

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jason LaChapelle,

Complainant

against

Docket # FIC 2024-0445

Bernie Dennier, First Selectman, Board of  
Selectmen, Town of Colchester; Board of  
Selectmen, Town of Colchester; and Town  
of Colchester,

Respondents

July 23, 2025

The above-captioned matter was heard as a contested case on February 25, 2025, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

Following the hearing in this matter, the complainant requested to file an after-filed exhibit, which has been admitted into evidence, without objection, as follows: Complainant's Exhibit J (after-filed): Moderator's Return.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of § 1-200(1), G.S.
2. It is found that by email dated June 12, 2024, the complainant made five separate requests to the respondents for copies of the following records:

**Request #1:**

1. Any and all documentation pertaining to the testing of tabulators that took place on June 5, 2024, in Town Hall Meeting Room 1 at 12 p.m.
2. The test results of the tabulator testing that took place June 5, 2024, in Town Hall Meeting Room 1 at 12 p.m.
3. Any and all documentation not mentioned above pursuant to CGS 9-242a-5 for the tabulator testing that took place June 5, 2024, in Town Hall Meeting Room 1 at 12 p.m.

**Request #2:**

1. Any and all documentation pertaining to the nature of the "software glitch" alleged to have occurred on the morning of

- June 11, 2024, including conversations, call logs, etc., with whomever was contacted to help resolve the issue.
2. All documentation pertaining to the testing of the tabulators that took place after the software glitch was corrected.
  3. The test results of the tabulator tested that took place after the software glitch was corrected.
  4. Any and all documentation not mentioned above pursuant to CGS 9-242a-5 for the tabulator testing that took place after the software glitch was corrected.

**Request #3:**

1. Every in-person ballot cast during the June 11<sup>th</sup> budget referendum held at Town Hall.
2. Every mail-in/absentee ballot cast during the June 11<sup>th</sup> budget referendum held at Town Hall.

**Request #4:**

1. The paper/physical log of election day voters.

**Request #5:**

1. All video footage for any camera that captures the second floor hallways for the dates between June 5<sup>th</sup> at 12 p.m. until June 11<sup>th</sup> at 9 a.m.
2. All video footage for any camera that captures the second floor vault where the tabulators, memory cartridges, etc. are stored for the dates between June 5<sup>th</sup> at 12 p.m. until June 11<sup>th</sup> at 9 a.m.

3. It is found that, by email dated July 29, 2024, the respondents provided the complainant with certain records responsive to the requests described in paragraph 2, above, and further notified the complainant that other records requested did not exist. Such requests and responses are not at issue in this matter and will not be addressed further herein.

4. With respect to Request #1 described in paragraph 2, above, the respondents denied the complainant's request for copies of the "sample ballots" utilized for tabulator testing, citing to § 9-310, G.S., and "official guidance from the Office of the Secretary of the State legal team" that "no private citizen has the right to view, handle, or receive copies of any ballots outside of the guidelines set forth for an audit or recanvass...."

5. With respect to Request #3 described in paragraph 2, above, the respondents also denied the complainant's request for copies of in-person and absentee ballots cast for the June 11, 2024 budget referendum, also citing to § 9-310, G.S., and the "official guidance" from the Office of the Secretary of the State described in paragraph 4, above.<sup>1</sup>

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<sup>1</sup> The Commission notes that the complainant subsequently requested to inspect the records described in paragraphs 4 and 5, above, and that the respondents also denied such requests for the same reasons.

6. By complaint filed August 1, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying the requests for records described in paragraphs 4 and 5, above. The complainant also requested the imposition of a civil penalty against the respondents.

7. 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.

8. 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.

9. 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.”

10. It is found that on May 15, 2024, the Board of Finance of the Town of Colchester convened for a special meeting, at which time the board voted “to send” the town and school district budgets to the Board of Selectmen of the Town of Colchester.

11. It is found that on May 16, 2024, the Board of Selectmen for the Town Colchester convened for a regular meeting, at which time the board voted “to warn the Town of Colchester Annual Budget Meeting will be held on May 29, 2024, and the Referendum on June 11, 2024.”

12. It is also found that the minutes of the May 16, 2024 meeting of the Board of Selectmen provide the following:

The legal voters of the Town of Colchester and those qualified to vote at town meetings of said Town are hereby warned to meet for the Annual Budget Meeting on Wednesday, May 29, 2024, at 6:30 p.m., to be held at Colchester Town Hall, 127 Norwich Avenue, Colchester, CT for the following purposes:

1. To consider and act upon the 2024-2025 fiscal year budget of the Board of Selectmen...as recommended by the Board of

Finance.

2. To consider and act upon the 2024-2025 fiscal year budget of the Board of Education...as recommended by the Board of Finance.
3. To adjourn said Annual Budget Meeting, pursuant to Section 7-344 of the Connecticut General Statutes<sup>2</sup> and the Colchester Town Charter Section C-1105a.E<sup>3</sup> for a Referendum vote on Tuesday, June 11, 2024 between the hours of 6:00 a.m. and 8:00 p.m. to be held at the Colchester Town Hall, 127 Norwich Ave., Colchester, CT.

13. It is found that the Annual Budget Meeting of the Town of Colchester convened on May 29, 2024, at which time motions to consider and act upon the fiscal year budget of the Board of Selectmen and Board of Education were made. It is found that a raised hand count was taken, and each motion passed.

14. It is found that on June 11, 2024, the Town of Colchester held the budget referendum described in paragraph 13, above, in accordance with § 1106a of the town's charter.<sup>4</sup>

15. At the hearing and in their post-hearing brief, the respondents contended that the records described in paragraphs 4 and 5, above, are not subject to the disclosure provisions of §§ 1-210(a) and 1-212(a), G.S., and that Title 9 of the General Statutes "prescribes what municipal officials shall do with ballots, sample ballots, and absentee ballots after a municipal referendum is held." The complainant disputed this contention.

16. In support of their argument, the respondents relied on several sections of Title 9 of the General Statutes: §§ 9-369, 9-310, 9-370a and 9-311, and 9-320(f), G.S., as well as §§ 9-

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<sup>2</sup> § 7-344, G.S., sets forth the procedures for appropriations in subject municipalities.

<sup>3</sup> Section C-1105a.E of the Charter provides that "[t]he Annual Budget Meeting shall be automatically continued to the Annual Budget Referendum, at which the budgets of the Board of Selectmen and the Board of Education as recommended by the Annual Budget Meeting, shall be presented to the Town Voters for final approval or disapproval."

<sup>4</sup> Section C-1106a of the Charter, entitled "[t]he Annual Budget Referendum" provides that "[t]he Annual Budget Referendum shall be held on such date as determined by the Annual Budget Meeting. A minimum of two questions shall appear on the ballot for the Annual Budget Referendum. The first question shall require a vote of "Yes" or "No" on whether to approve the Board of Selectmen Budget (Including debt service and capital expenditure budgets) as recommended by the Annual Budget Meeting. The second question shall require a vote of "Yes" or "No" on whether to approve the Board of Education Budget as recommended by the Annual Budget Meeting. The Board of Finance may, at its discretion, also direct that an advisory question appear on the ballot for either or both budgets. Such advisory question(s) shall require a response of either "Too High" or "Too Low" to describe the proposed level of spending.

Any action taken at the Annual Budget Meeting that is approved at the Annual Budget Referendum shall be considered conclusively approved, and no further Town Meetings or referenda regarding the specific action may be called."

369c(f), 9-150a(m), 9-150b(g), G.S. The respondents also relied on the Commission's final decisions in *Sam Romeo v. Veronica Musca, Republican Registrar of Voters, Town of Greenwich, et al.*, Docket #FIC 1997-394 (July 8, 1998) ("*Romeo*"), *Elizabeth Regan and Rivereast News Bulletin v. Town Manager, Town of East Hampton, et al.*, Docket #FIC 2017-0741 (Aug. 8, 2018) ("*Regan I*"), and *Elizabeth Regan and Rivereast News Bulletin v. Town Manager, Town of East Hampton, et al.*, Docket #FIC 2018-0477 (June 12, 2019) ("*Regan II*"). Finally, the respondents argued against disclosure of the sample ballots, in-person ballots and absentee ballots cast in reliance on the principle that "the longstanding right of a citizen to confidentially cast their vote is sacrosanct."

### **Sample and In-person Ballots**

17. Title 9 of the General Statutes defines the following terms relevant to the issues presented in this matter:

"Ballot" means paper or other material containing the names of the candidates or a statement of a proposed constitutional amendment or other question or proposition to be voted on. § 9-1(a), G.S.;

"Election" means any electors' meeting at which the electors choose public officials by use of voting tabulators or by paper ballots as provided in section 9-272. § 9-1(d), G.S.; and

"Referendum" means (1) a question or proposal which is submitted to a vote of the electors or voters of a municipality at any regular or special state or municipal election, as defined in this section, (2) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters, which meeting is not an election, as defined in subsection (d) of this section, and is not a town meeting, or (3) *a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters pursuant to section 7-7 or pursuant to charter or special act.* § 9-1(n), G.S. (Emphasis added.)

18. It is found that the budget referendum described in paragraphs 11 through 14, above, falls within the definition of "referendum" in § 9-1(n)(3), G.S.

19. The respondents contended that the Legislature intended the provisions of Title 9 to apply to municipal referenda. The respondents first relied on § 9-369, G.S., contending that such provision sets forth procedures for municipalities conducting referenda, including the budget referendum at issue in this matter.

20. Section 9-369, G.S., entitled, "Procedure for holding referendum" provides, in relevant part:

Whenever at any *regular or special state or municipal election any vote for approval or disapproval of any constitutional amendment or any question or proposal is taken pursuant to the Constitution, the general statutes or any special act, unless otherwise provided*, such *election* shall be warned and held, the vote on such amendment, question or proposal cast and canvassed and the result determined and certified *as nearly as may be in accordance with the provisions governing the election of officers in the state or in such municipality*. The warning for such *election* shall state that a purpose of such election is to vote for the approval or disapproval of such amendment, question or proposal and shall state the section of the Constitution or of the general statutes or the special act under authority of which such vote is taken. The vote on such amendment, question or proposal shall be taken by a “Yes” and “No” vote on the voting tabulator, and the designation of such amendment, question or proposal on the ballot shall be “Shall (here insert the question or proposal, followed by a question mark)”. Such ballot shall be provided for use in accordance with the provisions of section 9-250....

21. Section 9-369, G.S., clearly governs the procedure for holding referenda when held *in conjunction with regular or special state or municipal elections*. See *Town of Plymouth v. Church-Dlugokenski*, 48 Conn. Supp. 481, 485-86 (Conn. Super. Ct. Sept. 18, 2003) (“[T]he explicit language of § 9-369 limits the section to those referenda held in conjunction with “any regular or special state or municipal election.”)

22. *Town of Plymouth* is instructive to this matter. There, the town sought a declaratory judgment from the court regarding the validity of its 2002 bond referendum. *Id.*, 482-84. The defendant filed a counterclaim seeking a declaratory judgment that the bond referendum was invalid. *Id.* The parties jointly moved for summary judgment solely on the issue of whether the counterclaim was timely. *Id.* The town argued that the defendant’s counterclaim was not timely because she missed a statutorily-set fourteen day deadline, set forth in § 9-328, G.S. (the *election contest statute*), to challenge the validity of the referendum. *Id.*, 484-86. The town cited to § 9-369, G.S., arguing that the statute provides that the results of a referendum must be determined “as nearly as may be in accordance with the provisions governing the election of officers in the state or in such municipality.” *Id.* The town contended that § 9-369, G.S., requires compliance with § 9-328, G.S., in order to challenge the validity of the referendum. *Id.*

23. The court disagreed:

[T]he defendant has correctly pointed out that the explicit language of § 9–369 limits the section to those referenda held in conjunction with “any regular or special state or municipal election.” In addition, General Statutes § 9–369a, which establishes the procedure for the submission of local questions at an election, applies to questions that may be submitted to a vote of the electors of a municipality “at an election, as that term is defined in [General

Statutes § 9-1 ...” Section 9-1(d) defines “election” to mean “any electors’ meeting at which the electors choose public officials by use of voting machines or by paper ballots ....” Finally, General Statutes § 9-369c (a) allows absentee voting at a referendum “as defined in subdivision (2) ... of subsection (n) of section 9-1 [a stand-alone referendum].” This is a recognition by the legislature of the existence of stand-alone referenda and indicates that only one aspect of the stand-alone referendum vote has been affected by chapter 152 of the General Statutes entitled: “Referenda.”

Id., 485-86.

24. It is found that the budget referendum described in paragraphs 11 through 14, above, was not held in conjunction with “any regular or special state or municipal election” and instead constituted a “stand-alone” budget referendum. Section 9-369, G.S., therefore, is not applicable, and does not preclude disclosure of copies of the sample ballots and in-person ballots cast in the stand-alone budget referendum in this matter.

25. The respondents also relied on §§ 9-310, 9-370a, and 9-311, G.S., in support of their contention that the sample ballots and in-person ballots described in paragraphs 4 and 5, above, are not subject to the disclosure provisions of the FOI Act.

26. The aforementioned provisions must be read in conjunction with § 9-309, G.S., which the Commission analyzed in *John Santanella v. President, Board of Fire Commissioners, Enfield Fire District No. 1, et al.*, Docket #FIC 2019-0283 (Aug. 12, 2020) (“*Santanella*”) (ordering disclosure of ballots cast concerning the purchase of new fire truck apparatus because such records were not subject to Title 9 of the General Statutes).<sup>5</sup>

27. In *Santanella*, the Commission explained that § 9-309, G.S., provides for the procedures after *election* polls are closed, including the requirement that the moderator lock the voting tabulator, immediately cause the vote totals *for all candidates and questions to be produced*, announce vote totals, that vote checkers must record the number of votes received, and that the moderator must prepare a preliminary list from the vote totals for transmission to the Secretary of State.

28. In turn, § 9-310, G.S., provides that “[a]s soon as the count is completed and the moderator’s return required under the provisions of section 9-259 has been executed, the moderator shall place the sealed tabulator in the tabulator bag, and so seal the bag, and the tabulator shall remain so sealed against voting or being tampered with for a period of fourteen days, except as provided in section 9-309 or 9-311 or pursuant to an order issued by the State Elections Enforcement Commission.”

29. Section 9-310, G.S., also provides, in relevant part, that *in the case that a recanvass is required*, “immediately upon such determination the tabulators, write-in ballots, absentee

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<sup>5</sup> In *Santanella*, the Commission also concluded that Title 7 of the General Statutes, pertaining to municipalities, is silent on the treatment of ballots, apart from providing for the process of voting by ballot.

ballots, moderators' returns and all other notes, worksheets or written materials used at the election shall be impounded at the direction of the Secretary of the State. Such package shall be preserved for one hundred eighty days after such election and may be opened and its contents examined in accordance with section 9-311 or upon an order of a court of competent jurisdiction. At the end of one hundred eighty days, unless otherwise ordered by the court, such package and its contents may be destroyed.”

30. Section 9-370a, G.S., provides that recanvass is applicable to referenda on a close question vote:

In the case of an election or *referendum* wherein the difference between the “Yes” and “No” vote on a question was less than one-half of one per cent of the total number of votes cast for the question but not more than two thousand votes, *the moderator shall proceed forthwith to cause a recanvass of such returns to be made as nearly as may be in the manner provided in section 9-311.* (Emphasis added.)

31. In turn, § 9-311, G.S., sets forth the procedures for conducting a recanvass, provides that recanvassing procedures shall be open to the public, and for procedures for locking and sealing the tabulators used in such recanvass.

32. Although recanvass are applicable to referenda, as set forth in §§ 9-370a and 9-311, G.S., it is found that no recanvass occurred with respect to the budget referendum at issue in this matter. It is also found that the respondents so conceded in their communications to the complainant (“[T]his referend[um] did not trigger a recanvass...”).

33. Sections 9-309, 9-310, and 9-311, G.S., are located within Chapter 148 of Title 9, which governs “Election Canvass and Returns.” By their express terms, such provisions pertain to the procedures governing elections and election records, including ballots cast by tabulator in an election. There is nothing in §§ 9-309 and 9-310, G.S., to support the respondents’ contention that such provisions preclude disclosure of the sample and in-person ballots cast in the stand-alone budget referendum in this case, wherein a recanvass *has not occurred*.

34. Consequently, §§ 9-310, 9-370a and 9-311, G.S., do not preclude disclosure of copies of the sample ballots and in-person ballots cast in the stand-alone budget referendum in this case.

35. The respondents also relied on § 9-320f, G.S. However, § 9-320f, G.S., pertains to audits of elections and primaries. It is found that, in denying the complainant’s request for records, described in paragraph 2, Requests #1 and 2, above, the respondents acknowledged that audits are not applicable to referenda (“[R]eferend[a] are not “elections” and are not subject to audits”).<sup>6</sup>

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<sup>6</sup> See also Secretary of the State of Connecticut, *Audit Procedure Manual*, available at [Handbooks Moderators Absentee Ballot Counters Recanvass and Audit](#) (last accessed July 10, 2025) (“The primary purpose of the hand count audit is to assess how well the optical scan voting machines functioned in an actual *election* and to ensure that



36. Consequently, § 9-320f, G.S., does not preclude disclosure of copies of the sample ballots and in-person ballots cast in the stand-alone budget referendum that occurred in this case.

37. The respondents also relied on the final decisions of the Commission in *Romeo*, *Regan I*, and *Regan II*.

38. In *Romeo*, the complainant requested that the respondent registrars provide him with the opportunity to inspect the voting machines employed at the November 4, 1997 election in Greenwich, CT. The Commission concluded that “public access to the *records of elections* and to the records contained in the vote registers ... are provided by statutes other than § 1-[210](a), G.S.,” and therefore, the respondents did not violate the FOI Act by denying the complainant’s request. (Emphasis added.)

39. In *Regan I*, the complainant requested to inspect ballots that were “hand counted during the November 13 recount.” There, an election was held on November 7, 2017, and a recanvass was required due to a “close vote.” The Commission concluded that “public access to the requested paper ballots is governed by the state election statutes” (citing §§ 9-309, 9-310, 9-311, 9-311a, and 9-311b, G.S.), and therefore, the respondents did not violate the FOI Act by denying the complainant’s request to inspect the paper ballots.

40. In both cases, the Commission concluded that Title 9 governs records of elections. However, neither decision addresses the issue of whether sample ballots or in-person ballots cast in a stand-alone referendum are exempt from disclosure.

41. The respondents in this matter also relied upon the Commission’s final decision in *Regan II*, and more specifically, the written opinion of the Secretary of the State described therein. In *Regan II*, the complainants refiled their request to inspect the ballots that were “hand counted during the November 13 recount.” The complainants did so after the expiration of the 180-day impoundment period provided for by § 9-310, G.S., arguing that after the expiration of the 180-day impoundment period, the ballots became public records. The Commission disagreed, concluding that, after the 180-day impoundment period, the ballots are destroyed.

42. The respondents in this matter relied upon a written opinion of the Secretary of the State, described in part in *Regan II*, that was obtained by the respondents in that case in response to the request. There, the respondents obtained a formal written opinion from the Secretary of the State as to the following questions:

- (a) To what extent does Title 9 of the General Statutes control the public’s access to election documents, in particular, ballots of a municipal election and referendum, after the expiration of the one hundred eighty day impoundment period set forth in [§9-310, G.S.]? and
- (b) Are ballots of municipal election and referendum subject to disclosure pursuant to a request for inspection under the [FOI] Act....?

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votes cast using these machines are counted properly and accurately.”) (Emphasis added.) The Commission takes administrative notice of the Audit Procedure Manual.

43. In *Regan II*, the Commission found that, by letter dated August 27, 2018, the Secretary of the State opined that “Connecticut’s Electoral statutes ... prohibit routine public inspection of ballots.” The Commission also explained that “the Secretary of the State wrote that it is her opinion and her instruction” that:

[B]allots of individual voters not be made available for public inspection and be destroyed at the expiration of any statutorily or court ordered impoundment period. *In this particular case, therefore, it is the opinion of this office that the ballots securely preserved by the Town must remain in their secure transfer cases for a period of one hundred eighty days from the date of the November 2017 general municipal election in the Town. At the expiration of that period, the municipal clerk shall open the transfer cases that contain such ballots and such ballots shall be destroyed without public inspection.* (Emphasis added.)

44. The formal written opinion of the Secretary of the State, described in paragraph 41, above, is instructive in the case of a request for ballots cast in an *election*. It does not address the issue presented herein: whether sample ballots and in-person ballots cast in a stand-alone referendum are precluded from disclosure by any of the provisions of Title 9 of the General Statutes.

45. The Commission also notes that no formal written opinion of the Secretary of State, as was requested and supplied in *Regan II*, was offered by the respondents in this case.

46. It is clear from the final decisions in *Romeo*, *Regan I*, and *Regan II*, that this Commission has recognized that the General Statutes set forth very specifically the process by which records of *elections*, including ballots cast therein, must be secured, retained, and ultimately destroyed, and further that the General Statutes governing elections, “otherwise provide[]” for public access to the records of elections, and therefore, under § 1-210(a), G.S., such records are not public records subject to disclosure under the FOI Act.

47. However, such decisions do not conclude that the same is true for sample ballots and in-person ballots cast in a stand-alone referendum.

48. In addition, among the exhibits offered by the complainant and admitted in this matter is a list of “Frequently Asked Questions for Town Clerks and Registrar of Voters,” published by the Office of the Secretary of the State. It is found that such exhibit sets forth the following question and answer relevant to the issues before the Commission in this matter:

Question: Can our office render an opinion regarding a referendum or town meeting?

Answer: Generally, no. The Office of the Secretary of the State has extremely limited jurisdiction in regard to referenda, as they are a local, rather than a state issue. We can say that referenda should be

held in a manner that resembles that of an election as closely as possible. Particularly, in the way voters are checked in at the polls. Further, we can note that there is a law, Connecticut General Statutes Sec. 9-369c, which forbids Town Clerks from mailing absentee ballots for a referendum to voters, if the referendum is to be held with less than three weeks' notice. We may offer a certain level of assistance if the referendum is specifically for a Charter revision. Finally, if the referendum is to be held in conjunction with an election, any questions must be submitted to this [office] to determine whether the question begins with the word "Shall" and ends with a question mark. Other referendum questions should not be referred to this office.

49. The Commission takes administrative notice of the "Advisory Guidelines Concerning Municipal Referenda Not Held in Conjunction with a Regular or Special Election" also published by the Office of the Secretary of the State.<sup>7</sup> Although the Advisory Guidelines do not address the issues presented herein, the Commission notes that such document also explains the limited jurisdiction the Secretary of the State exercises over stand-alone referenda:

Pursuant to Section 9-4 of the General Statutes, we have authority to advise local election officials in connection with proper methods of conducting municipal referenda, including not only those held in conjunction with regular and special elections as defined in Section 9-1 of the Connecticut General Statutes but also referenda held at other times. We have formulated some advisory guidelines concerning municipal referenda in the hope that they will help settle certain recurring questions in advance and, by resolving ambiguity, will facilitate a smooth, uniform, and fair administration of the law. *Except where a requirement is mandatory by state statute, compliance with these guidelines is to be voluntary, and it is up to the individual municipalities and their respective town attorneys to determine the extent to which they are followed.* However, this office believes these guidelines to be workable and effective.

50. With respect to the requested sample ballots, the respondents did not cite to any state statutory section expressly providing that sample ballots are not subject to the disclosure provisions of the FOI Act. At the hearing, the respondents' witness testified that sample ballots are sealed in order to preserve them so that they may prove at a later date that such sample ballots have not been the subject of any tampering. The respondents contended generally that doing so is required by Title 9 of the General Statutes. However, neither the respondents' reasoning nor the broad assertion of Title 9 of the General Statutes constitute an exception to disclosure under the FOI Act with respect to the sample ballots maintained as a result of tabulator testing for the stand-alone budget referendum in this matter.

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<sup>7</sup> Available at <https://portal.ct.gov/-/media/sots/electionservices/2022/official-agency-opinions-2022.pdf?rev=99cc4c2622314bb98ca9c52bb0683732&hash=0517E7CAA81D36344CCE07337C9CFC01> (last accessed July 11, 2025).

51. The respondents also contended that “the longstanding right of a citizen to confidentially cast their vote is sacrosanct,” that “a person has a right to vote without fear of that vote being publicly disclosed without reason,” and that disclosure of the sample and in-person ballots cast in the stand-alone budget referendum in this matter would violate this principle.

52. The Commission already addressed similar concerns raised by the respondents in *Santanella*. There, the Commission concluded that, by common usage and historical precedent, the process of casting a ballot is presumptively secret. Among the questions presented in that case was whether that presumption expressed an exception to disclosure under the FOI Act. The Commission concluded that it did not. See *Chief of Police v. Freedom of Information Commission*, 252 Conn. 377, 398-99 (2000) (Reference to federal and state law in §1-210(a) “suggests ... a reference to federal and state laws, that, *by their terms*, provide for confidentiality of records or some other similar shield from public disclosure.”); and *Pictometry International Corp. v. Freedom of Information Commission*, 307 Conn. 684, 672 (2013) (“[B]oth this court and the Appellate Court consistently have required that any exemption from disclosure under the ‘otherwise provided’ language of § 1-210 (a)[, G.S.] be based on express terms in the state or federal law that either provide for the confidentiality of the documents or otherwise limit disclosure, copying, or distribution of the documents at issue.”).

53. In *Santanella*, after concluding that neither Title 9 nor Title 7 of the General Statutes provide for the confidentiality of ballots cast in that case, the Commission ordered disclosure of the ballots. However, in ordering disclosure, the Commission permitted the respondents to redact the names of any individual who wrote a name on their ballot.

54. Here, the principle cited by the respondents, as described in paragraph 51, above, is not a basis for nondisclosure of the sample ballots and in-person ballots cast in the stand-alone budget referendum at issue in this matter. As explained in paragraph 52, above, any exemption from disclosure under the “otherwise provided” language of § 1-210 (a), G.S., must be based on express terms in federal law or state statute.

55. Based on all of the foregoing, it is concluded that the sample ballots and in-person ballots cast at the June 11, 2024 budget referendum are public records, within the meaning of §§1-200(5) and 1-210(a), G.S., and that the provisions of Title 9 of the General Statutes do not preclude disclosure.

56. It is therefore concluded that the respondents violated §§ 1-210(a) and 1-212, G.S., when they declined to provide copies of such records to the complainant.

### **Absentee Ballots**

57. With respect to the absentee ballots cast for the June 11, 2024 budget referendum, § 9-369c(a), G.S., provides that absentee ballots may be utilized in referenda, as defined in subdivision (2) or (3) of § 9-1(n), G.S.

58. In turn, § 9-133f, G.S., entitled “Absentee voting procedures” provides that “[t]he provisions of this chapter shall govern procedures relating to absentee voting at elections. Except

as otherwise provided by statute, *such provisions shall also apply, as nearly as practicable and in the manner prescribed by the Secretary of the State, to procedures relating to absentee voting at primaries and referenda.*"<sup>8</sup> (Emphasis added.)

59. Section 9-150a, G.S., sets forth the procedures for absentee ballot counting. Section 9-150a(f), G.S., provides that the inner and outer envelopes containing absentee ballots shall be sealed in "depository envelopes" and delivered to the moderator.

60. Section 9-150a(m), G.S., cited by the respondents as a basis for nondisclosure of copies of the absentee ballots at issue in this matter, provides that, after the absentee ballots are counted, "they shall be placed by the counters, separately by voting district, in depository envelopes prescribed by the Secretary of the State and provided by the municipal clerk. Any notes, worksheets, or other written materials used by the counters in counting such ballots shall be endorsed by them with their names, the date and the time of the count and shall also be placed in such depository envelopes together with the ballots, and with the separate record of the number of votes cast on such ballots for each candidate as required by section 9-150b. *Such depository envelopes shall then be sealed, endorsed and delivered to the moderator by the counters in the same manner as provided in subsection (f).*" (Emphasis added.)

61. Section 9-150b(e), G.S., provides that the sealed depository envelopes, required by subsections (f) and (m) of section 9-150a "shall be returned by the moderator to the municipal clerk as soon as practicable on or before the day following the election, primary or referendum."

62. Section 9-150b(g), G.S., provides "[n]o such depository envelope shall be opened except by order of a court of competent jurisdiction, by the State Elections Enforcement Commission pursuant to a subpoena issued under subdivision (1) of subsection (a) of section 9-7b or within five business days after an election, primary or referendum for the purpose of a recanvass conducted pursuant to law. After such a recanvass the depository envelopes and their contents shall be returned to the municipal clerk and preserved for the stated period."

63. Finally, § 9-150b(j), G.S., provides that, at the expiration of the applicable retention period, if no contest is pending and no subpoena issued by the State Elections Enforcement Commission, the municipal clerk shall destroy the ballots, envelopes, and related materials.

64. It is found that none of the circumstances described in paragraph 62, above, with respect to the budget referendum in this matter apply. It is therefore concluded that the absentee ballots are subject to the sealing, preservation and retention requirements described in paragraphs 59 through 62, above.

65. It is concluded that access to the absentee ballots cast in the budget referendum in this matter is governed by Title 9 of the General Statutes. Consequently, it is concluded that the respondents did not violate §§ 1-210(a) and 1-212(a), G.S., by denying the complainant's request for copies of the absentee ballots cast during the June 11, 2024, budget referendum.

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<sup>8</sup> Section 9-369c(f), G.S., similarly provides that the "procedures for issuing, returning, casting and counting absentee ballots, declaring the count and packaging the ballots at elections, *shall apply, as nearly as may be, to absentee ballots at referenda.*"

66. Notwithstanding the violation described in paragraph 56, above, the Commission, in its discretion, declines to consider the imposition of a civil penalty.

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

1. Within 45 days of the Notice of Final Decision in this matter, the respondents shall provide the complainant with copies of the requested sample and in-person ballots cast in the June 11, 2024 stand-alone budget referendum in this matter, and described in paragraphs 4 and 5 of the findings, above, free of charge.

2. Consistent with the Commission's final decision and orders in *Santanella*, the Commission declines to order the disclosure of the identity of individual voters, if written on any ballots cast in-person; therefore, in complying with paragraph 1 of this order, the respondents may redact such information, to the extent it exists, from the requested in-person ballots referenced in order 1, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 23, 2025.

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Molly Steffes  
Acting Clerk of the Commission

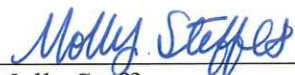


PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**JASON LACHAPELLE**, 48 Highwood Circle, Colchester, CT 06415

**BERNIE DENNIER, FIRST SELECTMAN, BOARD OF SELECTMEN, TOWN OF COLCHESTER; BOARD OF SELECTMEN, TOWN OF COLCHESTER; AND TOWN OF COLCHESTER**, c/o Attorney Matthew D. Ritter, Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, CT 06103

  
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Molly Steffes  
Acting Clerk of the Commission