

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jacques Parenteau,

Complainant

against

Docket # FIC 2021-0213

Mayor, City of New London; and City of  
New London,

Respondents

February 8, 2023

The above-captioned matter was heard as a contested case on April 12, 2022, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 Special Session).

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 March 29, 2021, the complainant requested from the respondents copies of "all invoices to the City of New London (including the Mayor and his staff and/or the Law Director's Office and its staff and/or the New London Police Department) from the law firm Berchem & Moses, between January 1, 2020 to the present concerning the investigation of Sergeant Cornelius Rogers' complaint."
3. By letter of complaint filed April 15, 2021<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 public records identified in paragraph 2, above.
4. It is found that by letter dated April 22, 2021, the respondents acknowledged the complainant's request and notified the complainant that responsive records would be compiled.
5. At the time of the request, §1-200(5), G.S., provided:

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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. Sec. 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 through June 30, 2021. Consequently, the Commission retains jurisdiction.

“[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>2</sup>

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 . . . (3) 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 records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, on or about May 13, 2021, the respondents notified the complainant that responsive records were available upon receipt of payment from the complainant. It is further found that, on or about March 2022, the complainant rendered payment and the respondents disclosed redacted copies of the responsive records to him.

10. At the hearing, the complainant argued that the redactions were improper. The respondents contended that portions of the responsive records were withheld from the complainant pursuant to §§1-210(b)(4) and 1-210(b)(10), G.S. The complainant disputed such contention and requested an in camera inspection.

11. On May 4, 2022, the respondents submitted the records, or portions thereof claimed to be exempt from disclosure to the Commission, for in camera inspection, along with an in camera index. Such in camera records are attorney billing records and shall be identified as 2021-0213-001 (information redacted in line 5 and line 16 only) and 2021-0213-002 (information redacted in line 18 only).

12. 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

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<sup>2</sup> Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to include data or information that is “videotaped.” Such amendment was effective June 23, 2021.

permits a public agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.”

13. 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.

14. 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. . . .

15. 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.

16. In the context of an attorney’s billing records, “[i]nformation contained in invoices . . . that reveals ‘the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided . . . fall within the privilege.’” Clerk of the Common Council v. Freedom of Information Commission, 215 Conn App. 404, 420 (Sept 27, 2021) (quoting Bruno v. Bruno, Superior Court, J.D. of Danbury, Docket No. FA-05-40049006-S (July 10, 2009).

17. In light of the foregoing, and after careful inspection of the in camera records, it is found that the portions of the records claimed to be exempt from disclosure, described in paragraph 11, above, do not reveal the motive of the client in seeking representation, litigation strategy or the specific nature of the services performed, and therefore are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

18. The respondents also claimed that 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.”

19. 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.

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

(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.

21. 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).

22. In light of the foregoing, and after careful inspection of the redacted information in the in camera records described in paragraph 11, above, it is found that the redacted information does not pertain to “strategy and negotiations” within the meaning of §1-210(b)(4), G.S. Accordingly, it is concluded that the redacted information, described in paragraph 11, above, is not exempt from disclosure pursuant to §1-210(b)(4), G.S.

23. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the redacted information, described in paragraph 11, above, from the complainant.

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

1. Forthwith, the respondents shall provide unredacted copies of the in camera records, described in paragraph 11, above, to the complainant, free of charge.

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 February 8, 2023.



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:

**JACQUES PARENTEAU**, c/o Attorney Claire M. Howard, Madsen, Prestley & Parenteau, LLC, 402 Asylum Street, Hartford, CT 06103

**MAYOR, CITY OF NEW LONDON; AND CITY OF NEW LONDON** c/o Attorney Jeffrey T. Londregan, Conway, Londregan, Sheehan & Monaco, PC, 38 Huntington Street, New London, CT 06320 and Attorney Brian K. Estep, Esq., Conway, Londregan, Sheehan & Monaco, P.C, 38 Huntington Street, New London, CT 06320



Cynthia A. Cannata  
Acting Clerk of the Commission