

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Matthew Hennessy,

Complainant

against

Docket # FIC 2023-0435

Carmen Sierra, City Treasurer, Office of the
Treasurer, City of Hartford; Office of the
Treasurer, City of Hartford; and City of
Hartford,

Respondents

August 14, 2024

The above-captioned matter was heard as a contested case on February 15, 2024, March 27, 2024, and May 9, 2024, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

On July 15, 2024, the hearing officer ordered the respondents to submit additional evidence including "any and all nondisclosure and/or confidentiality agreements or provisions that the respondents contend apply to [the in cameral records]..." as well as an affidavit averring facts related to the confidentiality of the records that the respondents submitted to the Commission for in camera review. The respondents complied with such order by submitting Respondents' Exhibit 9 (After-filed): Affidavit of Gary Draghi, dated July 18, 2024, as well as a thumb drive of various nondisclosure and/or confidentiality agreements or provisions, which has been marked as Exhibit 10 (After-filed): Nondisclosure and Confidentiality Agreements and Provisions Related to the In Camera Records.

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 August 10, 2023, the complainant requested that the respondents provide him with copies of the following: "all emails, memos, letters and presentations sent to you and staff responsible for monitoring the performance of the [the City of Hartford Municipal Employees Retirement Fund ("MERF")] in June, July and August of 2023, from all outside consultants (including Hooker & Holcombe) concerning the performance and valuation of the MERF and its assets."
3. It is found that, by letter dated August 15, 2023, the respondents acknowledged the complainant's request and stated the following in such letter:

Please note that some or all of the information you requested may be exempt from disclosure due to confidentiality provisions with which MERF is required to comply. Additionally, some or all of the information you requested may be exempt from disclosure under the provisions of Section 1-210 of the Connecticut General Statutes. We will work diligently to determine what information we can provide to you. Please recognize that the required careful attention to the above issues will likely take some time. We hope to have a response to you before long concerning the status of these determinations. In the meantime, we appreciate your patience.

4. By complaint filed August 28, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records described in paragraph 2, above. At the hearing on this matter, the complainant also requested the assessment of a civil penalty against Carmen Sierra, the Treasurer (the "Treasurer") for the City of Hartford (the "City").

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 concluded 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 the respondents released the first set of responsive records via the respondents' online public records portal known as GovQA on January 3, 2024. It is found that the respondents uploaded a second set of records to the GovQA system on January 29, 2024. It

is found that the respondents provided the complainant with a total of 4,333 pages of responsive records.

10. At the hearings on this matter and his brief, the complainant acknowledged that he had received certain responsive records from the respondents. However, he contended that they were not provided promptly and there should be additional responsive records, which the respondents had not provided to him. The complainant also took issue with the fact that he had to create a GovQA account and provide information in order to receive the records. The complainant additionally claimed that, at the time of the complainant's August 10, 2023 request, the respondent treasurer was running for re-election and that he was running against her, and therefore the respondents purposefully delayed the disclosure of the requested records because certain records included negative information concerning the MERF.¹ The complainant also contested the respondents' claims of exemption, and argued that civil penalties should be assessed against the Treasurer.

11. At the hearings on this matter and in their brief, the respondents claimed that they had performed thorough and diligent searches for records responsive to the complainants' August 10, 2023 request, and that they promptly provided the complainant with all responsive records that they maintained, with the exception of certain records, which they claimed are exempt from disclosure pursuant to §§1-210(b)(5)(A) and (B), G.S.

Thoroughness of the Respondents' Search and Promptness

12. At the hearings on this matter, the complainant claimed that the respondents failed to conduct an adequate search for responsive records and provide such records promptly.

13. At the May 9, 2024 hearing on this matter, the Chief Administrative Officer (the "CAO") for the Office of the Treasurer (the "Treasurer's Office") for the City testified with respect to the extent of the respondents' searches for records, and testified that they provided copies of all records that they believed were responsive to the request, other than those which they claimed to be exempt from mandatory disclosure under the FOI Act.

