STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by	FINAL DECISION
Jennifer Pardus,	
Complainant	
against	Docket # FIC 2022-0362
Commissioner, State of Connecticut, Department of Social Services; and State of Connecticut, Department of Social Services,	
Respondents	July 26, 2023

The above-captioned matter was heard as a contested case on April 13, 2023 and June 15, 2023, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

During the April 13, 2023 contested case hearing, the hearing officer issued an oral Order to the respondents to Submit Records for In Camera Inspection, as well as an oral Order to Submit Affidavits. Thereafter, on May 11, 2023, the hearing officer re-affirmed the Orders in writing.

On April 25, 2023, pursuant to the order of the hearing officer, the respondents submitted two after-filed exhibits, which have been admitted into evidence and marked as: Respondents' Exhibit 7 (after-filed): Affidavit of David Seifel (comprised of seven paragraphs and dated April 25, 2023) and Respondents' Exhibit 8 (after-filed): Affidavit of David Seifel (comprised of ten paragraphs and dated April 25, 2023).

On May 3, 2023, the complainant objected to the Affidavits, disputing the respondents' credibility as well as the substance of the Affidavits.

Pursuant to the Order of the Hearing Officer, the parties appeared for a reopened hearing, on June 15, 2023, at which time the respondents made Affiant David Siefel available for cross examination at the reopened hearing.

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 July 19, 2022, the complainant requested that the respondents provide her with a copy of the following:

[(a)] Any Calendar Year 2014 correspondence/communications, written or electronic, including any deleted electronic communications, that discuses [sic] me (Jennifer Pardus, Ms. Pardus, Employee ID 591036, or any similar reference to myself) between any or all of the following parties: Department of Social Services (DSS) Rate Setting Division management staff (under Christopher Lavigne and Krista Pender at the time), DSS Fiscal Division management staff (under Michael Gilbert and Kevin Carey at the time), any mid or top level DSS management staff (up to commissioner level), any Human Resources staff, any Office of Labor Relations staff, any Division of Equal Employment and Opportunity staff, any DSS legal Division staff, any outside medical provider, any party outside of DSS, and/or any A& R Union staff member.

[(b)] Any Calendar Year 2020 through CY 2022 correspondence/ communications, written or electronic, including any deleted electronic communications, that discuses [sic] me (Jennifer Pardus, Ms. Pardus, Employee ID 591036, or any similar reference to myself) between any or all of the following parties: Department of Social Services (DSS) Fiscal Division management staff (under Michael Gilbert, Nicholas Venditto, Nelida Maldonado, Diana Speranza), any mid or top level DSS management staff (up to commissioner level), any Human Resources staff, any Office of Labor Relations staff (including Michael Vasile and Meiko Chandler), any Division of Equal Employment and Opportunity staff, any DSS Legal Division staff, any outside medical provider, any party outside of DSS, and/or any A&R Union staff member.[1]

[(c)] Any Calendar Year 2014 through CY 2022 correspondence/ communication/documentation placed in my personnel file or medical files, or any similar file(s) kept by the Department of Social Services or State regarding my employment, produced by DSS staff or any party outside of DSS. This would include any correspondence/communication/documentation placed in my personnel/medical file and then moved to a similar file at a later time.[2]

3. It is found that, by email dated July 20, 2022, the respondents acknowledged the

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[1] Although the complainant requested records for the entire calendar year of 2022, a public agency's obligation under the FOI Act is to provide records it maintains **as of the date of the request**. Accordingly, the end date of the instant request is July 19, 2022.

[2] See Footnote 1.

complainant's request.

4. By email filed August 18, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the requested 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 section 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 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 January 21, 2023, the respondents provided the complainant with over 1300 pages of responsive records.

10. At the hearings in this matter, the complainant acknowledged that she had received hundreds of pages of records from the respondents that were responsive to her request described in paragraph 2, above. She contended, however, that many of the pages were duplicates and that the records were not promptly provided. The complainant also contended at the hearings that she believed there should be additional responsive records, which the respondents had not provided to her.

11. The complainant testified, and it is found, that she has worked at the Department of Social Services ("DSS") since 2006 and that she has worked as an associate accountant for the

DSS since 2012.

