STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jacqueline Rabe Thomas, Investigative Reporter,

Complainant

against

Docket # FIC 2023-0558

Secretary, State of Connecticut, Office of Policy and Management; and State of Connecticut, Office of Policy and Management,

Respondents

October 9, 2024

The above-captioned matter was heard as a contested case on May 31, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

By motion filed April 11, 2024, the Office of the Chief Public Defender requested permission to intervene in this matter. By order dated April 29, 2024, the hearing officer granted such motion.

On May 24, 2024, the respondents moved to dismiss this matter. By order dated May 29, 2024, the hearing officer denied such motion.

On June 24, 2024, pursuant to the order of the hearing officer, the respondents submitted an affidavit of Maurice Reaves. Such affidavit has been marked as Respondents' Exhibit 3 (after-filed).

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 June 27, 2023, the complainant requested that the respondents provide her with copies of "the data your office is provided to compile the [prosecutor data] reports under [§§4-68ff and 51-286j, G.S.]"

3. It is found that by letter dated September 12, 2023, the respondents denied the complainant's request, asserting that the requested records were exempt from disclosure pursuant

to the Erasure Statute, §§54-142a, G.S., et seq.[1] It is further found that the respondents asserted that the request required them to conduct research, which the respondents claimed they were not required to do under the Freedom of Information ("FOI") Act. It is also found that the respondents asserted that they could not comply with the request because they did not have access to the information necessary to determine whether the information contained in the requested records was subject to the Erasure Statute.[2]

4. It is found that by email dated September 13, 2023, the complainant replied to the letter described in paragraph 3, above, requesting that the respondents provide the requested records with all identifying information redacted in order "[t]o address your concern that these records would identify individuals whose cases have been erased ...." It is further found that the complainant asserted that under a prior decision of this Commission, the process of determining whether a particular record is subject to the Erasure Statute is not considered "research" for purposes of the FOI Act.

5. It is found that by letter dated October 27, 2023, the respondents again denied the complainant's request.

6. By email dated November 2, 2023, the complainant appealed to the Commission, alleging that the respondents violated the FOI Act by denying the request described in paragraphs 2 and 4, above.

7. At the hearing and in their post-hearing brief, the respondents claimed that (1) the requested records are not "public records," within the meaning of the FOI Act, (2) this case was rendered moot due to the passage of Public Act 24-81, (3) disclosure of the requested records would violate the Erasure Statute and §4-68m, G.S., and (4) they were not required to comply with the request because doing so would require them to perform research. With respect to the respondents' claim regarding the applicability of the Erasure Statute, the complainant claimed that the respondents could satisfy their obligations under the Erasure Statute by disclosing the requested records with all identifying information redacted.[3]

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[1] Although it is commonly referred to as the Erasure Statute, the relevant provisions are actually contained in multiple provisions of the General Statutes. Consistent with common practice, this decision refers to such provisions together as the Erasure Statute.

[2] The September 12, 2023 letter also asserted that the requested records were exempt from disclosure pursuant to §§1-210(b)(1) and (b)(10), G.S. However, because the respondents did not raise such claims at the hearing or in their post-hearing brief, they are not addressed in this decision.

[3] In addition to raising some of the same claims as the respondents, the intervenor claimed that the requested records were exempt from disclosure pursuant to §§1-210(b)(1) and (2), G.S., as well as the Health Insurance Portability and Accountability Act ("HIPAA"), Pub. Law No. 104-191, 110 Stat. 1936 (1996). However, because neither the respondents nor the intervenor presented any evidence in support of such claims, it is concluded that the intervenor failed to prove them. In addition, in *Commissioner of Mental Health & Addiction Services v. FOI Commission*, 347 Conn. 675, 716 (2023), the Supreme Court held that HIPAA does not prohibit the disclosure of public records that are otherwise required to be disclosed under the FOI Act.

**Factual and Procedural Background**

8. The Commission takes administrative notice of Public Act 19-59, "An Act Increasing Fairness and Transparency in the Criminal Justice System." It is found that Public Act 19-59 requires the respondents to produce an annual report regarding certain prosecutorial data ("Prosecutor Data Report"), and further requires the Division of Criminal Justice ("DCJ"), in consultation with certain other state entities, to collect data concerning criminal cases for purposes of such report.

9. Specifically, §4-68ff, G.S., requires the respondent Office of Policy and Management ("OPM") annually to "make a presentation to the Criminal Justice Commission … on existing prosecutorial data," to "report such presentation … to the chairpersons and ranking members of the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary," and to "make such presentation publicly available on [OPM's website]."

10. As of July 1, 2021, §4-68ff, G.S., further requires OPM to include in the Prosecutor Data Report "data collected under [§51-286j, G.S.,] for the previous calendar year."

11. Section 51-286j, G.S., requires DCJ, "in consultation with the Judicial Branch, the Department of Correction and the Criminal Justice Information System Governing Board," to "collect for the purposes of [§4-68ff, G.S.,] disaggregated, case level data by docket number pertaining to defendants who are eighteen years of age or older at the time of the commission of an alleged offense" concerning 13 specified categories of information. Additionally, as of February 1, 2021, §4-68ff(b), G.S., requires DCJ annually to "provide to [OPM] data collected under [§51-286j, G.S.,] for the previous calendar year."

12. It is found that, notwithstanding the requirements of §§4-68ff and 51-286j, G.S., DCJ has never provided the respondents with any of the data required by such statutes.

13. It is further found that, because DCJ has not complied with its statutory obligation to provide OPM with data collected under §51-286j, G.S., the respondents' Criminal Justice and Policy Planning Division ("Division") obtained relevant data from the Judicial Branch in order to compile the Prosecutor Data Report.

14. It is found that the records at issue in this case consist of the dataset that the Division obtained from the Judicial Branch to compile the Prosecutor Data Report published in 2022 ("Dataset").

15. It is found that the Dataset contains data from an internal database of the Judicial Branch that is only accessible to employees of the Judicial Branch. It is further found that the Dataset is comprised of data concerning all 98,729 criminal cases disposed of during the 2021 calendar year. It is found that 58,103 of such cases were nolled,[4] 13,747 of such cases were

[4] "A nolle prosequi is a declaration of the prosecuting officer that he will not prosecute the suit further at that time," which "terminate[s] the particular prosecution of the defendant without an acquittal and without placing him in jeopardy." *State v. Butler*, 209 Conn. App. 63, 97 (2021), aff'd, 348 Conn. 51 (2023). "[A] nolle prosequi essentially

dismissed, and 26,839 of such cases resulted in a finding of guilty. It is further found that the Dataset includes the defendant's name, date of birth, and social security number, as well as the docket number, arrest date, charges, and disposition of each case.

16. It is found that upon receiving the complainant's request, the respondents conducted legal research and met with other criminal justice agencies, including the Judicial Branch and DCJ, to determine whether and how they would be able to provide the complainant with the requested records while maintaining compliance with the Erasure Statute. In particular, the respondents testified, and it is found, that because the Dataset contains the disposition status of the referenced cases only as of the date that the Judicial Branch extracted the data, the respondents would need to ascertain the current disposition status of such cases to determine which cases were subject to the Erasure Statute.

17. It is found that the respondents engaged in discussions with the Judicial Branch about the feasibility of obtaining an updated version of the Dataset with the current disposition status of the referenced cases. It is further found that while the respondents discussed the potential time and expense it might take to obtain such information, the respondents did not get a definitive answer on such issues. The respondents testified that at some point during such discussions, they determined that obtaining an updated version of the Dataset "wasn't an option." However, when asked directly, the respondents acknowledged that the Judicial Branch never refused to provide them with an updated version of the Dataset.

18. The Commission further takes administrative notice of §54-142s, G.S., and Public Act 08-1, Special Session January 2008. It is found that the Connecticut Information Sharing System ("CISS") is an information technology system established pursuant to §54-142s, G.S., designed to facilitate the sharing of information among criminal justice agencies. In the affidavit described on page 1, above, the respondents stated that although they are eligible to obtain the credentials necessary to access CISS, they are not current users of CISS and that none of their employees have obtained the credentials and training necessary to use such system.

**Whether the Requested Records Are "Public Records"**

19. 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.

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results in a resolution of the matter without prejudice, meaning the state may refile the same charges provided it does so within any applicable statute of limitations." *Id.* at 98.

20. Section 1-200(1), G.S., provides in relevant part:

> "[p]ublic agency" or "agency" means … [a]ny executive, administrative or legislative office of the state … and any state … agency, any department, institution, bureau, board, commission, authority or official of the state … , and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions …."

21. 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.

22. 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."

23. The respondents and the intervenor claimed that the requested records are not "public records" within the meaning of the FOI Act, because such records were created by the Judicial Branch in the course of its adjudicative function. The respondents and the intervenor relied on *Clerk of the Superior Court v. FOI Commission*, 278 Conn. 28 (2006), in contending that because the Judicial Branch is a "public agency" within the meaning of §1-200(1), G.S., "only with respect to its … administrative functions," the requested records are not "public records" within the meaning of §1-200(5), G.S.

24. In *Clerk of the Superior Court*, the Supreme Court held "that the [J]udicial [B]ranch's administrative functions, as that phrase is used in [§1-200(1), G.S.,] consist of activities relating to its budget, personnel, facilities and physical operations." *Id.* at 36. Based on that interpretation, the Court concluded that the records at issue in that case, which were maintained by the Clerk of the Superior Court and concerned pending criminal and motor vehicle cases, were not "public records" within the meaning of §1-200(5), G.S., because such records did not pertain to the "budget, personnel, facilities and physical operations of the courts." *Id.* at 31-32.