¹ The complainant filed two motions requesting that the Commission subpoena the respondent treasurer to the FOIC hearings on this matter, both of which were denied. In such motions, the complainant contended that the respondent treasurer "made contemporaneous public statements indicating that she was personally aware of the public records at issue in [c]omplainant's 8/10/23 request for documents and informed the media she would not make records available until after the November Election for Hartford Treasurer had passed." To support this claim, the complainant cited a press release by the City of Hartford Treasurer, dated August 24, 2023 stating that " the MERF's actuary has estimated that its funded percent shown for the June 30, 2023, GASB report, which based on the market value of assets, has risen to 66.6% from 63.10% at June 30, 2022. ..." The complainant then cites an article from CTInsider.com, dated October 7, 2023, which stated that "the Treasurer's Office has declined to share the unfunded liability as of July 2023, stating the number will not be ready until the end of the year or earlier next year." Such article also specifically states that the Treasurer indicated that " the office will not know the most updated percentage as of July 2023 until March or April." <https://www.ctinsider.com/capitalregion/article/hartford-pension-fund-treasurer-18409083.php>. It is found that the "evidence" the complainant points to does not demonstrate that the Treasurer purposefully delayed responding to his specific request, which sought "all emails, memos, letters and presentations sent to you and staff responsible for monitoring the performance of the MERF in June, July and August of 2023, from all outside consultants (including Hooker & Holcombe) concerning the performance and valuation of the MERF and its assets."

14. It is found that the CAO reports directly to the Treasurer and that she assists the Treasurer with various responsibilities, including data management, workflow improvement, facilitating communications among key partners, processing payroll, preparing pension commission and deferred compensation committee meetings, preparing budgets, and responding to records requests made pursuant to the FOI Act. It is found that the CAO and one other staff member in the Treasurer's Office are responsible for coordinating and compiling responses to records requests made to that office.

15. Based upon the CAO's testimony, it is found that, upon receipt of the complainant's August 10, 2023 records request, the Treasurer assigned the task of coordinating the response to such request to the CAO. It is found that the CAO issued an acknowledgement of such request, on behalf of the Treasurer, within four business days. It is found that the CAO met with the Treasurer and the Treasurer's Office investment team to review the request and determine next steps. It is found that the CAO, the Treasurer and the investment team reviewed their emails, documents, memos, and files to locate responsive records, which included electronic records as well as the limited paper records maintained by the Treasurer's Office. It is found that the CAO worked in conjunction with the team to review hundreds of records to determine their responsiveness to the complainant's August 10, 2023 request. It is found that the CAO, the investment team and the Treasurer uploaded the records they located to an internally shared drive. It is found that, by the end of October 2023, the Treasurer reviewed the records the staff had compiled and the records she approved to be disclosed were uploaded to the GovQA system, but such records were not made available to the complainant at that time. It is further found that the respondents determined that certain records were exempt from mandatory disclosure under the FOI Act, which records were placed in a separate computer folder and provided to the City's Office of the Corporation Counsel for review.

16. It is found that the CAO contacted the City's information technology ("IT") staff in mid-October 2023, requesting IT to conduct an even more thorough system-wide search, including any deleted records, in order to locate and provide all responsive records to the complainant. It is found that the CAO provided a copy of the complainant's August 10, 2023 records request to facilitate IT's search. It is found that, after not receiving a response from IT, the CAO reached out to IT to follow up on the request on four separate occasions, three times in October 2023 and one time in early January 2024.

17. It is found that the respondents released the first set of records to the complainant via the GovQA system on January 3, 2024, however the complainant was unaware that the records had been uploaded to the system on such date, although a notice had been sent to the complainant. It is found that, thereafter, the complainant had difficulty accessing the records on the GovQA system and, by email dated January 8, 2024, requested that the respondents email him the records directly.

18. It is found that, on January 8, 2024, the respondents informed the complainant that he needed to create an account through the GovQA system in order to view the records and that the volume of records prevented the respondents from emailing them to him.

19. It is found that IT provided an additional 2,045 emails to the CAO in early January 2024. It is found that, after the respondents reviewed such records, they released the responsive

records, for which they did not claim an exemption, to the complainant via the GovQA system on January 29, 2024.

