cook, P.C., and (3) Halloran & Sage, P.C., that [in] any way relate to (1) Kristin Norton f/k/a Kristin Lanata, (2) 460 Miller Road, South Windsor, Connecticut, and which contain the word 'hoarder' or 'hoarders' or 'hoarder's.'

3. It is found that, by email dated October 15, 2021, the respondents acknowledged the request, and informed the complainant that the request was denied because the records were exempt from public disclosure.

4. By letter of complaint, dated November 4, 2022 and received November 5, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with copies of the records, described in paragraph 2, above.

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

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

> [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 … (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides, in relevant part: "[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. It is found that the complainant came to believe that her name was included on a "list of hoarders" maintained by the town, and she therefore issued the request set forth in paragraph 2, above.

10. At the time of the contested case hearing, the respondents represented that the Town Manager had received three or four responsive emails from Updike, Kelly & Spellacy, PC. ("Updike") and that these emails had been disclosed to the complainant. The respondents further represented that they had not yet searched for responsive emails received by the Town Manager from McGivney, Kluger & Cook, P.C. ("McGivney") or Halloran & Sage, P.C. ("Halloran"). The respondents contended that any additional emails were likely to be exempt from disclosure pursuant to §§1-210(b)(4) (pending litigation), and 1-210(b)(10), G.S., (attorney client privilege).

11. In response, the complainant contended that, even if the additional emails are exempt in part from disclosure, the respondents should still be required to disclose the emails in redacted

form such that only (1) the sender of the email; (2) the recipient of the email, (3) the date the email was sent, and (4) the word "hoarder" or "hoarders" or "hoarder's" is disclosed.

12. At the conclusion of the contested case hearing, the undersigned hearing officer ordered the respondents to run a search for responsive emails received by the Town Manager from McGivney and Halloran and to report the results of said search in writing to the complainant and the hearing officer.

13. By email dated August 2, 2022, the respondents filed an email containing multiple attachments with the Commission and copied the same to the complaint. The email and attachments have been marked as respondents' post-hearing Exhibit 4.

14. It is found that, following the contested case hearing, the Town Manager instructed the South Windsor IT department to run a search of all of his emails that include the terms "hoarder" or "hoarders" from January 1, 2019 through October 15, 2021.

15. It is found that, as a result of the search, the respondents located nine responsive emails totaling seventeen pages.

16. It is found that two of the emails were disclosed to the complainant with redactions; the remaining seven emails were disclosed to the complainant without redactions.

17. On August 25, 2022, the respondent submitted the two emails referred to in paragraph 16, above, to the Commission without redactions for in camera inspection. The two emails are fairly described as a 1-page email and a 2-page email.

18. The respondents contended that the information redacted from the emails is exempt pursuant to §§1-210(b)(10) and 1-210(b)(4), G.S.

19. In relevant part, §1-210(b)(10), G.S., permits the nondisclosure of "communications privileged by the attorney-client relationship...."

20. 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 Comm'n, 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.

21. 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. . . .

22. 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, supra. at 149.

23. The Supreme Court has further stated that, "[i]n 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. Olson v. Accessory Controls and Equipment Corp., et al., 254 Conn. 145, 157 (2000).

24. After careful inspection, it is found that the redacted material is exempt from disclosure pursuant to the attorney-client privilege. It is further found that these portions of the emails contain the legal advice that the respondents sought and/or received from their attorneys. It is further found that the respondents were acting within the scope of their duties with regard to current agency business when they sought and/or received this advice. It is further found that the communications were made in confidence. Finally, it is found that the respondents did not waive their attorney-client privilege. Accordingly, it is concluded that the respondents did not violate the FOI Act when they denied the complainant unredacted copies of the two emails referenced in paragraph 16, above.

25. Because the emails were appropriately redacted pursuant to the attorney-client privilege, the Commission need not consider the respondents' claim of exemption pursuant to §1-210(b)(4), G.S.

26. Nonetheless, it is found that it took the respondents 299 days from the date of the request to disclose the nine emails referred to in paragraph 15, above, to the complainant. See ¶¶ 2 and 13, above. The Commission must determine if such disclosure was prompt within the meaning of the FOI Act.

27. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

28. The respondents provided no evidence as to why it took them 299 days to provide the requested emails to the complainant.

29. It is found that the request in this case was clear and straightforward. It is further found that the respondents were able to run the necessary search, redact the exempt material, and disclose the responsive emails to the complainants within 22 days. See ¶¶ 12-13.

30. It is found that the respondents' provision of the requested records to the complainant was not prompt.

31. Accordingly, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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

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

Approved by Order of the Freedom of Information Commission at its regular meeting of October 26, 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:

KRISTIN NORTON, c/o Attorney Edward C. Taiman, Jr., Sabia Taiman, LLC, 999 Asylum Avenue, Hartford, CT 06105

TOWN MANAGER, TOWN OF SOUTH WINDSOR; OFFICE OF THE TOWN MANAGER, TOWN OF SOUTH WINDSOR; AND TOWN OF SOUTH WINDSOR, c/o Attorney Richard Carella, Updike, Kelly & Spellacy, P.C., 179 Main Street, 100 Plaza Middlesex, 3rd Floor, Middletown, CT 06457

Cynthia A. Cannata
Acting Clerk of the Commission

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