

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Sheri Speer,

Complainant

against

Docket # FIC 2023-0578

Corporation Counsel, Office of Corporation  
Counsel, City of Norwich; Office of  
Corporation Counsel, City of Norwich; and  
City of Norwich,

Respondents

October 23, 2024

The above-captioned matter was heard as a contested case on March 14, 2024, at which time 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. By email filed November 15, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the order in the Commission’s final decision in Docket #FIC 2022-0473, *Sheri Speer v. Corporation Counsel, Office of Corporation Counsel, City of Norwich; Office of Corporation Counsel, City of Norwich; and City of Norwich* (September 27, 2023) (“*Speer I*”).
3. The Commission takes administrative notice of the administrative record and final decision in *Speer I*.

**Procedural History**

4. It is found that on September 13, 2022, the complainant initially requested that the respondents provide her with copies of the following records:

[a.] A copy of all invoices sent to the City of Norwich and Norwich Public Utilities dated between January 1, 2012 and the present.

[b.] A copy of all checks and payments received from the City of Norwich and Norwich Public Utilities dated between

January 1, 2012 and the present.

[c.] A copy of all insurance policies provided to the City of Norwich and Norwich Public Utilities dated between January 1, 2012 and the present.

[d.] A copy of all payments received by you or your office for legal fees and costs relating to your representation of the City of Norwich [(“Norwich”)] or Norwich Public Utilities [(“NPU”)] between January 1, 2012 and the present.

[e.] A copy of all emails, faxes, documents and communications sent to or received by you by [Norwich and NPU] regarding Sheri Speer, and/or a Bankruptcy Case assigned docket number 14-21007.

[f.] Copies of all payments made to you by the Superior Court and/or state marshals as a consequence of any collections matter you prosecuted for [Norwich and NPU] between January 1, 2012 and the present.

5. It is found that, on October 4, 2023, the Commission mailed to the parties the Notice of Final Decision, dated October 4, 2023, and the Final Decision, dated September 27, 2023, in *Speer I*. It is further found that, in the final decision, the Commission concluded, in relevant part, that “the respondents failed to prove that they performed a diligent and thorough search for all of the records ....” described in paragraphs 4.a., 4.b., 4.c., 4.d., and 4.f., above. With respect to the records described in paragraph 4.e., above, the *Speer I* final decision concluded, in relevant part, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide responsive records.

6. In the final decision in *Speer I*, the Commission issued the following order (“*Speer I* Order”):

1. Within forty-five days of the date of the Notice of Final Decision in this matter, the respondents shall perform a diligent and thorough search for all records responsive to the request described in paragraph 2 of the findings, above,<sup>1</sup> and provide an affidavit to the complainant and to the Commission detailing the nature and scope of the search. If no responsive records are located with respect to any individual item set forth in paragraph 2 of the findings, above, the respondents shall so state in the affidavit. If responsive records are located, the respondents shall so state in the affidavit and immediately provide copies of such records to the complainant, free of charge.

2. If the respondents claim that any of the new found responsive

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<sup>1</sup> Such requests are described, herein, at paragraph 4, above.

records constitute privileged attorney-client communications, they shall provide a privilege log identifying each of the records claimed to be exempt and the legal basis for such claimed exemption within forty-five days of the date of the Notice of Final Decision in this matter.

3. If the respondents fail to comply with the timelines set forth in paragraphs 1 and 2 of this order, or the complainant takes issue with exemptions claimed, the complainant may file an appeal with the Commission and such appeal will be afforded expedited treatment.

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

7. It is found that, on November 20, 2023, the respondents provided the complainant with an affidavit by Michael E. Driscoll, Corporation Counsel for the City of Norwich, Connecticut, attesting to the searches conducted by the respondents for records responsive to the complainant's request described in paragraph 4, above. In addition, it is found that the respondents delivered to the complainant two bankers' boxes full of responsive records on November 20, 2023 and a privilege log, along with the affidavit (the "November 2023 Disclosure").

8. It is found that by letter dated November 27, 2023, the complainant amended her complaint in this matter, indicating that she received two large boxes of records on November 20, 2023, but she claimed that the delivery of such records was untimely. In her amended complaint, the complainant also alleged the following:

1. Responsive records have been withheld and ommitted [sic.]
2. The records are redacted without good cause[.]
3. The claim of privilege was not timely asserted and is baseless as to redactions and withheld records[.]
4. Compliance was late, and the untimeliness violates the FOI Commission's prior order.
5. To any extent attorney-client privilege is claimed, the Respondents have waived it on numerous occasions, including but not limited to this matter subject to prior appeal.