20. It is found that the complainant was ultimately able to review and obtain the records released through the GovQA system and that the respondents ultimately offered to provide the complainant with paper copies of all responsive records, but the complainant refused to accept such paper records. Although the FOI Act does not permit public agencies to implement a blanket policy requiring members of the public to provide identification as a condition to receiving copies of public records, it is found that the respondents did not violate the FOI Act by requesting that the complainant establish an account on GovQA to receive electronic records, particularly in light of the volume of records at issue in this case and their willingness to provide paper copies.

21. Based on the testimony presented, it is found that the respondents conducted a thorough search for records responsive to the request described in paragraph 2, above, and that the respondents provided the complainant with all responsive records for which they did not claim an exemption.

22. With respect to the complainant's contention that the respondents failed to comply with his request for records, promptly, the Commission has defined the word "promptly," as used in §1-210(a), G.S., to mean "quickly and without undue delay, taking into account all of the factors presented by a particular request [including]: the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requestor needs the information contained in the records; 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." FOI Commission Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk (Jan. 11, 1982). In Commissioner of Dept. of Emergency Servs. and Public Protection v. Freedom of Info. Comm'n, HHB-CV-18-6047741, 2020 WL 5540637, *6 (Conn. Super. Ct. July 2, 2020), the court recognized that a public agency should consider its obligations under the FOI Act as a "primary duty" of that agency, "on par with the [agency's] other significant duties, or said another way, that the agency's FOIA duty is not a second class duty."

23. It is also well settled that the law does not require "immediate" access to records upon demand, but rather provides a person the right to receive records "promptly." See Egan v. Comptroller, Office of the Comptroller, City of Ansonia, et al., Docket #FIC 2023-0277 (April 25, 2024); Deanna Bouchard v. Andreas Bisbikos, Docket #FIC 2022-0199 (March 22, 2023); Anne Manusky v. Commissioner, State of Connecticut, Department of Education, et al., Docket #FIC 2016-0224 (November 16, 2016); see also Bradshaw Smith v. Stephen Mitchell, Chairman, Greater Hartford Transit District, et al., Docket #FIC 2014-184 (October 8, 2014); Suzanne Carlson and the Journal Inquirer v. Mayor, Town of Vernon, et al., Docket #FIC 2011-542 (May 23, 2012) ("nothing in the FOI Act requires employees of a public agency, or public officials, necessarily, to interrupt their work in order to immediately fulfill a request to inspect or copy records").

24. It is found that the request described in paragraph 2, above, did not include any time

by which the complainant needed access to the records, nor did it address their importance to the complainant. However, it is found that the respondents knew or should have known of the importance to the records to the complainant, in view of the fact that the complainant was also running for the office of treasurer and that the election took place in November 2023.

25. Although the CAO testified that she had received two to three prior requests that were in progress at the same time as the complainant's request and that she had many other duties in addition to responding to FOI requests, she offered no explanation for waiting until January 3, 2024 to provide the first set of records to the complainant, even though she testified, and it is found, that such records had been reviewed and approved by the Treasurer and uploaded to the GovQA system in October 2023. See Jafar Razmi v. Chief Officer, Office of Audit, Compliance and Ethics, State of Conn., University of Conn. et al., Docket #FIC 2015-634 (May 11, 2016) (concluding that the respondents violated the promptness requirements of the FOI Act where the respondents failed to provide the complainant with responsive records on a rolling basis, and instead waited until they received and reviewed all responsive records from the IT department before sending any records to the complainant).

26. It is also found that the CAO failed to provide any explanation for not attempting to contact IT in November and/or December 2023.

27. Based upon the facts and circumstances of this case, it is concluded that the respondents failed to prove that they promptly complied with the complainant's request, as required by §§1-210(a) and 1-212(a), G.S.

Claims of Exemption

28. With regard to the records claimed to be exempt from disclosure, the respondents submitted such records to the Commission for in camera inspection on February 15, 2024. Such records consist of six "Financial and Funding Reports" and shall be referred to herein as IC 2023-0435-1 through IC 2023-0435-162.²

29. The respondents claimed, at the contested case hearings in this matter, on the In Camera Index, and in their brief that the entirety of IC 2023-0435-1 through IC 2023-0435-162 are exempt from disclosure pursuant to §§1-210(b)(5)(A) and 1-210(b)(5)(B), G.S.