25. In *Clerk of the Superior Court*, however, the requester made the request directly to the Judicial Branch, for records maintained by the Clerk of the Superior Court. That case did not involve records that an Executive Branch agency received from the Judicial Branch, used in the course of conducting the agency's own business, and then maintained as part of the agency's own records. In this case, the respondents did not dispute that they are "public agencies," within the meaning of §1-200(1), G.S. It is found that the respondents received the records at issue from the Judicial Branch, used such records for the purpose of conducting public business that is part

of the respondents' statutory obligations, and continue to maintain such records.

26. Accordingly, based on the plain meaning of §§1-200(5) and 1-210(a), G.S., it is concluded that the records described in paragraphs 2 and 4, above, are public records within the meaning of the FOI Act.

**Mootness**

27. The respondents and the intervenor also claimed that this case was rendered moot due to the passage of Public Act 24-81, which was signed into law by the Governor on May 30, 2024.[5]

28. Section 99 of Public Act 24-81 provides in relevant part:

> Sec. 99. (NEW) (Effective from passage) (a) ... Any person requesting data, records or files that have been shared by one state agency with another state agency pursuant to any statute, regulation, data sharing agreement, memorandum of agreement or understanding or court order, including, but not limited to, a request made pursuant to the [FOI] Act, as defined in section 1-200 of the general statutes, shall direct such request to the state agency from which such data, records or files originated.
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> (b) Notwithstanding the provisions of [the FOI Act], if a state agency that is not the originating state agency receives a request for data, records or files as described in subsection (a) of this section, such state agency shall (1) promptly refer such request to the state agency from which such data, records or files originated, and (2) notify, in writing, the person who submitted the request for such data, records or files that such request has been referred to the originating state agency. Such written notification shall include the name, address and telephone number of the originating state agency and the date on which the referral was made to the originating state agency.

29. The respondents acknowledged that Public Act 24-81 was not enacted until seven months after the respondents denied the complainant's request. However, the respondents contended that the requirements of §99 of Public Act 24-81 apply retroactively, such that the complainant is now required to direct her request to the Judicial Branch.

30. Section 55-3, G.S., provides that "[n]o provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect."

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[5] The Commission takes administrative notice of Public Act 24-81.

31. Connecticut courts "have uniformly interpreted [§55-3, G.S.,] as a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only." *Investment Associates v. Summit Associates, Inc.*, 309 Conn. 840, 867 (2013). The general rule in Connecticut is that statutes affecting substantive rights are presumed to apply prospectively, while procedural statutes are presumed to apply retroactively. *Id.* at 868. "While there is no precise definition of either [substantive or procedural law], it is generally agreed that a substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress." *Id.* Moreover, "a statute which, in form, provides but a change in remedy but actually brings about changes in substantive rights is not subject to retroactive application." *Id.* Finally, "statutes that effect substantial changes in the law do not apply in pending actions unless it clearly and unequivocally appears that such was the legislative intent ... and we have consistently expressed our reluctance to give such statutes retroactive application." *Town of Middlebury v. Department of Environmental Protection*, 283 Conn. 156, 185 (2007) (quoting *In re Judicial Inquiry No. 85-1*, 221 Conn. 625, 632 (1992)).

32. Courts have found that a statute affects substantive rights, and is therefore presumed to apply prospectively only, if such statute creates a new right or enacts changes that broaden or limit an existing right. See, e.g., *D'Eramo v. Smith*, 273 Conn. 610, 622-23 (2005) (statutory amendment expanding waiver of sovereign immunity in medical malpractice cases was substantive because it broadened an existing statutory right); *In re Daniel H.*, 237 Conn. 364, 375 (1996) (statutory amendment removing right to immediately appeal order transferring juvenile matter to regular criminal docket was substantive, even though defendant retained right to challenge order on appeal following final judgment).

33. It is concluded that §99 of Public Act 24-81 affects substantive rights because it imposes new limitations on the public's right to access public records. Prior to the enactment of Public Act 24-81, §1-210(a), G.S., gave members of the public the right to receive non-exempt public records that were "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 ...." (Emphasis added.) Public Act 24-81 placed a new limitation on such right by requiring requesters to make their requests to the agency from which the records originated, and imposed new obligations on public agencies by requiring them to refer such requests to the originating agency and to notify requesters of such referral.

34. Based on the foregoing, it is concluded that §99 of Public Act 24-81 does not apply retroactively. It is therefore concluded that this case is not moot.

**Claims of Exemption**

35. The respondents further claimed that disclosing the requested records would violate the Erasure Statute and §4-68m, G.S. The complainant claimed that redacting all identifying information from the requested records would be sufficient to address any confidentiality concerns, and therefore that the respondents were required to provide her with a copy of the entire Dataset with only identifying information redacted.

