

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gregg and Jenn Haythorn,

Complainants

against

Docket # FIC 2021-0569

Anne Hughes, State Representative, State of  
Connecticut, General Assembly, House of  
Representatives

Respondent

September 14, 2022

The above-captioned matter was heard as a contested case on July 28, 2022, at which time the complainants and the respondent 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 remotely pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3. The case caption has been amended to accurately reflect the title of the respondent.

After consideration of the entire record, the following facts are found, and conclusions of law are reached:

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that by letter dated August 23, 2021, in relevant part, the complainants requested that the respondent provide them with:

[a]ll documents, communications, worksheets, notes between you and all Weston Town and District officials, Board members, employees, their agents, etc. pertaining to the Weston 2020/21 budget process, including but not exclusive to the matter of WPS participation in the State of CT Partnership Insurance plan, for dates between January 1, 2020, and July 31, 2020.

(hereinafter "first request").

3. It is found that by email dated August 24, 2021, Attorney Corey Rioux, Legal counsel, for the Connecticut House Democrats, responded to the first request on behalf of the respondent, provided some of the requested records to the complainants and stated, in relevant part:

[t]he redacted material on p. 6 of the attachment was not responsive to your request and is exempt from disclosure under FOIC Declaratory Ruling #90 because it contains constituent files with personal information.

One document was withheld as a preliminary draft or note exemption. See Conn. Gen. Stat. §1-210(b)(1).

4. It is found that by email dated August 24, 2021, and a follow up email dated August 26, 2021, the complainants sent a second, more expansive records request to the respondent.

5. It is found that in the second request, the complainants requested the following:

[c]opies of all documents, communications, worksheets, notes between you and all Weston Town and District officials, Board members, employees, their agents, State officials, State Legislators, the Governor ... the State Comptroller...Governor's office staff, the CT Democratic and Progressive Caucus, State agency employees and appointed and elected officials, staff members (including ... 'Josh') ... contractors, their agents, etc. pertaining to the Weston 2020/21 and 2021/2022 budget process, including ... the matter of WPS participation in the State of CT Partnership Insurance plan, for dates Jul 1, 2019 and Aug 23, 2021.

(hereinafter "second request").

6. By email dated September 28, 2021, and filed on September 30, 2021, the complainants appealed to the Commission, alleging that the respondent violated the Freedom of Information (FOI) Act by failing to provide them with all records responsive to the first and second requests, described in paragraphs 2 and 5, above.

7. 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, videotaped, printed, photostated, photographed or recorded by any other method.

8. 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.

9. Section 1-212(a), G.S., in relevant part, further provides: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

10. It is found that the requested records, described in paragraphs 2 and 5, above, to the extent they exist, and relate to the conduct of the public’s business, are “public records”, within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that, following receipt of the first and second requests, Attorney Rioux, with the assistance of the General Assembly’s IT division, searched the respondent’s state and personal email accounts, and provided the complainants with copies of responsive records located, with the exception of certain records claimed as exempt from disclosure, and one text message that was not initially provided to the complainants due to an oversight.

12. The complainants contended that the respondent wrongfully withheld the text message described in paragraph 11, above, and that it was only produced after the complainants became aware of its existence through another town of Weston resident, who had made a separate but similar FOI request to the respondent and received the text message among the records produced. It is found that, upon learning of the existence of the text message, the complainants followed up with the respondent, whose office soon thereafter provided the complainants with a copy. The complainants further contended that, because the text message was not produced to them initially and without them alerting the respondent to its existence, they are of the impression that other responsive records may exist that were not produced. The complainants also took issue with the exemptions claimed by the respondent with respect to the records that were withheld.

13. At the hearing in this matter, the respondent conceded that the text message in question should have been produced to the complainants sooner, but due to an oversight, she did not locate it in her original search for records.

14. It is found that the respondent did not willfully withhold the text message from the complainants, and immediately provided it to them once alerted to its existence. Under the facts and circumstances of this case, and in light of Attorney Rioux’s credible testimony, it is found that the respondent conducted a thorough search for records responsive to the complainants’ requests.

15. With regard to the claim that certain responsive records are exempt from disclosure pursuant to §1-210(b)(1), G.S., that section provides that disclosure is not required of “[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.”

16. The Connecticut Supreme Court ruled in Wilson v. Freedom of Information Commission, 181 Conn. 324, 332 (1980) (“Wilson”), that:

[w]e do not think the concept of preliminary, as opposed to final, should depend upon who generates the notes or drafts, or upon whether the actual documents are subject to further alteration....

Instead the term ‘preliminary drafts or notes’ relates to advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated....

...[p]reliminary drafts or notes reflect that aspect of an agency’s function that precedes formal and informal decision making. We believe that the legislature sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions. It is records of this preliminary, deliberative and predecisional process the exemption was meant to encompass.

17. The year following Wilson, the Connecticut General Assembly passed Public Act 81-431, which added to the FOI Act the language now codified in §1-210(e)(1), G.S. That provision, which narrowed the exemption for preliminary drafts or notes, provides in relevant part:

[n]otwithstanding [§1-210(b)(1)], disclosure shall be required of:

[i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.... (emphasis added).

18. In Van Norstrand v. Freedom of Information Commission, 211 Conn. 339, 343 (1989) (“Van Norstrand”), the Supreme Court provided further guidance regarding “preliminary drafts”. Citing the dictionary definition, the court stated that the term “preliminary” means “something that precedes or is introductory or preparatory”, and “describes something that is preceding the main discourse or business.” Id. According to the Court, “[b]y using the nearly synonymous words ‘preliminary’ and ‘draft’, the legislation makes it very evident that

preparatory materials are not required to be disclosed”. Id.

19. Accordingly, Conn. Gen. Stat. §§1-210(b)(1) and 1-210(e)(1), G.S., together, permit nondisclosure of records of an agency’s preliminary, predecisional, deliberative process, provided that the agency has determined that the public interest in withholding the records clearly outweighs the public interest in disclosing them and provided further that such records are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or reports. See Shew v. Freedom of Information Commission, 245 Conn. 149, 164-166 (1998).

20. With regard to the “balancing test” required by §1-210(b)(1), G.S., it is well established that the responsibility for making the determination as to what is in the public interest is on the agency that maintains the records. See Van Norstrand at 345. The agency must have considered in good faith the effect of disclosure, and indicated the reasons for its determination to withhold disclosure, which reasons may not be frivolous or patently unfounded. Id., citing Wilson at 339. See also People for Ethical Treatment of Animals, Inc. v. Freedom of Information Commission, 321 Conn. 805, 816-817 (2016). Thus, the only determination for the Commission to make is whether the reasons for nondisclosure given by the agency are frivolous or patently unfounded. See Lewin v. Freedom of Information Commission, 91 Conn. App. 521, 522-523 (2005); Coalition to Save Horsebarn Hill v. Freedom of Information Commission, 73 Conn. App. 89, 99 (2002).

21. On August 2, 2022<sup>1</sup>, the respondent submitted the in camera records to the Commission for review. Such records will be referenced herein as follows:

- (a) IC 2021-0569-001 through IC 2021-0569-008;
- (b) IC 2021-0569-010 through IC 2021-0569-295;
- (c) IC 2021-0569-296 and IC 2021-0569-297;
- (d) IC 2021-0569-300 through IC 2021-0569-304; and
- (e) IC 2021-0569-305 through IC 2021-0569-599.

22. Upon careful inspection of the in camera records described in paragraph 21 (a), (b), (d) and (e), above, it is found that such records are records of the agency’s preliminary, predecisional deliberative process by which government decisions are formulated, and therefore are preliminary drafts, within the meaning of §1-210(b)(1), G.S.