30. Section 1-210(b)(5)(A), G.S., provides that disclosure is not required of:

[t]rade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic

² The Commission notes that based upon the dates of the reports contained within IC 2023-0435-94 through IC 2023-0435-155, it is not clear whether such records fall within the time frame set forth in the complainant's August 10, 2023 request. However, since the respondents submitted such records for in camera inspection, the Commission presumes such records are in fact responsive to the complainant's records request.

value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy...

31. Section 1-210(b)(5)(B), G.S., provides that disclosure is not required of “[c]ommercial or financial information given in confidence, not required by statute”.

32. For the exemption at §1-210(b)(5)(B), G.S., to apply, all three elements must be proven, i.e., the information must be: (1) commercial or financial information; (2) given in confidence; and (3) not required by statute. Dep't of Pub. Utilities v. Freedom of Info. Comm'n, No. CV990498510S, 2001 WL 79833, at *3 (Conn. Super. Ct. Jan. 12, 2001).

33. At the hearing on March 27, 2024, the Chief Investment Officer (“CIO”) of the MERF appeared and testified on behalf of the respondents. It is found that the CIO had been employed by the City for eighteen years, thirteen of which he served as the CIO. It is found that the CIO oversees the management of the City’s pension fund assets and advises the Treasurer and City’s Pension Commission regarding investments. It is found that, prior to his employment with the City, the CIO had been employed by the Treasurer for the State of Connecticut, and that he has worked for thirty-three years in the public pension space. It is found that he is very familiar with standards of pension valuation and investments.

34. It is found that the CIO is familiar with all of the in camera records, that he reviewed them, and that such records were provided to him by the consultants or professionals who prepared the reports and with whom the Treasurer has a contractual relationship to provide such records to the Treasurer.

35. With regard to the first element of the exemption, Connecticut appellate courts have not had occasion to interpret the phrase “commercial or financial information”, as used in §1-210(b)(5)(B), G.S. Thus, the Commission has looked to Exemption 4 in the federal FOI Act, which protects “commercial or financial information obtained from a person [that is] privileged and confidential”. See e.g., John Scott v. Chief, Poquonock Bridge Fire District, et al., Docket #FIC 2015-727 (March 8, 2016); DatabaseUSA LLC v. Commissioner, State of Connecticut, Department of Administrative Services, Docket #FIC 2015-209 (February 10, 2016). “Although our Freedom of Information Act does not derive from any model act or the federal Freedom of Information Act, other similar acts, because they are in pari materia, are interpretatively helpful, especially in understanding the necessary accommodation of the competing interests involved.” Wilson v. Freedom of Inform. Comm'n, 181 Conn. 324, 333 (1980).

36. “Commercial” information, as it is used in the federal FOI Act, 5 U.S.C. §552, has been construed broadly to mean any information related to business or trade. See COMPTEL v. F.C.C., 910 F. Supp. 2d 100, 115 (D.D.C. 2012) (“COMPTEL”); Hitkansut LLC v. United States, 111 Fed. Cl. 228, 236 (2013) (“Hitkansut”); Watkins v. U.S. Bureau of Customs and Border Protection, 643 F.3d 1189, 1194 (9th Cir. 2011) (intimate aspects of an importer’s business such as supply chains and fluctuations of demand for merchandise contained commercial information); Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290