9. At the hearing in this matter, the complainant claimed that the respondents violated the *Speer I* Order, by failing to timely comply with the order and provide all records responsive to her request described in paragraph 4, above. The complainant also contested the claimed exemptions and argued that the respondents waived the right to claim the attorney-client privilege.

10. The respondents claimed that they disclosed the November 2023 Disclosure timely and in accordance with the *Speer I* Order. It is found that, just prior to the hearing in this matter, the respondents identified a handful of additional records, which they acknowledged they were

late in providing, but asserted were overlooked by mistake. It is found that the respondents ultimately produced such records to the complainant within a week after the March 14, 2024 hearing in this matter, with certain portions redacted (the “March 2024 Disclosure”). (See paragraph 19, below.) The respondents contended that together the November 2023 Disclosure and the March 2024 Disclosure constituted all responsive records that they maintain.

### **Search for Responsive Records and Timeliness of Disclosure**

11. It is found that the respondents’ witness, Attorney Michael E. Driscoll, has served as the Corporation Counsel of the City of Norwich since December 2001. It is also found that Attorney Driscoll is a partner at the law firm of Brown Jacobson, PC (“Brown Jacobson”).

12. Based upon Attorney Driscoll’s testimony, it is found that he and other attorneys at Brown Jacobson have represented Norwich and NPU in various legal matters involving the complainant, including but not necessarily limited to a bankruptcy matter and a case involving one of the complainant’s dogs allegedly attacking certain minors and an adult (the “dog bite case”).

13. It is found that Attorney Driscoll, along with Brown Jacobson’s business manager, Attorney Driscoll’s legal assistant, a receptionist at Brown Jacobson and three attorneys of Brown Jacobson searched for and/or reviewed records responsive to the requests described in paragraph 4, above. It is found that the search process included not only electronic searches but also a physical examination of paper files. It is found that the total time expended by Brown Jacobson attorneys and staff to search for the requested records since the *Speer I* Final Decision was in excess of fifty hours.

14. It is found that the respondents’ searches located over three thousand pages of documents, which were provided to the complainant with certain information redacted. It is found that the respondents provided the complainant with a detailed privilege log, which indicated the legal grounds for the redactions.

15. With respect to the timeliness issue, it is found that the *Speer I* Order required the respondents to comply with the order within forty-five days of the date of the Notice of Final Decision in *Speer I*.

16. It is found that the date of the Notice of Final Decision in *Speer I* was October 4, 2023. It is found that Saturday, November 18, 2023, was the forty-fifth day after the Notice of Final Decision in *Speer I*. It is found that the next business day was November 20, 2023, which is the date the respondents delivered the November 2023 Disclosure to the complainant.

17. It is found that a reasonable interpretation of the *Speer I* Order is that the respondents were not required to deliver the records on a weekend and that, since the due date fell on a Saturday, the time period set forth in the *Speer I* Order ran until the following business day.<sup>2</sup>

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<sup>2</sup> See, e.g., §1-21j-15 of the Regulations of Connecticut State Agencies, which provides in relevant part “[c]omputation of any period of time referred to in sections 1-21j-1 to 1-21j-57, inclusive, of the regulations of Connecticut state agencies begins by first counting the day after the day on which the precipitating event occurs, and ends on the last day of the period so computed. The last day of the period is to be included unless it is a day on

18. Accordingly, under the facts and circumstances of this case, it is concluded that the respondents timely disclosed the November 2023 Disclosure to the complainant on November 20, 2023.<sup>3</sup>

19. It is also found, however, that as of the March 14, 2024 hearing, the respondents had not yet provided the complainant with the March 2024 Disclosure, but the hearing officer ordered the respondents to do so within one week, and the respondents agreed. At the hearing in this matter, the respondents' witness testified, and it is found, that he made a genuine mistake by initially overlooking such records. Nonetheless, it is concluded that, with respect to the March 2024 Disclosure, the respondents violated the FOI Act by failing to timely comply with the *Speer I* Order.

20. With respect to the request described in paragraph 4.a, above, it is found that the respondents conducted a thorough search for responsive records and that the respondents provided the complainant with all responsive invoices, portions of which were redacted.