*Redaction of Identifying Information*

36. As relevant here, §54-142a, G.S., provides for the erasure of criminal records under the following circumstances: when the accused is found not guilty or has their charges dismissed and the time to appeal has expired, §54-142a(a), G.S.; when the accused has their charges nolled and 13 months have elapsed since such nolle, §54-142a(c)(1), G.S.; and when a person receives an absolute pardon, §54-142a(d)(2), G.S.[6] When a record falls within the scope of §54-142a, G.S., such erasure applies to "all police and court records and records of any state's attorney pertaining to [an erased] charge …." §54-142a, G.S.

37. Section 54-142a(g)(1), G.S., provides that "[t]he clerk of the court or any law enforcement agency having information contained in such erased records shall not disclose to anyone … information pertaining to any [erased] charge …."

38. Similarly, §54-142c, G.S., provides that "[t]he clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased records or information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter."

39. With respect to the complainant's claim that the respondents may disclose all of the requested records without violating the Erasure Statute as long as they redact any identifying information, the Superior Court previously rejected such a narrow construction of the Erasure Statute. In *Commissioner v. FOI Commission*, 2019 WL 4201551, at *11 (Conn. Super. Aug. 20, 2019), the Commission had interpreted the Erasure Statute to apply to "records that expressly reference [the defendant] as an accused person, or that reveal his status as in custody, under arrest, or charged with [a specific] crime …." In rejecting that interpretation, the Court pointed to the provision that now appears in §54-142a(h), G.S., which allows a judge to order the transcript of jury charges from cases subject to erasure "for use by the judiciary, provided the names of the accused *and the witnesses* are omitted therefrom."[7] (Emphasis added.) *Id.* at 12. The Court noted that "[i]f the legislature had intended the [E]rasure [S]tatute to encompass only 'person-specific' information, redaction of the name of the accused alone would have accomplished that goal." *Id.* Instead, the Court concluded that the Erasure Statute more broadly applies to "all records that disclose 'when or where a person was arrested, the nature of or circumstances surrounding the crime charged or the names of witnesses from who further information may be obtained.'" *Id.* at 17 (quoting *State v. West*, 192 Conn. 488, 496 (1984).

40. As noted in paragraph 15, above, the requested records consist of case-specific data from an internal Judicial Branch database concerning all 98,729 cases disposed of during the

[6] Section 54-142a, G.S., also provides for the erasure of criminal records under other circumstances that would not apply to the records at issue. For example, §54-142a(e)(1), G.S., provides for the erasure of records pertaining to certain convictions following 7 or 10 years, depending on the severity of the charge. Because all of the data in the records at issue are from cases that were disposed of less than 7 years ago, such provisions would not apply.

[7] As the Court explained, at the time of the events at issue, transcripts were included among the "court records" subject to erasure. The Erasure Statute has since been amended to specify that transcripts are not subject to erasure. See §54-142a(l), G.S.

2021 calendar year, including the defendant's name, docket number, arrest date, charges, and nature of disposition. It is further found that because the requested records contain data from cases that were dismissed or nolled, some of the cases referenced in such records are subject to the Erasure Statute.

41. It is found that disclosing data contained in the requested records concerning cases that are subject to the Erasure Statute would disclose "the existence of ... erased records or information pertaining to [an erased] charge," within the meaning of §54-142c, G.S., even if identifying information was redacted from such records. It is therefore concluded that the Erasure Statute did not permit the respondents to provide the complainant with a copy of the entire Dataset with only identifying information redacted.

*The Erasure Statute*

42. With respect to the respondents' claim that disclosure of the requested records would violate the Erasure Statute, the respondents did not claim that either the Erasure Statute or any other statute required them to withhold the entirety of the requested records. Rather, the respondents contended that some of the cases referenced in the Dataset that were not subject to erasure at the time they received the Dataset may have become subject to erasure since that time. For example, the respondents noted that because §54-142a(c)(1), G.S., provides that cases that were nolled are subject to erasure if the state does not refile charges within 13 months, they would have to ascertain the current disposition status of such cases. The respondents further contended that they do not have the means to determine with certainty the applicability of the Erasure Statute to each case, and therefore that they cannot determine which records need to be redacted to comply with the Erasure Statute.

43. "[I]t is well established that the general rule under the [FOI Act] is disclosure," that "any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the [FOI Act]," and that "[t]he burden of proving the applicability of [such] an exception ... rests [on] the party claiming it." (Citation omitted.) *Drumm v. FOI Commission*, 348 Conn. 565, 581 (2024). The rule requiring exemptions to be narrowly construed applies equally whether the exemption at issue is set forth in the FOI Act or another provision of the General Statutes. *Commissioner v. FOI Commission*, 330 Conn. 372, 392 (2018).

44. The Superior Court has concluded that agencies are required to determine the applicability of the Erasure Statute based on the date a record is disclosed, regardless of whether the record was subject to erasure at the time of the request. See *Torlai v. FOI Commission*, 2016 WL 4150549, at *6 (Conn. Super. June 27, 2016). Thus, to determine which cases referenced in the requested records are subject to the Erasure Statute, the respondents need to be able to determine the disposition status of each case as of the date of disclosure.