(D.C. Cir. 1983); James Craven et al. v. Governor, State of Connecticut et al., Docket #FIC2011-152, (March 14, 2012) (finding that a company's name is related to the company's business or trade and concluding, therefore, that the names of the employers referenced by the Governor in an address constitute commercial information). The term commercial information, as used in the federal FOI Act, not only includes information that relates to income-producing aspects of a business or information that reveals basic commercial operations; it also "reaches more broadly and applies (among other situations) when the provider of the information has a commercial interest in the information submitted to the agency." Baker & Hostetler LLP v. U.S. Dept. of Commerce, 473 F.3d 312, 319 (D.C. Cir. 2006); COMPTEL, 910 F. Supp. 2d at 115; Hitkansut, 111 Fed. Cl. at 236. In short, "commercial" includes anything pertaining, or relating, to or dealing with commerce that serves a commercial function or is of a commercial nature. See American Airlines, Inc. v. National Mediation Bd., 588 F.2d 863, 870 (2d Cir. 1978); Public Citizen v. United States Dept. of Health and Human Servs., 2014 WL 4388062, *207-08 (D.D.C. 2014). The term "financial information" includes commercial financial information, such as records that reveal basic commercial operations, or relate to the income-producing aspects of a business, as well as personal financial information. See, Washington Post Co. v. U.S. Dept. of Health and Human Services, 690 F.2d 252, 266 (D.C. Cir. 1982).

37. With regard to the first element of the §1-210(b)(5)(B), G.S., and based upon the testimony of the CIO, it is found as follows:

- (a) that the information contained within IC 2023-0435-2 through IC 2023-0435-26 is a report that is comprised of information that is provided to the Treasurer's consultant and preparer of the report by private funds about their investment activities and their offering terms as well as other factors that would be of economic significance, and includes the consultant's opinions on those products;
- (b) that the information contained within IC 2023-0435-29 through IC 2023-0435-92 includes the Treasurer's consultant's thoughts on specific private partnerships as well as the partnerships terms and strategies, which the consultant and the partnerships would consider important proprietary and commercial information;
- (c) that IC 2023-0435-95 through IC 2023-0435-115 is comprised of information concerning specific private partnerships and their operations and the nature of and how such private partnerships conduct business;
- (d) that the information contained within IC 2023-0435-117 through IC 2023-0435-130 includes information about private partnerships, the Treasurer's consultant's analysis of such private partnerships, the partnerships' and the consultant's strategies and substrategies, and general information on returns on private investments;
- (e) that IC 2023-0435-132 through IC 2023-0435-155 constitutes a report that includes processes of the consultant who compiled such report, underlying information about private entities and partnerships that the MERF has invested in, as well as technical performance calculations and analytics prepared by the consultant that relate to private partnerships;

(f) that the information contained within IC 2023-0435-156 through IC 2023-0435-162 includes the specific results and other related information about specific private partnerships that was prepared in response to a specific request by one of the Treasurer's consultants.

38. Based upon a careful in camera inspection, it is found that IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 reveal commercial operations, business or investment strategies, business evaluations, and financial information, and/or relates to the income producing aspects of a business or businesses. It is also found that the providers of the information, the MERF, and the consultants have a commercial interest in the information contained within IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162. Therefore, it is found that the information contained within IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 is commercial and/or financial information, within the meaning of §1-210(b)(5)(B), G.S.

39. With regard to the second element of the exemption, the Connecticut Appellate Court in Allco Renewable Energy Limited v. Freedom of Info. Comm'n, 205 Conn. App. 144 (2021), affirmed the Commission's interpretation of the phrase "given in confidence" as used in §1-210(b)(5)(B), G.S. In that case, the Commission concluded, and the court agreed, that "given in confidence" within the meaning of §1-210(b)(5)(B), G.S., requires an intent to give confidential information, based on context or inference, such as where there is an express or implied assurance of confidentiality, where the information is not available to the public from any other source or where the information is such that it would not customarily be disclosed by the person who provided it.

40. It is found that the information contained within IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 relates to various private partnerships and their offerings as well as their and the MERF's investment strategies, and that the private investment industry is highly competitive.

41. Based upon the testimony provided by the CIO as well as his July 18, 2024 affidavit, it is found that, disclosing the information contained with IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 to the public could potentially harm the Treasurer's relationship with its consultants as well as the consultants' ability to continue similar types of services for its customers going forward. In addition, based upon the CIO's testimony, such information provides insight into the MERF's private investment strategies of which other

investors could potentially take advantage and which could compromise those strategies and potentially negatively impact the value of the MERF. It is found that disclosure of IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 could harm the respondents' relationship with its consultants, the ability for the respondents to receive quality and forthright investment advice from its consultants, the ability of the consultants to receive financial and commercial information from private partnerships as well as the performance of the MERF. It is found that members of the industry classify such information as confidential information and do not customarily disclose such information to the public.