12. The complainant testified further that, in 2014, she reported allegations of mismanagement internally and to the State Auditors, and that, as a result, she suffered retaliation in the workplace. For example, the complainant testified that she was abruptly removed from the workplace and placed on administrative leave from July 16, 2014 through September 8, 2014 because her employer claimed that she was not mentally fit for duty. The complainant further testified that she was not permitted to return to work until a mental health provider chosen by DSS determined that she was fit for duty. The complainant further testified that she developed various medical conditions while she was out on administrative leave, which she associated with employment related stress.

13. The complainant further testified that, in June 2021, the complainant's medical provider submitted paperwork to DSS, seeking an extended telework accommodation pursuant to the Americans with Disabilities Act ("ADA") because the complainant was COVID-fragile due to her medical conditions. The complainant testified that DSS wrongly denied her requested accommodation.

14. It is found that the complainant has multiple discrimination cases against DSS pending before the Connecticut Commission of Human Rights and Opportunities ("CHRO") related to the subjects described in paragraphs 12 and 13, above, among others.[3]

15. At the hearing, the complainant contended that she believes the respondents have withheld records for various reasons, including because, according to her, the respondents' witness, a DSS Staff Attorney ("Staff Attorney"), and another DSS attorney who represented the respondents at the first hearing, have conflicts of interest since they represented DSS in other matters involving the complainant, such as the CHRO cases described in paragraph 14, above. The complainant also contended that it was not credible that the respondents possessed so few records concerning the matters at issue in her CHRO cases.

16. The complainant testified, and it is found, that the respondents failed to provide her with a copy of a medical evaluation prepared by the mental health provider referenced in paragraph 12, above, which was faxed to DSS on or about September 4, 2014, according to an email dated October 17, 2014, by a DSS employee.[4]

17. The complainant also testified, and it is found, that the respondents failed to provide

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[3] At the hearing, the complainant testified regarding several employment related issues, not all of which are discussed herein because such issues are not central to the issues to be decided in this case.

[4] In such email dated October 17, 2014, a DSS employee reports the following:

> Regarding Jennifer Pardus, we placed her on Admin Leave effective Wednesday, July 16, 2014 and we reinstated her on Monday, September 8, 2014. … She physically returned to work on Tuesday, September 9, 2014. <u>Dr. Sewitch evaluation was faxed on Thursday, September 4, 2014 at 9:18 a.m</u>. and the letter reinstating her from leave was done the same day (9/4/14).

her with a copy of the paperwork that her medical provider submitted to DSS, seeking an extended telework accommodation for the complainant pursuant to the ADA, as described in paragraph 13, above.

18. At the hearing, the respondents contended that they conducted diligent searches and acted in good faith to provide the complainant with all non-exempt records that they believed were responsive to the request described in paragraph 2, above. The respondents redacted certain information, which they claimed is exempt from disclosure under §§1-210(b)(4), and 1-210(b)(10), G.S.

19. It is found that the DSS' Manager of Regulatory Compliance ("Compliance Manager") handled the initial phase of processing the complainant's FOI request described in paragraph 2, above. In that regard, it is found that, on July 20, 2022, the Compliance Manager sent an email to employees of the respondents, who he thought would be the individuals most likely to maintain records responsive to the complainant's request, but he did not receive any responses to this email.

20. It is found that, aside from sending the email described in paragraph 19, above, the Compliance Manager ceased his efforts to gather records responsive to the complainant's July 19th request because he incorrectly believed her request had been fulfilled based upon an email from another DSS employee to the complainant, which was responding to a prior FOI request she had submitted to the respondents. It is found that the Compliance Manager was new to the role and apologized for his mistake.

21. It is found that the respondents did not receive a copy of the complainant's complaint described in paragraph 4, above, until December 23, 2022; thereafter, the respondents restarted their efforts to search for responsive records.

22. It is found that, at the Staff Attorney's request, the Connecticut Department of Administrative Service Bureau of Information Technology Solutions (DAS BITS) conducted a search for responsive emails, based upon the search queries he created. It is found that DAS BITS conducted two separate searches for email communications: one for calendar year 2014 and the other for years 2020 through 2022, utilizing the email addresses for the names of individuals listed in the complainant's requests described in paragraphs 2(a) and 2(b), above, along with the terms "pardus but not Jennifer."

23. It is found that the Staff Attorney did not include the complainant's email address in the search because he did not interpret the complainant's requests described in paragraphs 2(a) and 2(b), above, as seeking emails that were sent directly to her or from her, but rather were seeking communications between the individuals listed therein that discussed the complainant. It is further found that the searches produced approximately 8,000 responsive emails.