45. As found in paragraph 15, above, the requested records contain information concerning all 98,729 cases that were disposed of during the 2021 calendar year, which includes 13,747 cases that were dismissed, 58,103 cases that were nolled, and 26,839 cases that resulted in a finding of guilty.

46. It is found that pursuant to §54-142a(a), G.S., all of the cases referenced in the Dataset that were dismissed are subject to erasure. It is therefore concluded that all records contained in the Dataset referencing such cases are exempt from disclosure, and that the respondents did not violate the FOI Act by denying the complainant's request for such records.

47. However, the respondents' contention that they cannot disclose *any* of the requested records because they cannot determine with certainty whether the cases that resulted in a nolle or conviction are subject to erasure is not supported by the record, and is foreclosed by various provisions of the General Statutes and previous decisions of the Superior Court.

48. Section 54-142g, G.S., provides in relevant part:

> (a) "Criminal history record information" means court records and information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments, informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases ....
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> (b) "Criminal justice agency" means ... any ... governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice, including ... the Office of Policy and Management .... "Criminal justice agency" includes any component of a public, noncriminal justice agency if such component is created by statute and is authorized by law and, in fact, engages in activities constituting the administration of criminal justice as its principal function.
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> (c) "Conviction information" means criminal history record information which has not been erased, as provided in section 54-142a, and which discloses that a person has pleaded guilty or nolo contendere to, or was convicted of, any criminal offense, and the terms of the sentence....
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> (e) "Nonconviction information" means (1) criminal history record information that has been "erased" pursuant to section 54-142a; (2) information relating to persons granted youthful offender status; (3) continuances which are more than thirteen months old....

49. Section 54-142j, G.S., provides:

> The Commissioner of Emergency Services and Public Protection shall adopt regulations to establish procedures for criminal justice agencies to query the central repository prior to dissemination of any criminal history disposition information to assure that the most up to date disposition data is being used. Inquiries to the State Police Bureau of Identification shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

50. Section 54-142k, G.S., provides in relevant part:

> (a) Each person or agency holding conviction information or nonconviction information shall establish reasonable hours and places of inspection of such information.
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> (b) Each person or agency holding conviction information or nonconviction information shall (1) update such information promptly whenever related criminal history record information is erased, modified or corrected or when a pardon is granted; and (2) post on any conviction information or nonconviction information available to the public a notice that the criminal history record information may change daily due to erasures, corrections, pardons and other modifications to individual criminal history record information and that the person or agency cannot guarantee the accuracy of the information except with respect to the date the information is disclosed or obtained.
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> (c) Conviction information shall be available to the public for any purpose....

51. Read together, §§54-142j and 54-142k, G.S., impose on criminal justice agencies[8] the obligation to update criminal records in their possession with current information regarding the erasure status of such records, while providing such agencies with a mechanism to obtain the information necessary "to assure that the most up to date disposition data is being used." §54-142j, G.S.

52. It is found that data in the Dataset concerning cases that are subject to the Erasure Statute is "nonconviction information," within the meaning of §54-142g(e), G.S., and that data in the Dataset concerning cases that resulted in a conviction is "conviction information," within the meaning of §54-142g(d), G.S. It is further found that the respondents are an "agency holding conviction or nonconviction information," within the meaning of §54-142k, G.S. It is therefore

[8] As the respondents conceded, §54-142g(b), G.S., expressly includes OPM within the definition of "criminal justice agency."

found that the respondents are required to comply with the requirements of §54-142k, G.S., with respect to the Dataset.

53. At the hearing, the respondents testified that they did not know whether the Commissioner of Emergency Services and Public Protection ("Commissioner") had established procedures for "criminal justice agencies to query the central repository prior to dissemination of any criminal history disposition information to assure that the most up to date disposition data is being used," as required by §54-142j, G.S. Following the hearing, the hearing officer ordered the respondents to submit an affidavit addressing, among other matters, whether the Commissioner implemented such procedures. However, the affidavit submitted by the respondents stated only that because §54-142j, G.S., "addresses the duties and responsibilities of the Commissioner," the respondents "[a]s an entirely separate agency …, cannot comment upon" whether the Commissioner implemented such procedures.

54. The Commission takes administrative notice that the provision in §54-142j, G.S., requiring the Commissioner to establish procedures for criminal justice agencies to obtain updated disposition information was enacted in 1978 pursuant to Public Act 78-200. The same Public Act amended §29-11, G.S., to require the State Police Bureau of Identification to "maintain[] a central repository of complete criminal history record disposition information," and to require that "[t]he record of all arrests reported to the [Bureau of Identification] after March 16, 1976, *shall contain information of any disposition within ninety days after the disposition has occurred.*" (Emphasis added.)

55. Thus, contrary to the respondents' contention that they cannot obtain the information necessary to ascertain the current disposition status of the cases referenced in the requested records, it is found that §54-142k, G.S., expressly requires the respondents to obtain such information, and that §§54-142j and §29-11, G.S., provide one mechanism by which the respondents may satisfy such obligation.