42. It is found that the respondents, the consultants who prepared and provided the Treasurer with IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162, as well as the private entities and funds whose information is contained within such records, consider the information contained within such records to be confidential, proprietary information.

43. It is found that IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 contain explicit confidential and nondisclosure provisions.

44. It is found that only key employees of the respondents have access to IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162, which, aside from the respondents' attorneys, includes the Treasurer, the CIO, the CAO, and three members of the Investment Management Unit at the Treasurer's Office. It is further found that if these were discussed with members of the City's Pension Commission, it is the respondents' practice to discuss such records in executive session only.

45. Additionally, the CIO averred in his affidavit, and it is found, that the information contained within IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 is information that is:

not only provided by the consultants themselves but is also based on information provided to the consultant or the MERF by private entities responsible for investing funds in partnerships employing bespoke strategies to make private investments and maintaining the data relating to these investments for different accounts. In many cases, the information about these entities including personnel, investment strategies, portfolio details and accounting information are also subject to an additional confidentiality clause or agreement

signed by consultants themselves or by the MERF to not allow the information to be made public. In the many years of [the CIO's] tenure as CIO, and since obtaining the advice of outside counsel, no information like this has been shared publicly nor was it ever publicly available for anyone to properly obtain.

46. It is found that the information the contained within IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 is not otherwise in the public domain and customarily would not be released to the public by the preparers of the reports or the private funds and partnerships discussed therein. It is also found that, based on the context in which it was provided, such information was provided under an implied assurance of confidentiality.

47. It is found that the information contained within IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 constitutes “commercial or financial information given in confidence” within the meaning of §1-210(b)(5)(B), G.S.

48. With regard to the third element of the exemption or the phrase “required by statute,” it is found that such term is not defined in the FOI Act. However, in the construction of statutes, words and phrases must be construed according to the commonly approved usage. See §1-1(a), G.S. (“Words and phrases. Construction of statutes.”).

49. The term “require” is defined, in relevant part, as: “[T]o demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation)....” (Webster’s Third New International Dictionary, *supra*), and “to direct, order, demand, instruct, command, claim, compel, request, need, exact.” Black’s Law Dictionary (6th Ed., 1990). See also Lewis v. Connecticut Gaming Policy Bd., 224 Conn. 693, 706 (1993) (the Supreme Court held that the phrase “required by statute” “in §4-166(2) [, G.S.], if construed to its commonly approved usage, can only mean that before a proceeding qualifies as a contested case, *an agency must be obligated by an act promulgated by the legislature* to determine the legal rights, duties or privileges of a party.”) (emphasis added); Advisory Opinion #69, In the Matter of a Request for Advisory Opinion, Connecticut Association of Assessing Officers, Applicant (the FOI Commission opined that “in the absence of *any express legal authority* that would enable assessors *to compel* disclosure of the information at issue...such information, when given to assessors, is ‘not required by statute’....”) (emphasis added); Advisory Opinion #82, In the Matter of a Request for Advisory Opinion, Under Secretary, Intergovernmental Policy Division, Office of Policy Management, Applicant (the FOI Commission opined that “statutes [did] *not require* the submission of the cost of acquisition data at issue. Rather, they *merely authorize[d]* the Secretary of OPM to prescribe forms, or mandate documentation, that may require such data.”) (emphasis added).

50. Based upon the evidence in the administrative record, the respondents’ testimony and affidavits, it is found that the information provided in IC 2023-0435-2 through IC 2023-0435-26,

IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 was not required by statute to be provided to the respondents.

51. Accordingly, it is found that §1-210(b)(5)(B), G.S., exempts IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 from mandatory disclosure.

52. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged, by withholding IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162.³

53. It is also found, however, that, based upon a careful in camera inspection and the evidence in the administrative record, the respondents did not prove that IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-131, which include the names of the Treasurer's consultants who prepared the reports as well as the names and dates of the reports and other miscellaneous information, are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.