24. With regard to the fitness for duty medical evaluation described in paragraphs 12 and 16, above, as well as the paperwork from the complainant's medical provider described in paragraphs 13 and 17, above, it is found the respondents failed to provide any evidence as to whether the respondents still maintain or possess such records.

25. With respect to non-electronic records responsive to the requests described in paragraphs 2(a) and 2(b), above, it is found that, on March 8, 2023, the Compliance Manager sent an email to certain DSS employees seeking records responsive to such requests, including any written communications that discussed the complainant. It is found that, after he sent a follow up email, on April 14, 2023, such DSS employees responded indicating that they did not possess any non-electronic, written communications that discussed the complainant.

26. With respect to the complainant's request described in paragraph 2(c), above, it is found the Compliance Manager sent an email to the Director of Human Resources, on January 3, 2023, requesting such records, and that, in response, he received two files one labeled the complainant's "Personnel File 2014 - current" and the other the complainant's "Medical File 2014 – current," both of which were included within the records provided to the complainant on January 21, 2023.

27. It is found that the Compliance Manager sent an additional email, on April 17, 2023, to employees within the divisions of Human Resources; Labor Relations; Legal; and Equal Employment, Opportunity & Diversity, requesting that they review their records to determine if any "like" files to the complainant's personnel and medical file exist, including any labor or ADA files. It is found that, in response, he received copies of the complainant's ADA file and Labor file. It is found that such files were provided to the complainant on April 24, 2023.

Credibility

28. It is found that both the Staff Attorney and the Compliance Manager testified credibly. With respect to the complainant's contentions concerning the respondents' counsel, their representation of the respondents with respect to different matters involving the complainant does not constitute a conflict of interest.[5]

Thoroughness of Searches

29. With respect to the requests described in paragraphs 2(a) and 2(b), above, it is found that the respondents conducted a reasonably thorough and diligent search for responsive *electronic* records. It is further found that the respondents' interpretation of the requests described in paragraphs 2(a) and 2(b), above, as not including any communications directly to or from the complainant was reasonable.

30. It is found, however, that the respondents failed to prove that they conducted a diligent and thorough search for the nonelectronic or written records responsive to the requests described in paragraphs 2(a) and 2(b), above. It is found that the respondents failed to provide any testimony or evidence regarding the nature and scope of the searches that were actually conducted for such nonelectronic records, and the Compliance Manager testified that he had not

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[5] See Rules of Prof. Conduct, Rule 1.7, which provides in relevant part "(a) Except as provided in subsection (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." *See also* Rule 1.8 of the Rules of Prof. Conduct.

discussed such searches with the employees who he had asked to search for such records.

31. With respect to the request described in paragraph 2(c), above, it is found that the respondents failed to prove that they conducted a diligent and thorough search for records responsive to such request. The respondents failed to provide any evidence regarding how and where the respondents maintained such files as well as the nature and scope of the searches. It is found that the electronic searches described in paragraphs 22 and 23, above, were insufficient with respect to such request, because such searches only searched email mailboxes, and did not include any other electronic files. Additionally, it is found that the respondents provided no evidence regarding certain responsive records that had existed but were missing from the personnel and medical files that were provided to the complainant. For example, the respondents provided no evidence regarding the whereabouts of the medical evaluation described in paragraphs 12 and 16, above, nor the paperwork from the complainant's medical provider described in paragraphs 13 and 17, above.

32. It is also found that the respondents failed to prove that they conducted a diligent and thorough search for files "similar" to the plaintiff's personnel and medical files, as sought in the request described in paragraph 2(c), above. Although the Compliance Manager sent an email to several employees and that such employees stated that they did not have any responsive records, the respondents failed to provide any evidence regarding the details of the nature and scope of such employees' searches for such records. Whereas the complainant provided evidence that certain responsive records had existed but were never provided to her in response to her request.

Promptness

33. With respect to the complainant's claim that the records were not provided to her "promptly," the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

34. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request. In addition, common sense and good will ought to be the guiding principles.

35. At the hearings, the respondents maintained that they made a significant effort and acted in good faith to promptly provide the complainant with records that they believed were responsive to the July 19th request.

36. At the hearing, the Staff Attorney testified that the electronic search for records

responsive to the July 19th request returned several thousand pages of records and that the review process was time-consuming.

37. While the Staff Attorney testified credibly that he acted promptly once he became aware of the complainant's July 19th request, it is concluded that the six-month delay was not prompt.

38. It is found that the respondents did not make any efforts to search and gather records until after December 23, 2022, aside from a single email to certain individuals, to which no one responded until after the hearing in the case commenced. It is concluded that, although the Compliance Manager testified credibly that he did not intentionally delay the complainant's access to the records because he mistakenly believed that the complainant's July 19th request had been satisfied, he reached that conclusion summarily without a valid basis and without communicating with the legal department, a manager or the complainant.

39. It is therefore concluded that, although it was not intentional, the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

Redacted Information

40. At the hearing in this matter, the respondents represented, and it is found, that the respondents redacted certain information from the records provided to the complainant in response to her July 19th request.

41. The complainant challenged the redactions described in paragraph 40, above, and requested that the hearing officer conduct an in camera inspection of such records.

42. On May 4, 2023, the respondents submitted to the Commission an unredacted copy of the records for an in camera inspection, along with an in camera index. Such records shall be identified hereinafter as IC-2022-00362-1 through IC-2022-00362-149.[6]

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

Section 1-210(b)(10), G.S.

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

[6] IC-2022-0362-21 through IC-2022-0362-22; IC-2022-0362-55 through IC-2022-0362-56; IC-2022-0362-64; IC-2022-0362-77; IC-2022-0362-82; IC-2022-0362-85 through IC-2022-0362-86; IC-2022-0362-90 through IC-2022-0362-91; IC-2022-0362-96 through IC-2022-0362-98; IC-2022-0362-100 through IC-2022-0362-101; IC-2022-0362-104; IC-2022-0362-107; IC-2022-0362-109; IC-2022-0362-118; IC-2022-0362-120; IC-2022-0362-124; IC-2022-0362-128; IC-2022-0362-131 through IC-2022-0362-132; IC-2022-0362-137; IC-2022-0362-143; and IC-2022-0362-148 did not contain any redactions and therefore they will not be discussed any further.

45. 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) ("Maxwell"). 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.

46. Section 52-146r(a)(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. . . .

47. 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 at 149.

48. 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 (2000) ("Olson"). 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). However, the privilege only applies when necessary to achieve its purpose; it is not a blanket privilege. Harrington v. FOI Commission, 323 Conn. 1, 12 (2016). Further, a party can establish that a document is privileged by showing that the document itself is the record or memorialization of a communication between the client and the attorney; by showing that the document was created with the intent to communicate the contents to an attorney, and the client actually communicated the contents to the attorney; or by showing that the document was somehow transformed for the purpose of seeking legal advice and communicated or intended to be communicated to an attorney. See State v. Kosuda-Bigazzi, 335 Conn. 327 (2020) ("Kosuda-Bigazzi").

49. If it is clear from the face of the records, extrinsic evidence is not always required to prove the existence of the attorney-client privilege. Lash v. FOI Commission, 300 Conn. 511, 516 (2011) ("Lash").

50. Based upon a careful in camera inspection of the records identified in paragraph 42, above, it is found that the redacted information in the following records constitute written communications, transmitted in confidence, between a public official or employee of a public agency, acting within the scope of their employment, and their attorney(s), and that such communications are related to legal advice sought: IC-2022-0362-19 through IC-2022-0362-20; IC-2022-0362- 51 through IC-2022-0362-53; IC-2022-00362-73 through IC-2022-00362-76; IC-2022-0362-079; IC-2022-0362-83 through IC-2022-0362-84; IC-2022-0362-87 through IC-2022-0362-89; IC-2022-0362-92 through IC-2022-0362-95; IC-2022-0362-99; IC-2022-0362-103; IC-2022-0362-105 through IC-2022-0362-106; IC-2022-0362-108; IC-2022-0362-110 through IC-2022-0362-117; IC-2022-0362-119; IC-2022-0362-121 through IC-2022-0362-123; IC-2022-0362-125 through IC-2022-0362-127; IC-2022-0362-129 through IC-2022-0362-130; IC-2022-0362-133 through IC-2022-0362-135; IC-2022-0362-138 through IC-2022-0362-142; IC-2022-0362-144 through IC-2022-0362-147; and IC-2022-0362-149. In addition, it is found that no evidence was provided by the complainant to rebut the presumption that such communications were made in confidence. See Blumenthal v. Kimber Mfg., Inc., 265 Conn. 1, 15 (2003). It is found that the respondents did not waive the attorney-client privilege with respect to such redactions.

51. It is concluded therefore that the redacted information described in paragraph 50, above, is exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents did not violate the FOI Act by withholding such information.

52. Upon careful examination of IC-2022-0362-54, it is found that the redacted information contained therein is not a confidential communication between an attorney and his or her client, but rather a communication from the Staff Attorney to employees of the CHRO, copying the complainant.

53. Upon careful examination of IC-2022-0362-102 and IC-2022-0362-136 as well as the July 8, 2022 and July 18, 2022 emails in IC-2022-0362-78, it is found that the redacted information contained therein does not constitute communications related to legal advice sought.

54. It is concluded therefore that the redacted information described in paragraphs 52 and 53, above, is not exempt from disclosure pursuant to §1-210(b)(10), G.S.

Section 1-210(b)(4), G.S.

55. With regard to the redacted portions of IC-2022-0362-54, IC-2022-0362-78, IC-2022-0362-102, and IC-2022-0362-136, the respondents also claimed that such redacted information is "strategy or negotiations" with respect to the pending claims or pending litigation exempt from disclosure pursuant to §1-210(b)(4), G.S.[7]

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[7] The respondents also claimed that the redacted information in the records set forth in paragraph 42, above, is exempt from disclosure pursuant to §1-210(b)(4), G.S. However, in light of the conclusion reached in paragraph 51, above, the Commission need not address any further claims of exemption with respect to such records. As such, IC-

56. Section 1-210(b)(4), G.S., 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."

57. Section 1-200(8), G.S., defines "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.

58. 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) <u>the agency's consideration of action to enforce or implement legal relief or a legal right</u>. (Emphasis added)

59. Our Supreme Court has determined, relying on Webster's Third New International Dictionary, that "strategy" is defined as "the art of devising or employing plans or strategems." <u>City of Stamford v. FOI Comm'n</u>, 241 Conn. 310, 318 (1997). Further, the court stated that "negotiation is defined as the action or process of negotiating," and "negotiate is variously defined as: to communicate or confer with another so as to arrive at the settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise about something; to arrange for or bring about through conference and discussion: work out or arrive at or settle upon by meetings or agreements or compromises; and to influence successfully in a desired way by discussion and agreements or compromises." (Internal quotations omitted). <u>Id</u>.

60. It is found that, as referenced in paragraph 14, above, at the time of the complainant's July 19th request, the complainant maintained multiple actions against the respondents pending before the CHRO.

61. It is found that the complainant's pending CHRO complaints constitute pending claims or pending litigation within the meaning of §1-200(8) and (9), G.S. <u>See</u> Docket #FIC 2007-273; <u>Orlando v. Department of Transportation</u> (January 23, 2008) (complaint against the DOT filed with the CHRO constituted pending litigation within the meaning of §1-210(b)(4), G.S.); Docket #FIC 92-369; <u>Gonzales v. Bridgeport Comptroller</u> (July 28, 1993) (finding that the

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2022-0362-54, IC-2022-0362-78, IC-2022-0362-102, and IC-2022-0362-136 are the only records remaining to be analyzed with respect to §1-210(b)(4), G.S.

complainant's CHRO complaint constituted pending claims or pending litigation within the meaning of the FOI Act).

62. Upon careful examination of IC-2022-0362-102 and IC-2022-0362-136, which are emails between or among the respondents' attorneys and employees with respect to the CHRO matters, it is found that the redacted information in IC-2022-0362-102 and IC-2022-0362-136 pertains to strategy or negotiations with respect to pending claims, within the meaning of §1-200(8), G.S., as well as, pending litigation, within the meaning of §1-200(9)(C), G.S.

63. It is concluded therefore that the redacted information described in paragraph 62, above, is exempt from disclosure pursuant to §1-210(b)(4), G.S., and that the respondents did not violate the FOI Act by withholding such information.

64. Upon careful examination of IC-2022-0362-54, it is found that the record is a communication from the Staff Attorney to employees of the CHRO, copying the complainant. It is concluded that it does not pertain to strategy or negotiations with respect to pending litigation and, thus, it is not exempt under §1-210(b)(4), G.S.

65. Upon careful examination of IC-2022-0362-78, it is found that such redacted information contained in the July 18, 2022 and July 8, 2022 emails therein, does not pertain to strategy and negotiations with respect to pending claims or pending litigation. Rather, it is found that such redacted information constitutes communications regarding scheduling meetings unrelated to strategy or negotiations.

66. It is concluded therefore that the redacted information described in paragraphs 64 and 65, above, is not exempt from disclosure pursuant to §1-210(b)(10), G.S.

67. Based upon the foregoing, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by withholding the redacted information described in paragraphs 64 and 65, above.

Nonresponsive Records

68. With respect to IC-2022-00362-1 through IC-2022-00362-18, IC-2022-00362-23 through IC-2022-00362-50, IC-2022-00362-57 through IC-2022-00362-72, IC-2022-00362-73 (lines 1 through 25), IC-2022-00362-74 (lines 16 through 19), IC-2022-00362-80 through IC-2022-00362-81, it is found that these in camera records constitute email communications created **after** the complainant's request described in paragraph 2, above. It is concluded that the respondents had no legal obligation "to provide the complainant with records not yet in existence at the time of [her] request." See, e.g., Stephen Whitaker v. Boris Hutorin, Director, Department of Information Technology, Town of Greenwich, Docket #FIC 2005-332 (June 28, 2006); Rita M. Pacheco v. Parks and Recreation Commission, City of Torrington, Docket #FIC 1996-221 (Jan. 8, 1997). It is therefore concluded that these in camera records were not responsive to the request at issue in this case and that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by withholding from the complainant the redacted information set forth in IC-2022-00362-1 through IC-2022-00362-18, IC-2022-00362-23 through IC-2022-00362-50, IC-2022-00362-57 through IC-2022-00362-72, IC-2022-00362-73 (lines 1 through

25), IC-2022-00362-74 (lines 16 through 19), IC-2022-00362-80 through IC-2022-00362-81.

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 the complainant with copies of the in camera records, described in paragraphs 64 and 65 of the findings, above, free of charge, with those portions of such records, as identified in paragraphs 64 and 65 of the findings, above, unredacted.

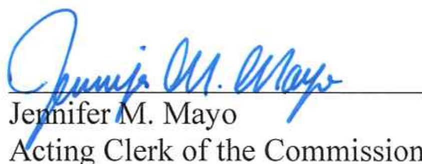
2. Within thirty days of the date of the Notice of Final Decision in this matter, the respondents shall perform a diligent and thorough search for all hardcopy or nonelectronic records responsive the requests described in paragraphs 2(a) and 2(b) of the findings, above, and provide an affidavit to the complainant and to the Commission detailing the nature and scope of the search. If no responsive records are located, the respondents shall so state in the affidavit. If responsive records are located, the respondents shall so state in the affidavit and immediately provide a copy of such records to the complainant, free of charge.

3. Within thirty days of the date of the Notice of Final Decision in this matter, the respondents shall perform a diligent and thorough search for all records responsive the request described in paragraph 2(c) of the findings, above, and detail the nature and scope of the search in the affidavit described in the second order, above. If no responsive records are located, the respondents shall so state in the affidavit. If responsive records are located, the respondents shall so state in the affidavit and immediately provide a copy of such records to the complainant, free of charge.

4. Within thirty days of the date of the Notice of Final Decision in this matter, respondents shall perform a diligent and thorough search for the medical evaluation described in paragraphs 12 and 16 of the findings, and any related records that were faxed to the respondents on or about September 4, 2014; and if the respondents cannot locate such records in their own files, the respondents shall retrieve a copy of such records from Dr. Sewitch or his office. In the affidavit described in the second order, above, the respondents shall detail their efforts to obtain such records. If no responsive records are located or if Dr. Sewitch or his office fails to provide such records to the respondents, the respondents shall so state in the affidavit. If responsive records are located, the respondents shall so state in such affidavit and immediately provide a copy of such records to the complainant, free of charge.

5. 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 26, 2023.



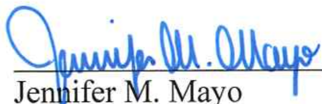
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JENNIFER PARDUS, 266 Pearl Street, Unit 504, Hartford, CT 06103

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF SOCIAL SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF SOCIAL SERVICES, c/o Attorney Joseph A. Smiga, Department of Social Services, 55 Farmington Avenue, Hartford, CT 06033 and Attorney Michael Slitt, Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105



Jennifer M. Mayo
Acting Clerk of the Commission

FIC 2022-0362/FD/JMM/7/26/2023