56. Moreover, as found in paragraph 17, above, although the respondents claimed that it "wasn't an option" for them to obtain an updated Dataset from the Judicial Branch in order to determine the applicability of the Erasure Statute, the respondents acknowledged that the Judicial Branch did not refuse to provide such information.

57. In addition, as found in paragraph 18, above, the respondents acknowledged that they could obtain the credentials necessary to access the CISS database, but that they have not done so. Although the respondents' affidavit stated that the CISS database would not provide "the information required to review and redact" the requested records because it "does not have live, real-time access into the Judicial Branch system," the respondents did not explain why such live, real-time access to the internal Judicial Branch database would be necessary to ascertain the disposition status of the cases referenced in the requested records. To that end, the Commission notes that pursuant to §54-142s, G.S., the CISS database is required to include, among other data, "[a]ccess to all state and local police reports, … criminal records, incarceration and parole records, and court records and transcripts …."

58. At the hearing, the respondents also acknowledged that the Judicial Branch public website contains a Criminal/Motor Vehicle Case Look-up feature that allows the public to search

criminal cases by docket number.[9] The respondents contended, however, that the Case Look-up would not allow them to obtain the current disposition status of every case in the Dataset "with 100% certainty" because it does not contain information about cases that have been dismissed.[10] The respondents further contended that because they would be required to manually search the Case Look-up for each docket number, the information would be "stale" by the time they completed the search for all cases referenced in the Dataset.

59. With respect to the respondents' claim that utilizing either the CISS database or the Judicial Branch public website would not allow them to determine the applicability of the Erasure Statute "with 100% certainty," the Superior Court recognized in *Torlai v. FOI Commission*, 2016 WL 4150549, at *3-4 (June 27, 2016), that agencies are not required to make such determinations with such absolute precision.

60. In *Torlai*, the State Police testified before the Commission that they had denied a request for certain arrest records "because neither the court nor the State Police Bureau of Identification had any information on his arrest, which indicated to [them] that the arrest was probably erased." *Id.* at 3. The Court affirmed the Commission's conclusion that such testimony satisfied the agency's burden to prove the applicability of the Erasure Statute, noting that the State Police "had a reasonable belief that the [requested] records might be erased because [they] could find no other information on them," and were not required "to risk violation of the [E]rasure [S]tatute merely to respond to the plaintiff's request." *Id.*

61. The Commission takes administrative notice that the Judicial Branch website states that the Case Look-up feature contains "[e]ach criminal and motor vehicle charge which resulted in a conviction within the past 10 years." See footnote 9 of this decision. Thus, it is found that, even if the respondents were unable to obtain the disposition status of the cases referenced in the Dataset either from the Judicial Branch, the State Police Bureau of Identification, or CISS, the Judicial Branch public website would allow them to ascertain which cases resulted in a conviction. In accordance with *Torlai*, to the extent the respondents were unable to locate the disposition status of a specific case following a reasonably diligent search, such lack of information may be used to infer that such case is subject to erasure.

62. Finally, with respect to the respondents' contention that a case might become subject to erasure after they obtained the disposition status, the Commission notes that nothing in the FOI Act would prevent the respondents from providing the complainant with data from the requested records on a rolling basis, as they obtain the disposition status of the referenced cases.

63. To the extent the respondents intended to claim that the Erasure Statute prohibits them from disclosing records that might become erased in the future, §54-142k(b), G.S.,

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[9] See State of Connecticut Judicial Branch, Criminal/Motor Vehicle Case Look-up, available at https://jud.ct.gov/crim.htm.

[10] The respondents also contended that the Judicial Branch Case Look-up does not contain information about the status of cases that have been statutorily sealed while the defendant is participating in a pretrial diversionary program. However, the respondents testified at the hearing that because the Dataset only contains information about cases that have already been disposed of, none of the cases referenced in the Dataset would have been subject to such a statutory sealing provision.

expressly addresses such concern by requiring agencies to "post on any conviction information or nonconviction information available to the public a notice that the criminal history record information may change daily due to erasures, corrections, pardons and other modifications to individual criminal history record information and that the person or agency cannot guarantee the accuracy of the information except with respect to the date the information is disclosed or obtained …."[11]

64. As noted in paragraph 43, above, the respondents have the burden of proving that the requested records are exempt from disclosure. *Drumm v. FOI Commission*, 348 Conn. at 581. There is nothing in the FOI Act that relieves the respondents of that burden merely because they might be required to obtain necessary information from another agency.

65. Based on the foregoing, it is found that with the exception of records in the Dataset referencing cases that were dismissed, as described in paragraph 46, above, the respondents failed to prove that the requested records are exempt from disclosure pursuant to the Erasure Statute.

*Section 4-68m, G.S.*

66. Section 4-68m, G.S., which sets forth the duties of the Division, provides in relevant part:

> (e)(1) At the request of the [D]ivision, the Department of Correction, the Board of Pardons and Paroles, the Department of Mental Health and Addiction Services, the Department of Emergency Services and Public Protection, the Chief Court Administrator, the executive director of the Court Support Services Division of the Judicial Branch, the Chief State's Attorney and the Chief Public Defender shall provide the [D]ivision with information and data needed by the [D]ivision to perform its duties under subsection (b) of this section.
>
> (2) The [D]ivision shall have access to individualized records maintained by the Judicial Branch and the agencies specified in subdivision (1) of this subsection as needed for research purposes. The [D]ivision, in collaboration with the Judicial Branch and the agencies specified in subdivision (1) of this subsection, shall develop protocols to protect the privacy of such individualized records consistent with state and federal law. The [D]ivision shall use such individualized records for statistical analyses only and shall not use such records in any other manner that would

[11] The Commission takes administrative notice that the Judicial Branch public website contains such a notice with respect to the information contained in the Criminal/Motor Vehicle Case Look-up. See State of Connecticut Judicial Branch, Criminal/Motor Vehicle Case Look-up, available at https://jud.ct.gov/crim.htm.

> disclose the identity of individuals to whom the records pertain.
>
> (3) Any information or data provided to the [D]ivision pursuant to this subsection that is confidential in accordance with state or federal law shall remain confidential while in the custody of the [D]ivision and shall not be disclosed.

67. The Supreme Court has long recognized that "[i]n those limited circumstances where the legislature has determined that some other public interest overrides the public's right to know, it has provided explicit statutory exceptions" to the FOI Act. *Commissioner v. FOI Commission*, 330 Conn. at 390 (quoting *Lieberman v. State Board of Labor Relations*, 216 Conn. 253, 266 (1990)). As noted in paragraph 43, above, the Supreme Court has also held that "*all* exceptions from the [FOI Act]," including those not contained in the FOI Act itself, "must be construed narrowly to effectuate the purpose of the [FOI Act], which favors disclosure." (Emphasis added.) *Id.* at 392.

68. The respondents did not claim that §4-68m, G.S., expressly provides that the requested records are exempt from disclosure. Rather, the respondents claimed that such statute requires them to "protect the confidentiality of the [requested] records" because they are (1) "exempt adjudicative records of the Judicial Branch," and (2) "contain erased records."

69. However, the plain language of §4-68m(e), G.S., does not impose any additional confidentiality requirements beyond what is set forth in other laws. Rather, such statute only reiterates that confidential information that the Division receives from other agencies retains its confidential status while it is maintained by the Division.

70. To the extent the respondents contended that the language in §4-68m(e)(2), G.S., requiring the Division to "use … individualized records [received from the Judicial Branch and other agencies] for statistical analyses only" prohibits them from disclosing such records, §4-68m(e)(3), G.S., forecloses such interpretation. Specifically, if §4-68m(e)(2), G.S., was intended as a blanket prohibition on the disclosure of *any* information that the Division received from other agencies, there would be no reason for §4-68m(e)(3), G.S., to further prohibit the Division from disclosing "information or data provided to the [D]ivision … that is confidential in accordance with state or federal law …." See *State v. LaFleur*, 307 Conn. 115, 126 (2012) ("We presume that the legislature did not intend to enact meaningless provisions.... [S]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant...."); *Commissioner of Environmental Protection v. Mellon*, 286 Conn. 687, 693 (2008) ("We generally reject a construction that renders any portion of a statute superfluous.").

71. To the extent the respondents intended to claim that the Dataset they received from the Judicial Branch is "confidential in accordance with state or federal law," within the meaning of §4-68m(e), G.S., merely because it contains adjudicative records that would not be subject to the FOI Act if the request were made directly to the Judicial Branch, such an interpretation is inconsistent with longstanding precedent recognizing the public's presumptive right to access court records.

72. While the Court in *Clerk of the Superior Court* concluded that adjudicative records of the Judicial Branch are not "public records," within the meaning of the FOI Act, the Court also recognized that the public has a presumptive right under the First Amendment to access such records. *Clerk of the Superior Court*, 278 Conn. at 42-43; see also *id.* at 54 (*Palmer, J.*, concurring) ("the public has a presumptive right of access to court proceedings and documents"); *State v. Ross*, 208 Conn. 156, 159 (1988) (recognizing "the first amendment interests of the public and the press in full access to all aspects of criminal proceedings"); Practice Book §42-49A(a) ("Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public."); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."). It would be unreasonable to conclude that *all* adjudicative records of the Judicial Branch are "confidential," within the meaning of §4-68m(e), G.S., when the public has a presumptive constitutional right to access such records.[12]

73. Accordingly, it is concluded that the requested records are not exempt from disclosure pursuant to §4-68m, G.S.

**Research**

74. Finally, the respondents claimed that they were not required to comply with the complainant's request because doing so would require them to conduct research, which they claim is not required by the FOI Act.

75. The FOI Act does not require public agencies to perform research to determine which records are responsive to a request. In *Wildin v. Freedom of Information Commission*, 56 Conn. App. 683, 686-87 (2000), the Appellate Court explained that a request requires research if it does not identify the records sought with sufficient particularity, such that the public agency must conduct an analysis or exercise discretion to determine which records fall within the scope of the request. *Id.* at 686-87.

76. Here, the respondents did not contend that the complainant did not sufficiently identify the records she was requesting, such that they would be required to exercise discretion to determine which records were responsive to the request. Instead, the respondents contended that the process of obtaining information from other agencies regarding the current disposition status of the cases referenced in the Dataset, and then using such information to determine whether each case was subject to the Erasure Statute, would constitute research.

77. However, the Commission has expressly rejected the respondents' claim in prior cases. As explained in *Brennan v. Chief, Police Department, Town of West Hartford, et al.*, FIC 2012-0405, ¶20 (April 24, 2013):

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[12] Although §4-68m(e)(2), G.S., provides that the Division "shall not use such records in any other manner that would disclose the identity of individuals to whom the records pertain," the complainant expressly requested the Dataset with identifying information redacted. Accordingly, the Commission need not address whether §4-68m(e)(2), G.S., would otherwise require the respondents to redact identifying information prior to disclosing the requested records.

> [T]he process of obtaining the disposition information required to update the respondent's database … so that the respondents may provide non-exempt records to the complainant in response to the request … would not constitute "research." It is found that such records are clearly identifiable and would not require the respondents to exercise discretion in order to determine whether or not such records fall within such request. Although the process may be burdensome and time consuming, it does not constitute research, as that term has been defined in *Wildin.* As the Commission concluded in [*Torlai v. Commissioner, State of Connecticut, Division of State Police, et al.*, Docket #FIC 2009-770 (Sept. 3, 2012)], the respondents may not rely on their lack of information regarding the dispositions of criminal cases as a basis to deny the public information about arrests.

78. The respondents further contended that "the magnitude of the task" of ascertaining the disposition status of each case would be "laborious and ultimately impossible." As the Court explained in *Wildin*, however, "[a] record request that is simply burdensome does not make that request one requiring research." *Id.* at 687. While the size of the request and the amount of time it takes for a public agency to comply are important factors in determining whether an agency complied with a request "promptly," within the meaning of §§1-210(a) and 1-212(a), G.S., nothing in the FOI Act permits a public agency to deny a request outright solely because the request is burdensome.

79. For all of the foregoing reasons, it is concluded that with the exception of the records described in paragraph 46, above, the respondents violated the FOI Act by denying the complainant's request.[13]

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

1. Within 60 days of the Notice of Final Decision in this matter, the respondents shall begin providing the complainant with a copy of the data contained in the requested records that relate to cases that are not subject to the Erasure Statute. The respondents shall continue

[13] The respondents also noted that the complainant testified that she separately requested a copy of the Dataset from the Judicial Branch, but decided not to proceed with such request because the Judicial Branch would have charged a fee that made the request cost-prohibitive. The respondents contended that, in light of the fact that the complainant was not willing to pay the fee that the Judicial Branch would have charged her, "an order requiring OPM to work with the Judicial Branch to produce a redacted bulk data file using the Judicial Branch's IT system and database, at OPM's sole cost and expense, is not appropriate under the circumstances." However, no evidence was presented regarding how much, if anything, it would cost the respondents to obtain the information necessary to redact the Dataset, whether from the Judicial Branch, CISS, or the State Police Bureau of Identification. See paragraphs 54-58, above. Moreover, because the respondents denied the complainant's request outright, the issue of whether the respondents may charge a fee for providing the requested records is not before the Commission.

providing the complainant with such data on a rolling basis, at least every 30 days thereafter, until they have provided the complainant with all data relating to non-erased cases contained in the requested records.

2. In complying with paragraph 1 of this Order, the respondents shall redact all personal identifying information from the records that they provide to the complainant.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of October 9, 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:

**JACQUELINE RABE THOMAS, INVESTIGATIVE REPORTER**, Hearst CT Media, P.O. Box 330238, West Hartford, CT 06133-0238

**SECRETARY, STATE OF CONNECTICUT, OFFICE OF POLICY AND MANAGEMENT**; **AND STATE OF CONNECTICUT, OFFICE OF POLICY AND MANAGEMENT**, c/o Attorney Gareth D. Bye, General Counsel and Attorney Kara A. T. Murphy, Staff Attorney 2, Office of Policy and Management, 450 Capitol Avenue, Hartford, CT 06106

**OFFICE OF THE CHIEF PUBLIC DEFENDER**, c/o Attorney Deborah D. Sullivan, Division of Public Defender Services, 55 Farmington Avenue, 8th Floor, Hartford, CT 06105

Jennifer M. Mayo
Acting Clerk of the Commission

FIC 2023-0558/FD/JMM/October 9, 2024