21. With respect to the requests described in paragraphs 4.b. and 4.d., above, it is found that Brown Jacobson submits invoices to Norwich and NPU for legal services that Attorney Driscoll and other Brown Jacobson attorneys provide to Norwich and NPU, and that Norwich and NPU then pay such invoices by submitting electronic payments to Brown Jacobson via direct deposit. It is found that Norwich and NPU do not remit checks to Brown Jacobson and thus no checks responsive to the requests described in paragraphs 4.b. and 4.d, above, exist. It is found, however, that the respondents provided the complainant with records relating to the payments received from Norwich and NPU. Consequently, it is found that the respondents conducted a reasonably thorough search for responsive records and that the respondents provided the complainant with all records responsive to the requests described in paragraphs 4.b. and 4.d., above.

22. With respect to the request described in paragraph 4.c, above, Attorney Driscoll testified, and it is found, that he never provided any insurance policies to Norwich or NPU. It is further found that Brown Jacobson staff conducted a reasonably thorough search for records responsive to the request described in paragraph 4.c., above, and no responsive records exist.

23. With respect to the request described in paragraph 4.e., above, Attorney Driscoll testified, and it is found, that the respondents conducted a reasonably thorough search and provided the complainant with all responsive records that were located, portions of which were redacted.

24. With respect to the request described in paragraph 4.f., above, Attorney Driscoll

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which the principal office of the commission is closed, in which event the period shall run until the end of the next following business day."

<sup>3</sup> Although it is found that, based upon the documentary evidence submitted by the respondents, the respondents delivered the November 2023 Disclosure to the complainant at or around 6:00 p.m., on November 20, 2023, which was after regular business hours, it is also found that the respondents produced more than 3,000 pages of records filling two bankers boxes and that the respondents' attorney personally delivered such boxes to the complainant's front porch on November 20, 2023, albeit a little after the close of regular business hours. Under the facts and circumstances of this case, it is found that such delivery was timely.

testified, and it is found, that no responsive records were located. In addition, it is found that, any payments for any collection matters that the Corporation Counsel or Brown Jacobson attorneys might have prosecuted on behalf of Norwich and NPU would have been made directly to Norwich or NPU, and not to the Corporation Counsel, Attorney Driscoll or Brown Jacobson. Accordingly, it is found that the respondents conducted a thorough search for and provided the complainant with all records responsive to the request described in paragraph 4.f., above.

### **First In Camera Submission**

25. On March 14, 2024, in accordance with an order of the hearing officer, the respondents submitted 689 pages of records without redactions for in camera inspection ("First In Camera Submission"). Such records will be identified herein as IC-2023-0578a-1 through IC-2023-0578a-689.

26. On the index for the First In Camera Submission, the respondents identified certain in camera records described in paragraph 25, above, as "Attorney-Client Privileged Communication," and claimed that such records, or portions thereof, were exempt from disclosure pursuant to §1-210(b)(10), G.S. Additionally, the respondents identified certain other in camera records contained in the First In Camera Submission as "Witness - Statement/Address/Phone Number/Age/Minor Status," and claimed that such records, or portions thereof, were exempt from disclosure pursuant to §1-210(b)(3), G.S.

27. It is noted that the respondents included in the First In Camera Submission a number of records, or portions thereof, for which the respondents did not raise a claim of exemption. It is found that, based upon the testimony at the hearing in this matter, such records have been disclosed to the complainant. Accordingly, such records will not be further addressed herein.

### **Second In Camera Submission**

28. At the hearing in this matter, as found in paragraph 19, above, the respondents testified that they located additional records and agreed to provide such records to the complainant within one week of the hearing, except for any records, or portions thereof, that the respondents claimed are protected by the attorney-client privilege.

29. On March 20, 2024, in accordance with an order of the hearing officer, the respondents submitted fifty-four pages of records for in camera inspection ("Second In Camera Submission"). Such records will be identified herein as IC-2023-0578b-1 through IC-2023-0578b-54.

30. On the index for the Second In Camera Submission, the respondents identified certain records as "Attorney-Client Privileged Communication," and claimed that such records, or portions thereof, were exempt from disclosure pursuant to §1-210(b)(10), G.S.

31. The respondents did not raise a claim of exemption with regard to a number of records, or portions thereof, submitted with the Second In Camera Submission. During the March 14, 2024 hearing, the hearing officer ordered the respondents to provide the complainant with copies of such records and they agreed to do so. Therefore, the Commission assumes that such records have been disclosed to the complainant; failure to do so would constitute a violation

of the disclosure provisions of the FOI Act.

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

32. The respondents claimed that certain information contained in the First and Second In Camera Submissions is exempt from disclosure pursuant to §1-210(b)(10), G.S., because such information is protected by the attorney-client privilege. The complainant contested such claims of exemption, and further contended that the respondents waived any claims of privilege by failing to timely assert the attorney-client privilege.<sup>4</sup>

**Waiver**

33. The complainant claimed that the respondents waived the protection of the attorney-client privilege by failing to provide the records timely and failing to claim the attorney-client privilege in *Speer I*.

34. As a general matter, when a communication or document protected by the attorney-client privilege is voluntarily disclosed outside the attorney-client relationship, such disclosure “constitutes a waiver of [the] privilege as to those items.” *Harp v. King*, 266 Conn. 747, 767 (2003).

35. It is found that, during the course of the proceedings in *Speer I*, the respondents raised the attorney-client privilege contending that certain responsive records were protected from disclosure based upon such privilege.

36. Additionally, the *Speer I* Order specifically permitted the respondents to claim that the attorney-client privilege applied to any new found responsive records, so long as the respondents provided a privilege log identifying each of the records claimed to be exempt and the legal basis for such claimed exemption. As found in paragraph 14, above, the respondents provided the complainant with a privilege log as required by the *Speer I* Order.

37. It is found that, based upon the evidence in the Administrative Record, the respondents did not disclose the records at issue in this case outside the attorney-client relationship. In addition, it is found that the respondents’ untimely disclosure of the March 2024 Disclosure does not constitute a waiver of the right to claim the attorney-client privilege, under the circumstances of this case.

38. Based on the foregoing, it is found that the respondents did not waive the protections of the attorney-client privilege with respect to any of the in camera records.

**Attorney-Client Privilege**

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<sup>4</sup> In her supplement to the complaint, the complainant also alleged “[t]o the extent attorney-client privilege is claimed, the respondents have waived it on numerous occasions, including but not limited to this matter subject to prior appeal.” Despite this claim, the complainant failed to present any evidence that the respondents revealed the contents of any of the claimed privileged communications outside the attorney-client relationship. Rather, the complainant’s contention was that the respondents failed to timely assert the attorney-client privilege.

39. The respondents claimed that the records, or portions thereof, that are identified as “Attorney-Client Privileged Communication” on the indexes to the First and Second In Camera Submissions are exempt from disclosure pursuant to §1-210(b)(10), G.S.

40. Section 1-210(b)(10), G.S., provides in relevant part that public agencies are not required to disclose “communications privileged by the attorney-client relationship ... or any other privilege established by the common law or the general statutes ....”

41. Section 52-146r(b), G.S., provides that “[i]n any civil or criminal case or proceeding or in any legislative or administrative proceeding, all confidential communications shall be privileged and a government attorney shall not disclose any such communications unless an authorized representative of the public agency consents to waive the privilege and allow disclosure.”

42. Section 52-146r(a)(2), G.S., defines “confidential communications” to mean:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice.

43. In *Maxwell v. Freedom of Info. Comm’n*, 260 Conn. 143, 149 (2002), the Connecticut Supreme Court held that §52-146r, G.S., “merely codif[ies] the common law attorney-client privilege as this court previously defined it.” The Court further stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client and relate to legal advice sought by the agency from the attorney.” *Id.*

44. The Supreme Court has adopted a four part test to determine whether communications are subject to the attorney-client privilege: “(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney; and (4) the communications must be made in confidence.” *Shew v. Freedom of Info. Comm’n*, 245 Conn. 149, 159 (1998). “The burden of establishing the applicability of the privilege rests with the party invoking it.” *Harrington v. Freedom of Info. Comm’n*, 323 Conn. 1, 12, (2016) (“*Harrington*”). If it is clear from the face of the records, extrinsic evidence is not required to prove the existence of the attorney-client privilege.” *Lash v. Freedom of Info. Comm’n*, 300 Conn. 511, 516-17 (2011).

45. Moreover, in Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice....The privilege fosters full and frank communications between attorneys



and their clients and thereby promote[s] the broader public interests in the observation of law and [the] administration of justice.” *PSE Consulting, Inc. v. Frank Mercede & Sons, Inc.*, 267 Conn. 279, 329–30 (2004).

