

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Hardy and Murphy Road  
Recycling, LLC,

Complainants

against

Docket #FIC 2021-0065

City Clerk, City of New Haven;  
and City of New Haven,

Respondents

December 17, 2025

The above-captioned matter was heard as a contested case on January 31, 2022 and March 16, 2022, at which times the complainants and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearings were conducted through the use of electronic equipment (remotely) pursuant to the Governor's Executive Order 7B (Mar. 14, 2020), which suspended the requirement to conduct public meetings in person and pursuant to §149 of Public Act 21-2 (June Spec. Sess.), respectively.

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 December 9, 2020, the complainants sent the respondent City Clerk the following request for copies of records:

...documents which are in the custody or control of the City of New Haven, and its officials, boards, commissions and departments...related to the property known as 19 Wheeler Street a/k/a MBL 082/0974/02001 a/k/a "Fairmont Av," (sic) New Haven, Connecticut owned by Airline Avenue Realty, LLC (the "Property"), the solid waste facility operated on the Property by Murphy Road Recycling, LLC (the "Waste Facility") which is now the subject of Applications for Site Plan, Coastal Site Plan, and Special Permit approvals filed with the City Plan Department in July of 2020 and identified as CPC 1573-01 and CPC 1573-04 (collectively, the "Application"), the building and operations on the Property by All American Waste LLC (AAW Facility"), and the improvements and

operations related to the Compressed Natural Gas Facility on the Property (the “CNG Facility”). Specifically, we are requesting the following documents:<sup>1</sup>

- a. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility, for the period of April 1, 2019 to present maintained by and/or within the possession of the Economic Development Department;
- b. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility for the period of April 1, 2019 to present maintained by and/or within the possession of the Mayor’s Office;
- c. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility for the period of April 1, 2019 to present maintained by and/or within the possession of the City Plan Department for the period April 1, 2019 to present, including but not limited to all documents (including without limitation, communications) concerning outside consultants retained by the City and/or the City Plan Department and/or the City Plan Commission, *but excluding the Application documents*;
- d. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility for the period of April 1, 2019 to present maintained by and/or within the possession of the New Haven Environmental Advisory Council;
- e. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the

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<sup>1</sup> The Commission notes that the introductory paragraph to the complainants’ request, which is a single, complex sentence, seeks records related to the following four separate subject matters: (1) the property known as 19 Wheeler Street a/ka MBL...a/ka “Fairmont Av,” New Haven Connecticut, owned by Airline Avenue Realty (the “Property”); (2) the solid waste facility operated on the Property by Murphy Road Recycling, LLC (the “Waste Facility”); (3) the builds and operations on the Property by All America Waste LLC (“AAW Facility”); and (4) the improvement and operations related to the Compressed Natural Gas Facility on the Property (the “CNG Facility”).

CNG Facility for the period of April 1, 2019 to present maintained by and/or within the possession of the Board of Alders;

- f. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility for the period of April 1, 2019 to present maintained by and/or within the possession of the New Haven Health Department;
- g. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility transmitted between the Economic Development Department and the City Plan Department during the period April 1, 2019 to present;
- h. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility transmitted between the Mayor's Office and the City Plan Department during the period of April 1, 2019 to present;
- i. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility transmitted between the Mayor's Office and the Economic Development Department during the period April 1, 2019 to present; and
- j. All documents (including without limitation, communications) concerning the Property, the Waste Facility, the Application, the AAW Facility, and/or the CNG Facility for the period April 1, 2019 to present maintained by and/or within the possession of any board, office, commission or department of the City of New Haven *excluding assessment records maintained by the Assessor's Office available on public websites.*

(Emphasis in original).

3. It is further found that in the request set forth in paragraph 2, above, the complainants further stated:

We request copies of all materials contained in your files to these various matters. The request includes, but is not

limited to, all correspondence, memoranda, reports, applications, opinions, notes, emails, text messages, photographs, figures and tables as well as all drafts thereof generated by any town official or employee and concerned members of the public....

4. It is found that, by email dated December 18, 2020, the respondents acknowledged the complainants' request, and informed them that they would forward the request to the following entities for processing (1) the Economic Administration; (2) the City Plan Department; (3) the Mayor's Office; (4) the Health Department; (5) the Board of Alders; (6) Legislative Services; and (7) the Assessor's Office. It is further found that the respondents informed the complainants that:

Please know that, due to the current public health emergency, many city offices remain closed to the public, with employees working remotely. While we are addressing public records requests in the ordinary course of business and in the order received, some records (especially paper records) are a challenge to access. Requests for records that require employees to schedule time to enter city offices are taking significantly longer to process....To the extent that the City can access records in electronic form, we will provide those records to you via email....Thank you for your patience at this time.

5. It is found that, by email dated January 19, 2021, the complainants requested a status update on the processing of the request.

6. It is found that, by email dated February 9, 2021, the complainants memorialized a discussion that occurred between the parties on February 3, 2021, in which the respondents represented that various city departments were working to comply with the request and that, in turn, the complainants represented that they were willing to accept responsive records from the respondents on a rolling basis.

7. By email dated and filed February 16, 2021<sup>2</sup>, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with a copy of all requested records.

8. At the time of the request, §1-200(5), G.S., provided:

"[p]ublic records or files" means any recorded data or information relating to the conduct of the public's business

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<sup>2</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

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, printed, photostated, photographed or recorded by any other method.<sup>3</sup>

9. 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.

10. 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.”

11. It is concluded that the requested records, to the extent that they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

#### **The First Contested Case Hearing on January 31, 2022**

12. At the first contested case hearing on this matter, although the complainants conceded that they had received many records responsive to the request, they contended that the respondents had failed to provide them with copies of all requested records. In response, the respondents contended that they had provided the complainants with all non-exempt records responsive to the request. The respondents indicated that some records had been provided to the complainants with redactions, while others had been withheld in their entirety.

13. The Director of City Plan Department (the “Director”) appeared at the first contested case hearing and testified on behalf of the respondents.

14. It is found that, upon receipt of the request set forth in paragraph 2, above, the Director requested that all employees of the City Plan Department search for records, including emails, responsive to the request and provide such records to her. It is further found that upon receipt of all responsive or potentially responsive records, the Director forwarded such records to Corporation Counsel for review.

15. It is further found that the Director forwarded the request to the following departments and offices for processing: (1) the Economic Development Department; (2) the Mayor’s Office; (3) the City Plan Commission; (4) the Chairperson of the Environmental

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<sup>3</sup> Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.”

Advisory Council; (5) Legislative Service, which department serves the Board of Alders; (6) the City Health Department; and (7) the City Administrator's Office.

16. It is found that, in March 2021, the respondents began providing the complainants with responsive records on a rolling basis. It is further found that, by early August 2021, the respondents had provided the complainant with ten installments of records, and, in late August 2021, the respondents informed the complainants that they had provided them with all non-exempt records responsive to their request.

17. It is found that, by letter dated December 3, 2021, the complainants informed the respondents that, to settle this matter, the following six categories of records would need to be addressed:

- (a) the lack of handwritten notes;
- (b) the lack of invoices and payment records for consultants hired by the City concerning 19 Wheeler Street;
- (c) the redactions contained in certain communications that the complainants contended did not appear to be privileged or otherwise exempt;
- (d) the redactions contained in Deputy Corporation Counsel Roderick William's handwritten notes;
- (e) the redactions contained in the following five emails, which the complainants contended seem to have been circulated to third parties outside the respondent City or to non-attorneys:
  - (i) an April 26, 2019 email from Jenna Montesano to Michael Piscitelli, et al.;
  - (ii) an October 10, 2019 email from Stacey Davis to David Sousa, et al.;
  - (iii) a July 31, 2020 email from Aicha Woods to Stacey Davis and Jenna Montesano;
  - (iv) a November 30, 2020 email from Ann Catino to Michael Piscitelli, et al.; and
  - (v) a December 2, 2020 email from Steve Fontana to Douglas Hausladen, et al.; and
- (f) finally, the complainants noted that the respondents had provided them with a Transition Memorandum, without redactions, which references an alternative version of a

special permit report in the respondents' "the K drive." The complainants requested that the respondents provide them with a copy of such record, as well as any other responsive record on the K drive.

18. It is found that, on or about January 27, 2022, the respondents provided the complainants with an additional installment of records, which resolved the complainants' concerns regarding the lack of handwritten notes, referenced in paragraph 17.a, above; the lack of invoices and payment records for consultants hired by the city concerning 19 Wheeler Street, referenced in paragraph 17.b, above; as well as the October 10, 2019 and the November 30, 2020 emails, referenced in paragraphs 17.e.(ii) and (iv), above.

19. In total, it is found that, between March 23, 2021 and January 27, 2022, the respondents provided the complainants with 18 installments of records containing 2,359 pages of responsive records.

20. The Director testified at the first contested case hearing that the respondents had searched the K drive of their computer system for responsive records and, based upon her knowledge, all responsive records maintained on such drive had been uploaded into a shared drive for the complainants' review. Nonetheless, the respondents agreed to conduct another search for the alternative version of the special permit report referenced in paragraph 17.f, above., and, if they located it, provide such record to the complainants.

### **The Second Contested Case Hearing on March 16, 2022**

21. Deputy Corporation Counsel Roderick Williams ("Attorney Williams") appeared and testified on behalf of the respondents at the second contested case hearing.

22. Attorney Williams testified, and it is found, that after the first contested case hearing on this matter, the respondents located the alternative version of the special permit referenced in paragraph 17.f, above, and provided such record to the complainants without redactions. Based upon Attorney Williams' testimony and the testimony provided by the Director during the first contested case hearing, see ¶ 20, above, it is found that all the records referenced in paragraph 17.f, above, have been provided to the complainants.

23. The respondents contended that the remaining records at issue were exempt from disclosure either in their entirety or in part pursuant to §1-210(b)(1), G.S., (preliminary drafts and notes); and §1-210(b)(10), G.S., (attorney client privilege).

24. On May 31, 2022, the respondents submitted unredacted copies of the records that they claimed were exempt from disclosure to the Commission for in camera inspection. Such records shall be identified as IC-2021-0065-1 through IC-2021-0065-117. On the index that accompanied the in camera records, the respondents also raised an additional exemption pursuant to the provisions of §1-210(b)(10), G.S., (attorney work product).

25. First, the respondents contended that IC-2021-0065-1 through IC-2021-0065-56 and IC-2021-0065-102 through IC-2021-0065-117 are exempt from disclosure in their entirety

pursuant to the provisions of §1-210(b)(1), G.S., because they are preliminary notes.

26. Section 1-210(b)(1), G.S., provides, in relevant part, that the FOI Act shall not require the disclosure of:

Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure....

27. It is found that IC-2021-0065-1 through IC-2021-0065-56 are Attorney Williams' handwritten notes and that IC-2021-0065-102 through IC-2021-0065-117 are the handwritten notes of Michael Piscitelli, the respondents' Director of the Department of Economic Development, which department oversees the City Plan Department.

28. It is found that Attorney Williams created the notes referenced in paragraph 27, above, in connection with devising legal strategy and legal advice for his clients concerning various legal matters as well as imminent litigation. Attorney Williams further testified, and it is found, that it is his practice to develop legal strategies and advice through the process of note writing.

29. It is found that Mr. Piscitelli took the notes referenced in paragraph 27, above, at a meeting concerning how to navigate a Department of Energy and Environmental ("DEEP") permit as well as what to prepare for in a subsequent DEEP proceeding.

30. It is further found that neither Mr. Piscitelli nor Attorney Williams shared their handwritten notes with anyone.

31. Based upon the testimony of Attorney Williams, it is found that the respondents determined that the public interest in withholding the handwritten notes clearly outweighed the public interest in disclosure. In this regard, it is found that the respondents determined that if their attorneys or department heads were forced to disclose their handwritten notes, it would have a chilling effect of such individuals' willingness to take notes, which could compromise their ability to remember key facts, relevant material and the like, and generally compromise their overall effectiveness and productivity.

32. It is concluded that IC-2021-0065-1 through IC-2021-0065-56<sup>4</sup> and IC-2021-0065-102 through IC-2021-0065-117 are exempt from disclosure in their entirety, pursuant to the provisions of §1-210(b)(1), G.S., as they constitute preliminary notes.

33. 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 such records to the

<sup>4</sup> Because the Commission has determined that Attorney Williams' handwritten notes are exempt in their entirety pursuant to the provisions of §1-210(b)(1), G.S., it need not address the respondents' alternate and potentially applicable claims that such records are also exempt in their entirety pursuant to the provisions of §1-210(b)(10), G.S., as communications privileged by the attorney-client relationship and attorney work product.

complainants.

34. Next, the respondents contended that portions of IC-2021-0065-57 through IC-2021-0065-101 are exempt from disclosure in part pursuant to §1-210(b)(10), G.S., which section permits an agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.”

35. 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.”

36. 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.

37. In Maxwell v. Freedom of Info. Comm'n, 260 Conn. 143, 149 (2002), the Connecticut Supreme Court held that §52-146r, G.S., “merely condifies] 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.

38. 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).

39. 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).

40. Moreover, it is generally understood that “once a privileged communication has been purposely disclosed to a third party, the attorney-client privilege is waived, unless the disclosed material falls under the common interest rule.” Raymond Rd. Assocs., LLC v. Taubman Centers, Inc., No. X02UWYCV075007877S, 2009 WL 4069251, at \*8 (Conn. Super. Ct. Oct. 30, 2009), citing United States v. United Techs Corp., 979 F.Supp. 108, 111 (D.Conn. 1997). The common interest rule, also referred to as the common interest doctrine, applies “where the parties are represented by separate attorneys but share a common legal interest.” State Farm Mut. Auto. Ins. Co. v. Hawkins, No. 08-10367, 2010 WL 2287454, at \*8 (E.D. Mich. June 4, 2010). Under the doctrine, privileged communication can be exchanged without waiving the privilege, provided that the parties “share a ‘common interest about a legal matter,’ but ‘it is ... unnecessary that there be actual litigation in progress....’” (Citations omitted.) Bianco v. Denning, No. FSTCV206045111S, 2021 WL 4906070, at \*3 (Conn. Super. Ct. Sept. 20, 2021), reconsideration granted in part, No. FSTCV206045111S, 2021 WL 5277877 (Conn. Super. Ct. Oct. 27, 2021); accord, Fensore v. Lyons, No. FBTCV166057520S, 2017 WL 1311107, at \*2 (Conn. Super. Ct. Mar. 17, 2017); Hubbell v. Ratcliffe, No. HDX04CV08403824S, 2010 WL 4885631, at \*8 (Conn. Super. Ct. Nov. 8, 2010).

41. A party relying on the common interest doctrine to shield communications from disclosure has the burden of establishing all the elements of the attorney-client privilege, see ¶ 36, above, as well as the burden of establishing that a common legal interest exists between the entities who are raising the protection. See Ford Motor Co. v. Michigan Consol. Gas Co., No. 08-CV-13503, 2015 WL 6470830, at \*5 (E.D. Mich. Oct. 27, 2015) (“for the common-interest doctrine to apply, the underlying shared communication must be privileged.”).

42. Upon careful in camera inspection, it is found that, with the exception of a few records,<sup>5</sup> the redacted portions of the in camera records referenced in paragraph 34, above, constitute 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, and which were “transmitted in confidence,” within the meaning of §52-146r(a)(2), G.S.

43. Regarding the complainants’ concern that a few of the emails appear to be communications with individuals outside of the respondent city, it is found that such records are either communications between the respondents and their outside counsel or are communications between the respondents and outside individuals, and their attorneys, with whom the respondents share a common legal interest. It is further found that such communications were intended to further such common interest. It is therefore found that these records satisfy the requirements of §52-146r(a)(2), G.S.

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<sup>5</sup> The Commission notes that in certain emails a public official or agency employee is sharing or discussing an attorney’s legal advice with another public official or employee, who is part of the “client agency.”

44. It is concluded that the redacted portions of the records referenced in paragraph 34, above, constitute communications 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.

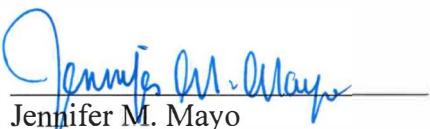
45. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they redacted such portions from the records they provided to the complainants.

46. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 December 17, 2025.



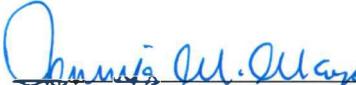
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**DAVID HARDY AND MURPHY ROAD RECYCLING, LLC**, c/o Attorney David S. Hardy, Carmody Torrence Sandak & Hennessey LLP, 195 Church Street, PO Box 1950, New Haven, CT 06509-1950

**CITY CLERK, CITY OF NEW HAVEN, AND CITY OF NEW HAVEN**, c/o Attorney Catherine E. LaMarr, Office of the Corporation Counsel, City Hall, 165 Church Street, New Haven, CT 06510

  
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Jennifer M. Mayo

Acting Clerk of the Commission