23. It is also found that the respondent determined that the public interest in withholding the records clearly outweighs the public interest in disclosure. At the hearing in this matter, the respondent indicated that the reason for not disclosing the records, described in paragraph 21 (a), (b), (d) and (e), was because they are draft communications and materials that contain

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<sup>1</sup> Also, on August 2, 2022, after submitting the in camera records to the Commission, the respondent provided the complainants with one additional record, responsive to their requests at issue here, and indicated in a cover email that when preparing the in camera records’ log, the respondent realized that the additional record now being provided did not contain any exempt information.

preliminary estimated budget numbers for Connecticut municipalities, which numbers changed constantly, and which if disclosed would cause unease and anxiety.

24. It is found that the respondent's reason for withholding the records is not frivolous or patently unfounded.

25. Moreover, it is found that the in camera records constitute preliminary drafts of memorandums, prepared by a member of the staff of a public agency, which are subject to revision prior to submission to or discussion among the members of such agency, and therefore are not required to be disclosed pursuant to §1-210(e)(1), G.S.

26. Consequently, it is concluded that the in camera records described in paragraph 21 (a), (b), (d) and (e), above, are exempt from disclosure pursuant to §1-210(b)(1), G.S., and the respondent did not violate the FOI Act by withholding such records.

27. The respondent also contended that certain portions of IC 2021-0569-296 and IC 2021-0569-297 are not required to be disclosed pursuant to Declaratory Ruling #90 (April 24, 1998).<sup>2</sup>

28. Declaratory Ruling #90, in relevant part, states:

[t]he Commission believes that the FOI Act applies to some categories of constituent correspondence to members of the General Assembly, but does not apply to other categories...

[Section 1-200(5)] ... defines "public records" for purposes of the [FOI] Act as ... 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 ...

The legislative power of the state [per Article Third, Section I of the Connecticut Constitution] shall be vested in ... the general assembly...

The Connecticut Supreme Court has written that the principal function of a legislative body is 'to make laws which declare the policy of the state...'. Thus, the Commission believes that any correspondence, prepared, owned, used, received, or retained by a legislator, that relates directly or indirectly to enacting legislation or making laws, relates to the public's business and falls within the ... [§1-200(5)] definition of public records.

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<sup>2</sup> Declaratory Ruling #90 addressed the applicability of the FOI Act to correspondence sent between a constituent and member of the General Assembly.

Members of the General Assembly, however, have traditionally and historically performed functions other than those relating to enacting legislation or law making... legislators, as elected representatives of their respective constituents, are frequently requested by constituents to assist them with, or intervene in, personal matters, particularly as they relate to some arm of government. Although this constituent service is, as a practical matter, one that is expected of legislators, and is recognized as such, it is not part of the constitutional or statutory duties of individual members of the General Assembly.

Therefore, the Commission believes that this function does not relate to the 'conduct of the public's business' within the meaning of ... [§1-200(5)]. Rather the Commission believes that correspondence relating to such personal matters, unrelated to enacting legislation or law-making, is of a private nature and does not constitute a public record for purposes of the FOI Act...

[Consequently] any ... [record] ... from or to a constituent concerning a request for the assistance or intervention of the legislator in a manner unrelated directly or indirectly to enacting legislation or making laws, are not public records under ... [§1-200(5)] for purposes of the FOI Act.  
(Emphasis in original).

29. After careful inspection of the in camera records, described in paragraph 27, above, it is found that the portions claimed as exempt from disclosure constitute constituent correspondence, unrelated to enacting legislation or law-making.

30. Consequently, it is found that the portions of in camera records described in paragraph 27, above, are not public records as defined in §1-200(5), G.S., and therefore are not required to be disclosed.

31. It is therefore concluded that the respondent did not violate the FOI Act by withholding those portions of the in camera records, described in paragraph 27, above.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 14, 2022.

A handwritten signature in blue ink, appearing to read "Cynthia A. Cannata", is written over a horizontal line.

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:

**GREGG AND JENN HAYTHORN**, 6 Winthrop Hill, Weston, CT 06883

**ANNE HUGHES, STATE REPRESENTATIVE**, c/o Assistant Attorney General Phillip Miller, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Cynthia A. Cannata  
Acting Clerk of the Commission