46. The Supreme Court, however, has also recognized that “[n]ot every communication between attorney and client falls within the [attorney-client] privilege.” *Harrington*, 323 Conn. at 14 (quoting *Ullmann v. State*, 230 Conn. 698, 713 (1994)). In *Harrington*, the Court held that, when an attorney provides both legal and nonlegal professional advice, communications containing such advice will be privileged “if the non-legal aspects of the consultation are integral to the legal assistance given and the legal assistance is the primary purpose of the consultation....” *Harrington*, at 17.

47. Upon careful in camera inspection, it is found that the following redacted information identified as “Attorney-Client Privileged Communication” on the indexes to the First and Second In Camera Submissions, are communications “between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney,” which “relate to legal advice” sought by the public agency client from the attorney, which were “transmitted in confidence,” or were “records prepared by the government attorney in furtherance of the rendition of such legal advice,” within the meaning of §52-146r(a)(2), G.S.:

IC-2023-0578a-4;  
IC-2023-0578a-8;  
IC-2023-0578a-11;  
IC-2023-0578a-13;  
IC-2023-0578a-14 to 15;  
IC-2023-0578a-87  
IC-2023-0578a-89 to IC-2023-0578a-90;  
IC-2023-0578a-92 to IC-2023-0578a-94;  
IC-2023-0578a-142;  
IC-2023-0578a-157 to IC-2023-0578a-159;  
IC-2023-0578a-163 to IC-2023-0578a-170;  
IC-2023-0578a-172 to IC-2023-0578a-173;  
IC-2023-0578a-175;  
IC-2023-0578a-176, lines 1 to 16;  
IC-2023-0578a-178;  
IC-2023-0578a-179, lines 1 to 16;  
IC-2023-0578a-180 to IC-2023-0578a-181;  
IC-2023-0578a-183 to IC-2023-0578a-185;  
IC-2023-0578a-203 to IC-2023-0578a-213;  
IC-2023-0578a-218 to IC-2023-0578a-221;  
IC-2023-0578a-248 to IC-2023-0578a-253;  
IC-2023-0578a-257 to IC-2023-0578a-261;  
IC-2023-0578a-263 to IC-2023-0578a-265;  
IC-2023-0578a-277 to IC-2023-0578a-295;  
IC-2023-0578a-299;  
IC-2023-0578a-302;  
IC-2023-0578a-305;

IC-2023-0578a-307 to IC-2023-0578a-314;  
IC-2023-0578a-318 to IC-2023-0578a-319;  
IC-2023-0578a-320, lines 1 to 9, 26;  
IC-2023-0578a-323, lines 1 to 20;  
IC-2023-0578a-325 to IC-2023-0578a-333;  
IC-2023-0578a-336 to IC-2023-0578a-337;  
IC-2023-0578a-340 to IC-2023-0578a-341;  
IC-2023-0578a-346, lines 1 to 8;  
IC-2023-0578a-346, lines 1 to 10;  
IC-2023-0578a-349 to IC-2023-0578a-355;  
IC-2023-0578a-357 to IC-2023-0578a-358;  
IC-2023-0578a-361 to IC-2023-0578a-367;  
IC-2023-0578a-372 to IC-2023-0578a-376;  
IC-2023-0578a-382 to IC-2023-0578a-387;  
IC-2023-0578a-403 to IC-2023-0578a-405;  
IC-2023-0578a-439 to IC-2023-0578a-441;  
IC-2023-0578a-445;  
IC-2023-0578a-473;  
IC-2023-0578a-489;  
IC-2023-0578a-491 to IC-2023-0578a-492;  
IC-2023-0578a-494 to IC-2023-0578a-496;  
IC-2023-0578a-497, lines 10 to 12;  
IC-2023-0578a-499 to IC-2023-0578a-501;  
IC-2023-0578a-503 to IC-2023-0578a-505;  
IC-2023-0578a-507 to IC-2023-0578a-509;  
IC-2023-0578a-511;  
IC-2023-0578a-512 to IC-2023-0578a-537;  
IC-2023-0578a-539;  
IC-2023-0578a-542;  
IC-2023-0578a-544;  
IC-2023-0578a-546;  
IC-2023-0578a-548;  
IC-2023-0578a-550;  
IC-2023-0578a-618;  
IC-2023-0578b-20;  
IC-2023-0578b-22;  
IC-2023-0578b-27 to IC-2023-0578b-33;  
IC-2023-0578b-40; and  
IC-2023-0578b-41, lines 1 to 13.

48. It is concluded that the records, or portions thereof, identified in paragraph 47, above, constitute communications or records privileged by the attorney-client relationship, within the meaning of §1-210(b)(10), G.S. It is found that the attorney-client privilege has not been waived with respect to such records. Accordingly, 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, or portions thereof, to the complainant.

49. It is found that the following redacted information that is identified as “Attorney-

Client Privileged Communication” on the indexes to the First and Second In Camera Submissions, do not contain any communication “between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney,” which “relate to legal advice” sought by the public agency client from the attorney, which were “transmitted in confidence”; nor are they “records prepared by the government attorney in furtherance of the rendition of such legal advice,” within the meaning of §52-146r(a)(2), G.S. :

IC-2023-0578a-21;  
IC-2023-0578a-176, lines 17 to 32;  
IC-2023-0578a-177;  
IC-2023-0578a-179, lines 17 to 39;  
IC-2023-0578a-182;  
IC-2023-0578a-216;  
IC-2023-0578a-217;  
IC-2023-0578a-231;  
IC-2023-0578a-233 to IC-2023-0578a-238;  
IC-2023-0578a-241 to IC-2023-0578a-243;  
IC-2023-0578a-245 to IC-2023-0578a-247;  
IC-2023-0578a-276;  
IC-2023-0578a-320, lines 10 to 25;  
IC-2023-0578a-497, line 13;  
IC-2023-0578b-16;  
IC-2023-0578b-41, lines 14 to 33; and  
IC-2023-0578b-42.

50. It is therefore concluded that the redacted information described in paragraph 49, above, is not exempt from disclosure pursuant to §1-210(b)(10), G.S., as contended by the respondents.

51. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., when they failed to disclose the records, or portions thereof, identified in paragraph 49, above.

**§1-210(b)(3), G.S.**

52. The respondents contended that the records, or portions thereof, described as “Witness - Statement/Address/Phone Number/Age/Minor Status,” on the index to the First In Camera Submission are exempt from disclosure by virtue of §1-210(b)(3), G.S.

53. Section 1-210(b)(3), G.S., provides, in relevant part, that disclosure is not required of:

[r]ecords of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of (A) the ... identity of witnesses not otherwise known whose safety would be endangered or who would be

subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof....<sup>5</sup>

54. It is found that the *Speer I* Order solely permitted the respondents to withhold records responsive to the complainant's request described in paragraph 4, above, based upon a claim that such records were protected by the attorney-client privilege.

55. Therefore, it is concluded that the respondents violated the FOI Act by failing to comply with the *Speer I* Order and disclose the records, or portions thereof, identified in paragraph 52, above.

56. Notwithstanding the conclusion set forth in paragraph 55, above, the Commission, under the facts and circumstances of this case, will address the issue of whether the records, or portions thereof, described in paragraph 52, above, contain the identity of minor witnesses, within the meaning of §1-210(b)(3)(B), G.S.

57. After careful inspection of the in camera records described in paragraph 52, above, it is found that such records are law enforcement records not otherwise available to the public which were compiled in connection with the investigation of a crime, namely the dog bite case. It is also found that the following records, described in paragraph 52, above, contain the identity of minor witnesses:

IC-2023-0578a-561, lines 7 to 10, 19 to 22;  
 IC-2023-0578a-562;  
 IC-2023-0578a-564;  
 IC-2023-0578a-566, lines 13, 15 to 20, 27 to 34, 36;  
 IC-2023-0578a-567 to IC-2023-0578a-569;  
 IC-2023-0578a-570, lines 4 to 6, 8, 14 to 17, 19, 24, 28, 32;  
 IC-2023-0578a-571, line 30;  
 IC-2023-0578a-582 to IC-2023-0578a-583;  
 IC-2023-0578a-593 to IC-2023-0578a-594;  
 IC-2023-0578a-596 to IC-2023-0578a-598;  
 IC-2023-0578a-605 to IC-2023-0578a-606;  
 IC-2023-0578a-608 to IC-2023-0578a-611;

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<sup>5</sup> The Commission notes that §1-210(b)(3)(C), G.S., was subsequently amended to include "signed or sworn" statements pursuant to Public Act 24-56, §1.

IC-2023-0578a-612, lines 8 to 10, 17, 24;  
IC-2023-0578a-613, lines 20;  
IC-2023-0578a-629 to IC-2023-0578a-630;  
IC-2023-0578a-632 to IC-2023-0578a-633;  
IC-2023-0578a-644 to IC-2023-0578a-647;  
IC-2023-0578a-650 to IC-2023-0578a-652;  
IC-2023-0578a-655;  
IC-2023-0578a-657 to IC-2023-0578a-659;  
IC-2023-0578a-665 to IC-2023-0578a-666;  
IC-2023-0578a-670 to IC-2023-0578a-671;  
IC-2023-0578a-673 to IC-2023-0578a-676;  
IC-2023-0578a-677, lines 8 to 10, 17, 21;  
IC-2023-0578a-678 lines 9, 14, 20; and  
IC-2023-0578a-685 to IC-2023-0578a-689.

58. It is concluded that the records, or portions thereof, described in paragraph 57, above, are permissively exempt from disclosure by virtue of §1-210(b)(3)(B), G.S. Although the respondents failed to raise this claim of exemption in *Speer I* and failed to comply with the Commission's order in *Speer I*, the Commission declines to order their disclosure.

59. After careful in camera inspection, it is found that the following records, described in paragraph 52, above, do not contain the identity of minor witnesses, and are therefore not exempt from disclosure pursuant to §1-210(b)(3)(B), G.S.:

IC-2023-0578a-553 to IC-2023-0578a-560;  
IC-2023-0578a-570, line 27;  
IC-2023-0578a-571, lines 7, 10 to 11, 23;  
IC-2023-0578a-572;  
IC-2023-0578a-575;  
IC-2023-0578a-579;  
IC-2023-0578a-580 to IC-2023-0578a-581;  
IC-2023-0578a-585;  
IC-2023-0578a-586;  
IC-2023-0578a-591 to IC-2023-0578a-592;  
IC-2023-0578a-600 to IC-2023-0578a-601;  
IC-2023-0578a-603 to IC-2023-0578a-604;  
IC-2023-0578a-612, lines 20, 34, 37 to 39;  
IC-2023-0578a-613, lines 9, 14, 25, 28 to 29, 40;  
IC-2023-0578a-614;  
IC-2023-0578a-615 to IC-2023-0578a-616;  
IC-2023-0578a-621 to IC-2023-0578a-626  
IC-2023-0578a-627 to IC-2023-0578a-628;  
IC-2023-0578a-634;  
IC-2023-0578a-637;  
IC-2023-0578a-648 to IC-2023-0578a-649;  
IC-2023-0578a-653 to IC-2023-0578a-654;  
IC-2023-0578a-656;  
IC-2023-0578a-657 to IC-2023-0578a-659 (except can redact minor witnesses

identifiers);  
IC-2023-0578a-660 to IC-2023-0578a-662;  
IC-2023-0578a-663 to IC-2023-0578a-664;  
IC-2023-0578a-668 to IC-2023-0578a-669;  
IC-2023-0578a-677, lines 20, 34, 37, 39;  
IC-2023-0578a-678, line 25;  
IC-2023-0578a-679;  
IC-2023-0578a-680 to IC-2023-0578a-681;  
IC-2023-0578a-683; and  
IC-2023-0578a-685 to IC-2023-0578a-689.

60. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records described in paragraph 59, above.

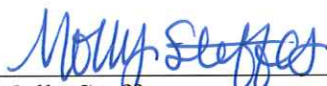
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within thirty days of the Notice of Final Decision, the respondents shall disclose to the complainant, free of charge, the records, or portions thereof, described in paragraphs 49 and 59 of the findings, above.

2. If the respondents have not provided the complainant with the records described in paragraph 31 of the findings, above, the respondents shall disclose such records to the complainant within seven days of the Notice of the Final Decision.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of October 23, 2024.

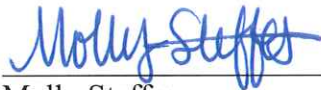
  
Molly Steffes  
Acting Clerk of the Commission

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:

**SHERI SPEER**, 151 Talman Street, Norwich, CT 06360

**CORPORATION COUNSEL, OFFICE OF CORPORATION COUNSEL, CITY OF NORWICH; OFFICE OF CORPORATION COUNSEL, CITY OF NORWICH; AND CITY OF NORWICH**, c/o Attorney Michael P. Carey, Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.O. Box 1591, New London, CT 06320



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Molly Steffes  
Acting Clerk of the Commission