54. Section 1-210(b)(5)(A), G.S., provides that disclosure is not required of:

[t]rade secrets, which for purposes of the [FOI] Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy.

55. The definition of "trade secret" in §1-210(b)(5)(A), G.S., "on its face, focuses exclusively on the nature and accessibility of the information." University of Connecticut v.

³ The exemption set forth in §1-210(b)(5)(A), G.S., is separate from the exemption set forth in §1-210(b)(5)(B), G.S., and the Commission need not determine whether the redacted information is exempt from disclosure under both. See Department of Public Utilities v. Freedom of Information Commission, Docket No, CV-990498510-S, 2001 WL 79833 (June 4, 2008). Because the Commission finds, for the reasons set forth in paragraphs 31 through 52, above, that IC 2023-0435-2 through IC 2023-0435-26, IC 2023-0435-29 through IC 2023-0435-92, IC 2023-0435-95 through IC 2023-0435-115, IC 2023-0435-117 through IC 2023-0435-130, IC 2023-0435-132 through IC 2023-0435-155, and IC 2023-0435-156 through IC 2023-0435-162 constitute "commercial or financial information given in confidence, not required by statute[,]” within the meaning of §1-210(b)(5)(B), G.S., it declines to consider whether such records are "trade secrets."

Freedom of Info. Comm'n, 303 Conn. 724, 733 (2012) ("UConn"). The information claimed to be a trade secret must "be of the kind included in the nonexhaustive list contained in the statute." Elm City Cheese Co., Inc. v. Federico, 251 Conn. 59, 70 (1999). In addition, "to qualify for a trade secret exemption under §1-210(b)(5)(A)[, G.S.], a substantial element of secrecy must exist, to the extent that there would be difficulty in acquiring the information except by the use of improper means." (Citation omitted; internal quotation marks omitted.) Director, Dept. of Information Technology of Town of Greenwich v. Freedom of Info. Comm'n, 274 Conn. 179, 194 (2005).

56. The Supreme Court has also recognized that "the 'independent economic value' requirement ... has been interpreted as a codification of the common-law requirement that a trade secret must give its owner a competitive advantage."⁴ Elm City Cheese Co., 251 Conn. at 88 n.27. See also Robert S. Weiss & Assocs., Inc. v. Wiederlight, 208 Conn. 525, 538 (1988) ("A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.").

57. Thus, courts and the Commission have found that a public agency had its own trade secret for purposes of §1-210(b)(5)(A), G.S., when such agency was a participant in a competitive market, and it was found that the information claimed to be a trade secret gave such agency a competitive advantage that would be lost if the information was disclosed. See UConn v. Freedom of Info. Comm'n, 2010 WL 2106972 (April 21, 2010), at *10, (disclosing UConn Athletics customer list "would adversely affect [UConn Athletics'] sales by giving its competitors opportunity to pull away those regular ticket buyers it worked so hard to develop"), aff'd, 303 Conn. 724 (2012); Allco, 205 Conn. App. at 160 (Department of Energy and Environmental Protection was "a commercial actor [that] has made a significant investment within a heavily competitive [renewable energy] industry for the benefit of ratepayers across the state," and disclosing information used to analyze bids would harm agency's ability to obtain competitive rates); Mike Savino, et al. v. Commissioner, State of Connecticut, Department of Economic and Community Development, et al., docket #FIC2018-0044 (Oct. 24, 2018) (disclosure of bid submitted to attract Amazon to build second headquarters in Connecticut "would enable states to better their offers in their competition with Connecticut to attract and keep private business, and give an advantage to private businesses in future negotiations with the state").

58. It is found that IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-131, which include the names of the Treasurer's consultants who prepared the reports as well as the names and dates of the reports and other miscellaneous information, do not derive economic value by remaining confidential.

59. It is found that that, unlike in UConn and Allco, IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-

⁴ The Commission notes that *Elm City Cheese* involved the definition of "trade secrets" under the Connecticut Uniform Trade Secrets Act ("CUTSA"), §35-51(d), G.S. However, as the Supreme Court noted in *UConn*, 303 Conn. at 735-36, "[t]he definition of a trade secret under §1-210(b)(5)(A) mirrors the definition under [CUTSA]," and "it makes no sense to construe the scope of the two acts differently."

131, do not provide the respondents a competitive advantage that could be lost if the information was disclosed.

60. Based on the foregoing, it is found that the IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-131, do not “derive independent economic value” from their confidentiality, and that potential investors could not obtain “economic value” from knowing the information contained in on IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-131.

61. It is therefore found that IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-131 are not trade secrets for purposes of §1-210(b)(5)(A), G.S. Accordingly, it is concluded that IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-131 are not exempt from disclosure pursuant to §1-210(b)(5)(A), G.S.

62. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding IC 2023-0435-1, IC 2023-0435-27, IC 2023-0435-28, IC 2023-0435-93, IC 2023-0435-94, IC 2023-0435-116, and IC 2023-0435-131 from the complainant.

Civil Penalties

63. With respect to the complainant’s request that the Commission impose civil penalties on the Treasurer, §1-206(b)(2), G.S., provides in relevant part:

... upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than five thousand dollars.

64. The complainant contended that civil penalties are warranted because the respondents failed to promptly provide the records in this case and improperly withheld the in camera records. He also claimed, without any credible evidence, that the Treasurer intentionally sought to delay the disclosure of the records in this case because she was seeking reelection.

65. It is found that the respondents made reasonable efforts to comply with the complainant’s August 10, 2023 request, but one of the main reasons for the delay in providing a sizable portion of the records was due to IT’s delay, not the respondents. In addition, the CAO testified credibly, and it is found, that the Treasurer did not instruct her to delay responding to the complainant’s August 10, 2023 request, but rather was instructed to, and did, follow the respondents’ typical protocols for responding to records request.

66. In addition, the complainant testified that although the Commission has previously

ordered the City of Hartford to comply with the FOI Act, the City of Hartford continues to violate the Act. The plaintiff specifically cited the Commission's final decisions in Alyssa Peterson v. Chief, Police Department, City of Hartford; Police Department, City of Harford; and City of Hartford, Docket #FIC 2021-0354 (June 22, 2022); Robert Cushman v. Jason Thody, Chief, Police Department, City of Hartford; Police Department, City of Hartford; and City of Hartford, Docket #FIC 2022-0035 (September 14, 2022); and Louis Pepe v. Clerk, City of Hartford; and City of Hartford, Docket #FIC 2022-0348 (July 26, 2023). However, the complainant specifically seeks civil penalties against the Treasurer and none of the cases cited by the complainant involve the Treasurer or the Treasurer's Office.

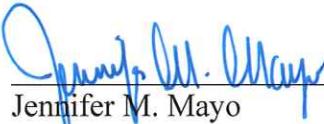
67. In addition, it is found that the Commission has determined that the majority of the in camera records that contain substantive information are permissively exempt from disclosure under the FOI Act.

68. Notwithstanding the conclusions in paragraphs 27 and 62, above, the Commission finds that the respondents' failure to comply with the FOI Act was not without reasonable grounds and that the imposition of a civil penalty is therefore not warranted under the facts and circumstances of this case.

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 records described in paragraph 62 of the findings, above.
2. Henceforth, the respondents shall strictly comply with the disclosure and promptness requirements in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 14, 2024.



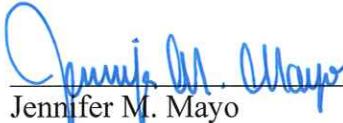
Jennifer M. Mayo
Acting Clerk of the Commission

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:

MATTHEW HENNESSY, 161 Tremont Street, Hartford, CT 06105

CARMEN SIERRA, CITY TREASURER, OFFICE OF THE TREASURER, CITY OF HARTFORD; OFFICE OF THE TREASURER, CITY OF HARTFORD; AND CITY OF HARTFORD, c/o Attorney Danielle Combs, Office of the Corporation Counsel, 550 Main Street, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission