

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Faith Murray,

Complainant

against

Docket #FIC 2023-0188

Comptroller, State of Connecticut,
Office of the State Comptroller;
and State of Connecticut, Office
of the State Comptroller,

Respondents

April 10, 2024

The above-captioned matter was heard as a contested case on August 23, 2023, and November 6, 2023, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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 February 3, 2023, the complainant requested that the respondents provide her with copies of the following records, which were prioritized in three parts:

PRIORITY #1:

1. Any and all communications to or from any party, internal or external, referring regarding and/or mentioning Faith Murray from January 1, 2019 to present, up to and including, John Herrington, Robert Helfand, Colin Newman, Donald Wilkerson, Ginger Frasca, Morgan Roane, Bonnie Schlechtweg, Martha Carlson, Natalie Braswell, Paul Piechowicz, Heather DiMauro, Yamuna Menon, any OSC¹ employee, any DAS employee, any OPM employee, and OLR employee and any others not specifically listed;

¹ OSC is an acronym for the Office of the State Comptroller.

2. All emails between Robert Helfand and Faith Murray that were forwarded to John Herrington from July 1, 2020, to present day to include replies between John Herrington and Robert Helfand and/or forwarded to others;
3. All names of OSC employees that were reclassified from January 1, 2020 to present day to include name, division, unit, date of reclass. [sic] Position held prior to reclassification including recent promotions that were previous [sic] reclassified;
4. All names, division, unit, and dates of OSC employees reclassified to Associate Retirement & Benefits Officers (ARBO) with previous position held prior to reclass including employees that held the ARBO title and have been since promoted to Retirement & Benefit System Coordinator (RBSC);
5. All submissions for promotion to ARBO via reclass for each employee including duties questionnaire [sic], justification letter(s)/documentation from OSC and DAS and any other supporting documentation for reclassification/promotion. Any associated returned communication from DAS regarding reclassification for employees identified in #4 presented for reclass to ARBO for each employee including any recent promotions to Retirement & Benefits System Coordinator (RBSC) from ARBO;
6. All promotions from January 1, 2020, to present day in the OSC to include name, unit, division, and date of promotion, previous position, promotional position and date of hire at the OSC;
7. Any and all communication from any and all Office of the State Comptroller (OSC) employee regarding complaints/concerns about Donald Wilkerson formal or informal from 2015 to present including CHRO;
8. Any and all documentation or communication that ensued regarding the aforementioned complaints [that is, request #7], including meeting requests, agendas, memos, investigation, notes, interviews, investigation results, witness statements, interview findings, and associated emails to or from any OSC employee [in] hardcopy or electronic.
9. All formal and informal training, classes, seminars and meetings Donald Wilkerson has attended from January 2015 to present;
10. Date, time, location, and instructor when Donald Wilkerson attended "Effective Communication for Managers" training, or any other training as recommended by the results of the 2019 investigation;
11. All Annual Performance Assessment/Appraisals/Service Ratings (PR125, PR132 or any other document) evaluations and comments for Donald Wilkerson;
12. Former duties, assignments, and responsibilities of Annette Sadlowski in the Disability Unit;
13. Annette's Sadlowski's approval time off/attendance report for May 2022;

14. Job Posting and Application including Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire for job posting Recruitment #220822-4731AR-001² Associate Retirement & Benefits Officer;
15. Names of all applicants that applied to job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer;
16. Names of all applicants denied an interview by the OSC to [sic] job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer;
17. All letters to all applicants denied an interview for job posting Recruitment #220822-4731AR-001;
18. Specific reason each applicant was denied an interview [for] job posting Recruitment ##220822-4731AR-001 Associate Retirement & Benefits Officer;
19. All job applications and questionnaires submitted, including Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire completed by denied applicants for job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer;
20. Names of all applicants interviewed for job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer;
21. All letters to interviewed applicants not chosen for job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer;
22. Names of all individuals involved in the interviewing process as well as names of individuals who conducted interviews for each applicant for job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer;
23. All questions asked to applicants as well as interview notes or documents, formal and informal and any documents procedure and/or answered from the applicants interview[ed] for job posting Recruitment #220822-4731AR-001 **ARBO**.
24. Any justification sent to DAS regarding the creation of the job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer;
25. Explanation detailing how and why the position #220822-4731AR-001 was created from a Retirement and Benefits System Coordinator (RBSC) previously filed by Annette Sadlowski;
26. Personnel record of William Cassada including resume, any applications, and transcripts;
27. William Cassada's submitted and completed application for job posting Recruitment #220822-4731AR-001 Associate Retirement & Benefits Officer including completed requirement Supplemental Questionnaire. (Underling in original). In addition, all

² All bolded text herein reflects text that was bolded in the original February 3, 2023 request.

- Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaires;
28. Date and time of William Cassada's interview for position;
 29. All Annual Performance Appraisals/Service Ratings evaluations and comments (PER127, PER127A and any other form) for William Cassada;
 30. Communication of officer to William Cassada for Associate Retirement & Benefits Officer;
 31. Provide any and all forms of communication regarding justification for promotion of William Cassada, internal or external to and/or from DAS;
 32. Day in January 2022 William Cassada began shadowing Annette Sadlowski in the Disability Unit;
 33. William Cassada's duties, responsibilities, assignments, and accomplishments from **10/1/2020 to 12/20** [sic];
 34. William Cassada's duties, responsibilities, assignments, and accomplishments from **1/1/2021 to 12/31/2021**;
 35. William Cassada's duties, responsibilities, assignments, and accomplishments from **1/1/2022 to 5/31/2022**;
 36. William Cassada's duties, responsibilities, assignments, and accomplishments from **6/1/2022 to 9/30/2022**;
 37. William Cassada's duties, responsibilities, assignments, and accomplishments from **10/1/2022 to present**;
 38. Any and all Telework schedule applications and approval status from January 1, 2022, to present for William Cassada;
 39. Age, gender, and race of RBOs as the OSC;
 40. Name of all Retirement & Benefit Officers (RBO), years and months of service as a RBO only;
 41. Age, gender, race, unit and division of all Associate Retirement & Benefit Officers (ARBO) in the OSC;
 42. Names of all ARBOs with years and months of service as an ARBO;
 43. ARBOs previous job title/class to include dates with length of service in previous job title/class;
 44. All ARBOs who supervise others, name, unit, division, supervisor or the ARBO and the names of the individuals that are supervised by the ARBO;

PRIORITY #2:

45. Attendance Report Log from Organizer Robert Helfand's Microsoft Teams Meeting of "Workflow" with Faith Murray, beginning on or about **February 15, 2021, through May 31, 2021**. Must extract from Organizer.
46. In chronological order by date, provide any and all attendees in each daily "Workflow" Teams meetings with Faith Murray;

47. In chronological order by date, provide date, time and duration of all “Workflow” Teams meetings with Faith Murray;
48. Provide all recordings and transcripts from all “Workflow” Teams meetings with Faith Murray;
49. Personnel file/record of Helena Bartolomeo including resume, any applications, and transcripts;
50. Job posting, posting number and Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire completed by Helena Bartolomeo and her initial position upon hire;
51. Completed application including Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire by Helena Bartolomeo;
52. All State of Connecticut employees interviewed for position filled by Helena Bartolomeo;
53. All denial letters to candidates from position filled by Helena Bartolomeo;
54. All questions asked to candidates during the interviewing process;
55. All individuals involved in the interviewing process filled by Helena Bartolomeo;
56. Duties, responsibilities, assignments, and accomplishments of Helena Bartolomeo, member of the Disability Unit;
57. Supervisor of Helena Bartolomeo;
58. OSC Organizational Chart from January 2022 through May 2022 and any intervening changes, updates, or adjustments;
59. Personnel file/record of Morgan Hilliard including resume, any applications, and transcripts;
60. Job posting, Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire completed and submitted by Morgan Hilliard for job class of **Retirement & Benefits Officer**;
61. Job posting, Supplemental Questionnaire, and Prerequisite Questionnaire submitted and completed by Morgan Hilliard for job class of **Retirement Examiner**;
62. All questions asked of candidates during the interviewing process for Retirement & Benefits Officer position filled by Morgan Hilliard;
63. All individuals involved in the interviewing process for RBO position filled by Morgan Hilliard;
64. Duties, responsibilities, assignments, and accomplishments of Morgan Hilliard;
65. Supervisor of Morgan Hilliard;
66. All Service Ratings (PER127 and PER127A and/or any other document) for Morgan Hilliard;
67. DAS statewide rules governing Promotions, transfers, reclassifications, and demotions used in the Office of the State Comptroller hiring practices;

68. Job Posting and Application including Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire for job posting Recruitment #221024-0181AR-001 Retirement & Benefits System Coordinator;
69. Names of all applicants that applied to job posting Recruitment #221024-0181AR-001 Retirement & Benefits System Coordinator;
70. All job applications and all questionnaires completed and submitted by denied applicants for job posting Recruitment #221024-0181AR-001 Retirement & Benefits System Coordinator;
71. Names of applicants denied an interview for the OSC to job posting #221024-0181AR-001 Retirement & Benefits System Coordinator;
72. All denial letters to all applicants for job posting Recruitment #221024-0181AR-001;
73. All letters to interviewed candidates not chosen for job posting Recruitment #221024-0181AR-001;
74. Specific reasons applicants were denied an interview [for] job posting #221024-0181AR-001 Retirement & Benefits System Coordinator;
75. All applicants interviewed for job posting Recruitment #221024-0181AR-001 Retirement & Benefits System Coordinator;
76. All individuals involved in interviewing the applicants for job posting Recruitment #221024-0181AR-001 Retirement & Benefits System Coordinator;
77. All questions asked, interview notes or documents to [sic] the applicants interviewed for job posting Recruitment #221024-0181AR-001 Retirement & Benefits System Coordinator;
78. Candidate to successfully fill position #221024-0181AR-001 Retirement & Benefits System Coordinator;
79. Candidate's offer letter for position #221024-0181AR-001;
80. Name of individual who previously filled position #221024-0181AR-001 and reason for vacating RBSC position;

PRIORITY #3:

81. Job Posting and Application including Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire for job posting Recruitment #221006-4732AR-001 Retirement & Benefits Officer;
82. Names of all applicants that applied to job posting Recruitment #221006-4732AR-001 Retirement & Benefits Officer;
83. Names of all applicants denied an interview by the OSC to job posting Recruitment #221006-4732AR-001 Retirement & Benefits Officer;
84. All letters to applicants denied an interview;

85. Specific reason applicants were denied an interview [for] job posting #221006-4732AR-001 Retirement & Benefits Officer;
86. All job applications and questionnaires completed and submitted by denied applicants for job posting Recruitment #221006-4732AR-001 Retirement & Benefits Officer;
87. All applicants interviewed for job Recruitment #221006-4732AR-001 Retirement & Benefits Officer;
88. All individuals involved in interviewing the applicants for job posting Recruitment #221006-4732AR-001 Retirement & Benefits Officer;
89. All questions asked, interview notes and documents to [sic] the applicants interviewed for job posting #221006-4732AR-001 Retirement & Benefits Officer;
90. Candidate's Offer letter;
91. Name of individual who previously filled this position and reason for vacating RBO position;
92. Names of all applicants who applied to job posting Recruitment #221014-0181AR-001 Retirement & Benefits System Coordinator;
93. Names of all applicants interviewed by OSC to [sic] job posting #221014-0181AR-001 Retirement & Benefits System Coordinator;
94. All denial letters to all applicants;
95. Explanation for no Candidate to successfully fill position #221014-0181AR-001 Retirement & Benefits System Coordinator;
96. Name of individual who previously filled position #221014-0181AR-001 and reason for vacating RBSC position;
97. Date of hire of Robert Helfand;
98. Personnel record of Robert Helfand including resume, all applications, and transcripts;
99. Job posting position Retirement & Benefits Coordinator (RBSC) Robert Helfand applied for at date of hire;
100. Completed Application for RBSC including Supplemental Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire, resume and any other credentials submitted by Robert Helfand;
101. All questions asked during interview process for RBSC job posting filled by Robert Helfand;
102. Names of all candidates that applied for the RBSC position filled by Robert Helfand;
103. All candidates interviewed for RBSC position filled by Robert Helfand;
104. State of Connecticut employees interviewed for RBSC position filled by Robert Helfand;
105. Robert Helfand's job offer letter for RBSC;
106. Explanation letter or communication internal or external including DAS detailing how and why the position was created for a Retirement and Benefits System Coordinator (RBSC) previously filled by an Assistant Division Director;

107. Job Posting position and application of Assistant Division Director Robert Helfand;
108. Robert Helfand's completed application including Supplement Questionnaire, Certification Questionnaire (RQs) Referral Questions and Prerequisite Questionnaire, or promotion by reclassification application documentation and paperwork or any other credential submitted by Robert Helfand;
109. Date Robert Helfand was reclassified to Assistant Division Director;
110. All individuals conducting interviews or involved with reclassification for Assistant Division Director position filled by Robert Helfand;
111. All questions asked during interview process for the position of Assistant Division Director filled by Robert Helfand;
112. All candidates interviewed for Assistant Division Director filled by Robert Helfand;
113. All State of Connecticut employees interviewed for Assistant Division Director filled by Robert Helfand;
114. All individuals involved in the interviewing process for Assistant Division Director filled by Robert Helfand;
115. Robert Helfand's offer letter for Assistant Division Director;
116. All Annual Performance Assessment/Appraisals/Service Ratings (Pr125, PR132 or any other document) evaluations and commends for Robert Helfand;
117. All Annual Performance Assessment/Appraisals/Service Ratings (Pr125, PR132 or any other document) evaluations and commends for John Herrington;
118. Beginning January 1, 2021, to present day, all emails between John Herrington and Martin Nwachukwu;
119. DAS statewide rules governing Temporary Worker Retirees (TWRs); and
120. OSC rules governing TWRs.

3. It is found that, by email dated February 8, 2023, the respondents acknowledged the complainant's request.

4. It is found that, by email dated March 1, 2023, the respondents requested that the complainant narrow the first request set forth in paragraph 2, above, because the request, as written, produced approximately 18,000 potentially responsive records. It is further found that the respondents also requested that the complainant clarify fourteen of the requests set forth in paragraph 2, above.

5. It is found that, with regard to the respondents' request to narrow the first request set forth in paragraph 2, above, by email dated March 1, 2023, the complainant informed the respondents that they could remove "any general agency broadcast emails or [emails] having Faith Murray in a distribution list created by any agency in the State of Connecticut."

6. It is found that, with regard to the respondents' request that the complainant clarify certain requests set forth in paragraph 2, above, by email dated March 2, 2023, the complainant told the respondents to refer to her original request.

7. It is found that, by email dated March 7, 2023, the respondents informed the complainant that, even removing general broadcast emails and distribution lists concerning the complainant, running the first request set forth in paragraph 2, above, was still resulting in approximately 18,000 potentially responsive records that had to be reviewed. It is further found that the respondents again informed the complainant that, if she narrowed this request, it could reduce the records that had to be reviewed; if the complainant chose not to narrow the request, the respondents indicated that they would provide her with responsive records on a rolling basis.

8. It is found that, in response to the respondents' March 7, 2023 email set forth in paragraph 7, above, the complainant replied, as follows:

Please help me understand [how] narrowing my request by excluding all generalized emails sent to all OSC, all State of CT employees, or all agencies, that your results still yield 18,000 emails. No sarcasm intended; I cannot fathom that I (Faith Murray) would be the subject of thousands of emails. Please send a screen shot of [the] 18,000 results that you reference. For my third attempt, I am requesting internal communications referencing Faith Murray as the subject or a part of the email including conversations to external parties.

9. It is found that, by email dated March 9, 2023, the respondents explained to the complainant that:

DAS/Best eDiscovery conducted a search for "Faith Murray" and excluded faith.murray@ct.gov within the search parameters to ensure that communications to or from that email address would not add to the search results. DAS/BEST cannot conduct a search in any more specific a manner based on the parameters that you have set....The result has produced approximately 18,000 possibly responsive records, not 18,000 responsive emails. The search results do not guarantee that every record is responsive, and so...18,000 [hits] will include a mix of responsive and nonresponsive records, all of which will require review prior to release.

10. It is found that, by email dated March 13, 2023, the complainant informed the respondents that her request "stands."

11. It is found that, by email dated March 14, 2023, the respondents suggested that, with regard to the first request set forth in paragraph 2, above, the complainant could perhaps 1) specify certain mailboxes to be searched, instead of an all-office search; 2) use keyword searches; 3) specify types of data, instead of requesting an all-types search; or 4) narrow the timeframe of the request.

12. It is found that, by email dated March 20, 2023, the complainant indicated to the respondents that, with respect to the first request set forth in paragraph 2, above, she did not understand why the respondents could not just break the request down into smaller parts.

13. It is found that, by email dated March 24, 2023, the complainant requested that the respondents put the first request set forth in paragraph 2, above, aside for the moment, and provide her with a status update with regard to the processing of the remainder of the requests set forth in her Priority #1 requests (that is, the second through the forty-fourth request, set forth in paragraph 2, above).

14. It is found that, by email dated March 24, 2023, the respondents, addressing the complainant's suggestion that the respondents break the first request set forth in paragraph 2, above, into smaller parts, informed the complainant that the only way they could envision breaking the request into smaller parts would be by employee, which would result in DAS/BEST having to conduct 350 individual employee searches. It is further found that the respondents informed the complainant that they did not know if DAS/BEST would be able to run that number of searches. Finally, it is found that the respondents requested that the complainant confirm whether they should focus their efforts on processing the complainant's Priority #1 requests first (with the exception of the first request set forth in paragraph 2, above), before processing the complainant's Priority # 2 requests (that is, requests forty-five through eighty) and Priority #3 requests (that is, requests eighty-one through one hundred and twenty), as well as the complainant's *second request*.³

15. It is found that, by email dated March 24, 2023, the complainant responded to the email set forth in paragraph 14, above, as follows:

I am confirming the production of [the] Priority 1 [requests] be completed as expeditiously as possible with #1 being amended [as indicated below]. As quite a bit of time has passed without a response, I am requesting the date to be the present day of March 24, 2023. Once [request] #2 through [request] #44 have been completed, please respond to amended #1 below follow[] by Priority #2 and #3. I am requesting my second request *be worked on concurrently* as this request was received on February 8, 2023:

³ It is found that, in addition to the instant request, the respondents received a second request from the complainant on March 17, 2023.

PRIORITY #1 (Amendment)⁴

- 1-1 Any and all communication to or from any party, internal or external, referring, regarding and/or mentioning Faith Murry, Faith, or Ms. Murray, from June 1, 2020 to March 24, 2023, from Robert Helfand;
- 1-2 Any and all communication to any party, internal or external, referring, regarding and/or mentioning Faith Murry, Faith, or Ms. Murray, from January 1, 2018 to March 24, 2023, from John Herrington;
- 1-3 Any and all communication to any party, internal or external, referring, regarding and/or mentioning Faith Murry, Faith, or Ms. Murray, from January 1, 2018 to December 31, 2020, from Ginger Frasca;
- 1-4 Any and all communication to or from any party, internal or external, referring, regarding and/or mentioning Faith Murry, Faith, or Ms. Murray, from February 1, 2021 (or Morgan Roane's date of hire at the OSC) to March 24, 2023, from Morgan Roane;
- 1-5 Any and all communication to or from any party, internal or external, referring, regarding and/or mentioning Faith Murry, Faith, or Ms. Murray, from January 1, 2018 to March 24, 2023, from Colin Newman;
- 1-6 Any and all communication to or from any party, internal or external, referring, regarding and/or mentioning Faith Murry, Faith, or Ms. Murray, from January 1, 2018 to August 31, 2020, from Donald Wilkerson;
- 1-7 Any and all communication to or from any party, internal or external, referring, regarding and/or mentioning Faith Murry, Faith, or Ms. Murray, from January 1, 2018 to March 24, 2023, up to and including, Bonnie Schlechtweg, Martha Carlson, Natalie Braswell, [or] Heather DiMauro;
- 1-8 Any and all communication to or from any party, internal or external, referring, regarding and/or mentioning Faith Murray, Faith, or Ms. Murray, from January 1, 2022 to March 24, 2023, from Yamuna Menon; and

⁴ This is the complainant's amendment to the first request set forth in paragraph 2, above.

1-9 Any and all communication to or from any party, internal or external, referring, regarding and/or mentioning Faith Murray, Faith, or Ms. Murray, from June 1, 2020 to February 1, 2022, from Paul Piechowicz.

16. It is found that, by email dated March 24, 2023, the respondents confirmed receipt of the email set forth in paragraph 15, above.

17. It is further found that, on March 24, 2023, the respondents provided the complainant with an initial production of responsive records, free of charge, and indicated that they would continue to provide the complainant with responsive records until the request was completely processed. It is further found that the respondents specifically identified certain exemptions to disclosure at such time.

18. It is found that, by email dated April 3, 2023, the respondents provided the complainant with a second production of responsive records, free of charge. It is further found that the respondents again specifically identified certain exemptions to disclosure.

19. By email dated and filed April 21, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with the requested records, as described in paragraph 2, above.

20. 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.

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. It is concluded that the requested records are public records within the meaning of §§1-210(a), and 1-212(a), G.S.

24. It is found that, by the time of the contested case hearings, the respondents had provided the complainant with at least ten installments of responsive records.

25. The complainant contended, however, that the respondents had not provided her with all records responsive to the following requests set forth in paragraph 2, above: 1,⁵ 18, 19, 23, 26, 27, 49, 50, 51, 54, 59, 60, 61, 67, 70, 71, 72, 73, 74, 77, 86, 89, 98, 100, 101, 107, and 108. In addition, the complainant indicated that, with the exception of the exemption claimed for employee service ratings, she was challenging all the exemptions raised by the respondents.

26. The respondents contended that, with regard to the following requests set forth in paragraph 2, above, there are no responsive records: 18, 67, 71, 72, 73 and 74. The respondents further contended that all of the records that had been withheld, either in their entirety or in part, were exempt from disclosure pursuant to the provisions of: §1-210(b)(2), G.S.; §1-210(b)(6), G.S., and §1-219, G.S.

27. On December 4, 2023, the respondents submitted the records at issue to the Commission for in camera inspection. Such records will be referred to as IC-2023-0188-1 through IC-2023-0188-397.

28. Yamuna Menon, General Counsel for the Office of the State Comptroller and Assistant State Comptroller, appeared and testified at both contested case hearings on behalf of the respondents.

Requests for Which There Were No Responsive Records

29. With regard to the requests set forth in parts 18, 67, 71, 72, 73 and 74 of paragraph 2, above, based upon the testimony of Attorney Menon, it is found that the respondents initially searched for records responsive to these requests, but were unable to locate any responsive records. Following the first contested hearing and prior to the second contested case hearing, it is found that the respondents conducted additional searches for each of these requests and located records responsive to requests 18 and 74. It is found that such records were provided to the complainant. It is found that the respondents do not maintain any records responsive to the requests set forth in parts 67, 71, 72 or 73 of paragraph 2, above. In this regard, it is found that the respondents

⁵ With respect to the first request set forth in paragraph 2, above, the complainant contended that, despite amending such request multiple times, she still had not received all of the records responsive to the amended request. At the time of the first contested case hearing, the complainant contended that the first request set forth in paragraph 2, above, had been modified, as follows: “any and all emails from John Herrington, (to/from, deleted, carbon copies, and blind carbon copies) that mention “Faith,” during the following timeframes: 1) July 24, 2019 through December 31, 2019; 2) March 1, 2020 through June 30, 2020; 3) July 1, 2020 through December 31, 2020; 4) January 1, 2021 through December 31, 2021; 5) January 1, 2022 through December 31, 2022; and 6) January 1, 2023 through March 23, 2023.”

conducted two thorough searches for records within the departments of the respondent agency that would maintain such records, and also consulted with various employees within such departments, and ultimately determined that there were no responsive records to disclose to the complainant.

30. Accordingly, it is concluded that, with respect to requests 18, 67, 71, 72, 73 and 74 set forth in paragraph 2, above, the respondents did not violate §§1-210(a) or 1-212(a), G.S., as alleged in the complaint.

Records Containing Employee Service Ratings

31. The Commission notes that, in addition to the exemptions identified in paragraph 26, above, in the index accompanying the in camera records, the respondents claimed that the following records were exempt from disclosure in their entirety pursuant to Conn. Gen. Stat. §§5-225 and 5-237: IC-2023-0188-123 through IC-2023-0188-125; IC-2023-0188-138; IC-2023-0188-139; IC-2023-0188-201; IC-2023-0188-202; and IC-2023-0188-204 through IC-2023-0188-208. It is found that such records are described on the in camera index as "service ratings."

32. On the index accompanying the in camera records, the respondents also claimed that the following records were exempt from disclosure in their entirety pursuant to Conn. Gen. Stat. §§5-225 and 5-237: IC-2023-0188-314 through IC-2023-0188-321. While IC-2023-0188-314 through IC-2023-0188-321 are described on the in camera index as "performance evaluations," it is found that such records are also employee service ratings.

33. Because the complainant expressly stated at the first contested case hearing that she was not challenging claims of exemption with regard to records of employee service ratings, the Commission will not further address the in camera records identified in paragraphs 31 and 32, above.

Section 1-219, G.S.

34. The respondents claimed that the following in camera records are exempt from disclosure in their entirety pursuant to §1-219, G.S.: IC-2023-0188-105; IC-2023-0188-106; and IC-2023-0188-113 through IC-2023-0188-115.⁶

35. Section 1-219, G.S., provides, in relevant part, as follows:

- (a) As used in this section: (1) "Armed forces" means the Army, Navy, Marine Corps, Coast Guard, Air Force or Space Force of the United States; (2) "veteran" means any

⁶ While the respondents also claimed that IC-2023-0188-112 was exempt from disclosure pursuant to §1-219, G.S., the Commission believes that such claim was made in error. Accordingly, such record will be addressed in connection with the respondents' claim of exemption pursuant to §1-210(b)(2), G.S. See ¶ 44, below.

person honorably discharged from, or released under honorable conditions from active service or reserve status in the armed forces; (3) "military discharge document" means a United States Department of Defense form, including, but not limited to, a DD 214 form, or any valid paper that evidences the service, discharge or retirement of a veteran from the armed forces that contains personal information such as a service number or Social Security number.... (Emphasis supplied)

...

- (b) Notwithstanding any provision of chapter 55, or any provision of section 11-8 or 11-8a, any military discharge document filed by or on behalf of a veteran with a public agency before, on or after October 1, 2002...shall be retained by the agency separate and apart from the other records of the agency. The contents of such document shall be confidential for at least seventy-five years from the date the document is filed with the public agency....

36. Upon careful in camera inspection, it is found that the in camera records identified in paragraph 34, above, are "military discharge documents" that were "filed by or on behalf of a veteran with a public agency before, on or after October 1, 2002," and that "seventy-five years from the date the document [was] filed" has not transpired, within the meaning of §1-219, G.S.

37. It is therefore concluded that the records identified in paragraph 34, above, are exempt from disclosure pursuant to the provisions of §1-219, G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose a copy of such records to the complainant.

Section 1-210(b)(2), G.S.

38. Next, the respondents claimed that the remaining in camera records are exempt from disclosure, either in whole or in part, pursuant to §1-210(b)(2), G.S.

39. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require disclosure of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

40. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in Perkins v. Freedom of Info. Comm'n, 228 Conn. 158, 175 (1993). The claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would

constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

41. Section 1-214, G.S., provides in relevant part that:

(b)(1) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (A) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned, and (B) the collective bargaining representative, if any, of each employee concerned.

(b)(2) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files, and the agency reasonably believes that the disclosure of such records would not legally constitute an invasion of privacy, the agency shall first disclose the requested records to the person making the request to inspect or copy such records and subsequently, within a reasonable time after such disclosure, make a reasonable attempt to send a written or an electronic copy of the request to inspect or copy such records, if applicable, or a brief description of such request, to each employee concerned and the collective bargaining representative, if any, of each employee concerned.

(b)(3) Nothing in this section shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

(c) A public agency which has provided notice under subdivision (1) of subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given. Each objection

filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206. Notwithstanding any provision of this subsection or subsection (b) of section 1-206 to the contrary, if an employee's collective bargaining representative files a written objection under this subsection, the employee may subsequently approve the disclosure of the records requested by submitting a written notice to the public agency.

42. It is found that the respondents reasonably believed that the remaining in camera records, or portions thereof, were exempt from disclosure pursuant to §1-210(b)(2), G.S. It is further found that the respondents timely notified the employees about the request for records in this case, and that all employees objected to the disclosure of the records in accordance with §1-214, G.S.

43. It is found that the remaining in camera records, or portions thereof, constitute "personnel" or "similar" files within the meaning of §1-210(b)(2), G.S.

44. Upon careful in camera inspection, it is found that the following records, or portions thereof, contain or relate to personal matters, such as information concerning matrimonial, familial, health or financial affairs, which are unrelated to a government employee's job duties or performance:

IC-2023-0188-99 (lines 1-11); IC-2023-0188-100 through IC-2023-0188-102 (all); IC-2023-0188-103 (lines 1-2); IC-2023-0188-104 (all); IC-2023-0188-107 through IC-2023-0188-109 (all); IC-2023-0188-110 (lines 1-10); IC-2023-0188-111 (lines 1-9); IC-2023-0188-112 (all); IC-2023-0188-116 through IC-2023-0188-122 (all); IC-2023-0188-135 (lines 1-14); IC-2023-0188-136 (lines 1-2); IC-2023-0188-140 through IC-2023-0188-142 (all); IC-2023-0188-143 (lines 1-14); IC-2023-0188-144 through IC-2023-0188-154 (all)⁷; IC-2023-0188-164 (lines 1-14); IC-2023-0188-165 through IC-2023-0188-169 (all); IC-2023-0188-

⁷ The Commission notes that the in camera submission does not contain IC-2023-0188-155.

170 (lines 1-4); IC-2023-0188-171 through IC-2023-0188-174 (all); IC-2023-0188-175 (lines 1-2); IC-2023-0188-176 (lines 1-10); IC-2023-0188-186 (lines 1-2); IC-2023-0188-187 through IC-2023-0188-200 (all); IC-2023-0188-203 (lines 1-2); IC-2023-0188-209 (all); IC-2023-0188-210 (all); IC-2023-0188-309 (lines 1-14); IC-2023-0188-310 (line 1); IC-2023-0188-312 (all); IC-2023-0188-313 (all); IC-2023-0188-322 (lines 1-4); IC-2023-0188-323 through IC-2023-0188-327; IC-2023-0188-328 (lines 1-8); IC-2023-0188-329 (all); IC-2023-0188-330 (all); IC-2023-0188-331 (lines 1-3); IC-2023-0188-332 through IC-2023-0188-335 (all); IC-2023-0188-351 (lines 1-9); IC-2023-0188-352 (lines 1-2); IC-2023-0188-353 (all); IC-2023-0188-354 (lines 1-2); IC-2023-0188-355 through IC-2023-0188-360; IC-2023-0188-361 (all); IC-2023-0188-362 (all)⁸; IC-2023-0188-363 (lines 1-2); IC-2023-0188-364 (lines 1-2); IC-2023-0188-365 (line 1); IC-2023-0188-366 (line 1); IC-2023-0188-367 (line 1); IC-2023-0188-368 (line 1); IC-2023-0188-369 (line 7)⁹; IC-2023-0188-370 (lines 1-2); and IC-2023-0188-371 (lines 1-2).

45. It is found that the in camera records, or portions thereof, identified in paragraph 44, above, do not pertain to legitimate matters of public concern. It is further found that release of such records, or portions thereof, would be highly offensive to a reasonable person.

46. It is therefore concluded that disclosure of the in camera records, or portions thereof, specifically identified in paragraph 44, above, would constitute an invasion of privacy within the meaning of §1-210(b)(2), G.S. It is further concluded that such records, or portions thereof, are exempt from disclosure by virtue of §1-210(b)(2), G.S.

47. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose a copy of the in camera records, or portions thereof, identified in paragraph 44 above, to the complainant.

⁸ With regard to IC-2023-0188-361 and IC-2023-0188-362, while the index accompanying the in camera records indicates that only one line in each of the records is exempt from disclosure, upon careful in camera inspection, it is found that both records are exempt from disclosure in their entirety pursuant to the provisions of §1-210(b)(2), G.S.

⁹ With regard to IC-2023-0188-365 through IC-2023-0188-369, it is found that such records are employee paystubs and that the only redaction on such records is an employee identification number. This Commission has previously declined to order the disclosure of employee identification numbers contained in personnel, medical or similar files pursuant to §1-210(b)(2), G.S., as such disclosure would constitute an invasion of personal privacy. See Daly, Jr., et al. v. Comm’r, State of Connecticut, Dep’t of Correction, et al., Docket #FIC 2014-032 (Oct. 17, 2014).

Section 1-210(b)(6), G.S.

48. Next, the respondents claimed that the following (and remaining) in camera records are exempt from disclosure in their entirety pursuant to §1-210(b)(6), G.S.:

IC-2023-0188-1 through IC-2023-0188-98; IC-2023-0188-126 through IC-2023-0188-134¹⁰; IC-2023-0188-137; IC-2023-0188-156 through IC-2023-0188-163; IC-2023-0188-177 through IC-2023-0188-185; IC-2023-0188-211 through IC-2023-0188-308; IC-2023-0188-336 through IC-2023-0188-350; and IC-2023-0188-372 through IC-2023-0188-397.

49. Section 1-210(b)(6), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require disclosure of “[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations.”

50. In addition, §5-225, G.S., provides, in relevant part, as follows:

All persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Not later than thirty days after the issuance of the final earned rating, a person who has not achieved a passing rating may inspect his or her papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, subject to such regulations as may be issued by the Commissioner of Administrative Services. Not later than ten days after inspecting his or her papers, a person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his or her final earned rating, as based on the original examination paper or responses. The commissioner shall render a final decision on the person's appeal within thirty days thereafter and correct candidate lists as appropriate.

51. In Personnel Director, Dep't of Income Maintenance v. Freedom of Info. Comm'n, 214 Conn. 312 (1990), the Supreme Court concluded that “the disclosure and inspection referred to under §5-225 applies only to the candidate who has taken the examination.” Id. at 320. The Court held that §5-225, G.S., provided an exemption from

¹⁰ While the index accompanying the in camera records indicates that a particular record begins on IC-2023-0188-127 and ends on IC-2023-0188-134, upon careful in camera review, it is found that the first page of such document is actually IC-2023-0188-126.

mandatory disclosure with reference to persons other than a person seeking their own examination papers.

52. The Commission takes administrative notice of its final decisions in Barbara Godejohn v. Comm’r, State of Connecticut, Dep’t of Agriculture, et al., Docket #FIC 2018-0696 (Oct. 10, 2019), and Nsonsa Kisala v. Comm’r, State of Connecticut, Dep’t of Pub. Health, et al., Docket #FIC 2014-330 (Mar. 11, 2015). In these cases, the Commission recognized that an employment examination may consist of an examination of professional credentials, experience, and evaluations, rather than a traditional written or oral examination that involves responding to questions. Moreover, the Commission concluded that applications and related materials, when submitted for competitive positions in the classified service, constitute “examination” materials that are exempt from disclosure pursuant to the provisions of §1-210(b)(6), G.S.¹¹

53. Based on careful in camera inspection, it is found that all of the in camera records identified in paragraph 48, above, with the exception of IC-2023-0188-162 and IC-2023-0188-0163, are applications and related materials submitted for competitive positions in the classified service. It is further found that the respondent agency’s human resources department used the applications and related materials to evaluate candidates’ professional credentials and experience, to compare and assess candidates, to rank the various candidates, and to select the final candidates. It is therefore found that such records constitute “examination data” within the meaning of §1-210(b)(6), G.S.

54. Based on careful in camera inspection, it is found that IC-2023-0188-162 and IC-2023-0188-0163 contain interview questions, which also constitute “examination data” within the meaning of §1-210(b)(6), G.S.

55. It is therefore concluded that the in camera records identified in paragraph 48, above, are exempt from disclosure pursuant to §1-210(b)(6), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose a copy of such records to the complainant.

Promptness

56. Finally, with regard to whether the respondents have acted promptly in responding to the instant request, this Commission has previously opined that the word “promptly” in §1-210, G.S., means “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 requester 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 loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The

¹¹ The Commission also concluded that §5-225, G.S., provided an additional basis upon which to withhold these types of records.

Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

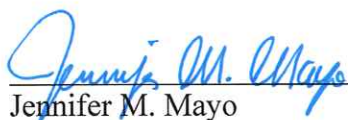
57. While the Commission realizes that the parties disagree as to whether all responsive records have been provided to the complainant, (see n.12, below), it is found that the amount of work the respondents performed to produce the records that have been disclosed to the complainant as of the dates of the hearings in this matter is extraordinary. It is also found that, by the time of the second contested case hearing, the respondents had provided the complainant with at least ten installments of responsive records totaling 9,200 pages. It is further found that Attorney Menon reviewed 161,000 pages in order to provide such records to the complainant. It is further found that, in connection with the instant request, Attorney Menon worked over 300 hours and that members of her staff worked an additional eighty hours. It is further found that, by the time of the second hearing, the respondents had completely fulfilled the complainant's second request for records, which was filed approximately five weeks after the instant request. See ¶ 14 n.3, above. Finally, it is found that the only outstanding matter in the instant request concerns the scope of the first request for records set forth in paragraph 2, above.¹²

58. It is concluded that the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., in this case.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 10, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

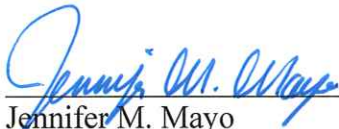
¹² It is found that, from the complainant's perspective, the first request set forth in paragraph 2, above, was a request for all communications (emails, and attachments thereto, as well as other forms of non-email communications). It is found that, from the respondents' perspective, the first request set forth in paragraph 2, above, was a request only for emails. It is further found that the respondents have fully processed such request as it pertains to emails. Finally, it is found that, if the scope of the request were expanded to include attachments to emails and non-email communications, the respondents would have to review an additional 150,000 pages of potentially responsive records. Given that the request in the instant matter is so voluminous, if the complainant still desires additional records in connection with the first request set forth in paragraph 2, above, she is free to submit a new request for such records.

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:

FAITH MURRAY, 140 Folly Brook Lane, Manchester, CT 06040

COMPTROLLER, STATE OF CONNECTICUT, OFFICE OF THE STATE COMPTROLLER; AND STATE OF CONNECTICUT, OFFICE OF THE STATE COMPTROLLER, c/o Assistant Attorney General Blake T. Sullivan and Assistant Attorney General Benjamin Abrams, Connecticut Office of the Attorney General, 165 Capital Avenue, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission