FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Paul Manocchio,

Complainant

against Docket # FIC 2024-0398

Director of Public Records, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut,

Respondents July 9, 2025

The above-captioned matter was heard as a contested case on November 25, 2024, at which time the complainant and respondents appeared and presented testimony, exhibits, and argument on the complaint.

Subsequent to the hearing, on November 25, 2024, the respondents submitted one after-filed exhibit, without objection, which has been admitted into evidence and marked as: "Respondents' Exhibit 2 (after-filed): Email from Complainant to Respondents, dated September 11, 2024, with attached redacted records."

On November 26, 2024, the complainant submitted nine after-filed exhibits, eight of which were objected to by the respondents. The undersigned hearing officer sustained such objections. The remaining exhibit submitted by the complainant, without objection, has been admitted into evidence and marked as: "Complainant's Exhibit C (after-filed): Emails between Complainant and Respondents, dated September 11, 12 and 18, 2024."

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 May 3, 2024, the complainant submitted to the respondents a request for copies of the following: "all communications regarding any inquiry or complaint or investigation pertaining to Cathleen Hammel of [t]he NEAG department [....] [a]s well as salary. Job abilities, and job description, run down of day to day job functions [sic]" ("Hammel request").

3. It is found that, by email dated May 13, 2024, the complainant submitted two additional requests to the respondents for copies of the following:

> (a) Email communications, telephone records, telephone communications (including text messages), instant messages on all platforms, computer activity and phone search history from

> Cathleen Hammel, Alison Cutler and Thomas Long containing any of the following terms: Paul Manocchio, Crumb Patisserie, Pamela Manocchio, Brian Coleman, comradedragon@proton.me, or comrade dragon ("communications request").
>
> (b) Any complaints made regarding Thomas Long[,] professor ("Long request").

4. It is found that, by email dated May 15, 2024, the respondents acknowledged the complainant's request, described in paragraphs 3(a) and (b), above.

5. It is found that, by email dated June 17, 2024, the respondents disclosed to the complainant records that they purported to be responsive to his requests described in paragraphs 2 and 3(a), above. It is found that the respondents noted that the following records were withheld from such disclosure: (a) emails to which the complainant was "a party" and (b) records exempt under attorney-client privilege within the meaning of §1-210(b)(10), G.S. It is further found that the respondents claimed that they maintained no responsive records to the Long request, described in paragraph 3(b), above.

6. It is found that, by a series of emails later in the day on June 17, 2024, the complainant responded to the respondents' disclosure of records by questioning its completeness and the validity of the respondents' attorney-client privilege claim.

7. It is found that, later in the day on June 17, 2024, the respondents replied to the complainant's emails described in paragraph 6, above. In their reply, the respondents claimed that the records disclosed to the complainant in response to the Hammel request reflected only one complaint against Ms. Hammel, which was the one the complainant himself submitted to UConn Labor Relations. The respondents further claimed that any emails related to that complaint against Ms. Hammel were exempt from disclosure pursuant to attorney-client privilege.

8. By email, received and filed by the Commission on July 11, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with a copy of all records responsive to his requests described in paragraphs 2, 3(a), and 3(b), above.

9. Section 1-200(5), G.S., provides as follows:

> "[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.

10. Section 1-210(a), G.S., provides the following in relevant part:

> [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 (1) inspect such records promptly during regular office or business hours [...] or (3) receive a copy of such records in accordance with section 1-212.

11. 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."

12. 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.

13. It is found that, on September 11, 2024, the respondents disclosed a second batch of records to the complainant.

14. At the contested case hearing on November 25, 2024, the complainant challenged the thoroughness of the respondents' search for responsive records. He also requested an in camera review of any records withheld or redacted by the respondents. Accordingly, on November 27, 2024, the hearing officer ordered the respondents to submit records that are the subject of this matter to the Commission, without redactions, for an in camera inspection.

Search for Responsive Records

15. At the contested case hearing, the complainant alleged that the respondents did not conduct a thorough search for records responsive to his communications request, described in paragraph 3(a), above. Specifically, he contended that the respondents should have contacted the campus police, dean, and other staff members employed in various departments with the respondent university as part of their search for responsive records.

16. With respect to the communications request, it is found that the respondent Director of Public Records managed the search for responsive records.

17. It is found that it was reasonable for the respondent director to interpret the complainant's communications request, described in paragraph 3(a), above, to be limited to records maintained by Cathleen Hammel, Alison Cutler, and Thomas Long.

18. Regarding the search for email communications and instant messages responsive to the complainant's communications request, it is found that the respondent director personally searched the electronic mailboxes of Ms. Hammel, Ms. Cutler, and Professor Long, which included a search of electronic messages sent through the Microsoft Teams platform. It is found that any responsive records that were located were provided to the complainant.

19. Regarding the search for telephone records and telephone communications responsive to the complainant's communications request, it is found that the respondent director

instructed Ms. Hammel, Ms. Cutler, and Professor Long to search their own university telephone records, including voicemail records, as well as their personal cell phones. It is found that any responsive records that were located were provided to the complainant.

20. As a result of the foregoing, it is concluded that the respondents performed a thorough search and did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with respect to the communications request described in paragraph 3(a), above.

Withheld Records

21. On January 13, 2025, the respondents submitted 25 pages of unredacted records for in camera inspection, of which only 8 pages contained claimed exemptions to disclosure. Along with such records, the respondents submitted a detailed Index to Records Submitted for In Camera Inspection (hereinafter "Index"). Such in camera records are identified herein as IC-2024-0398-1, IC-2024-0398-3 through IC-2024-0398-6, IC-2024-0398-8, and IC-2024-0398-17.

22. On the Index, the respondents claimed that the records were exempt from disclosure pursuant to §1-210(b)(10), G.S., because such information is protected by the attorney-client privilege.

23. 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." The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. Freedom of Info. Comm'n, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

24. Section 52-146r(a)(2), G.S., defines "confidential communications" as follows:

> All oral and written communication 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....

25. Our Supreme Court has stated that a four-part test must be applied to determine whether communications are privileged: "(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." Lash v. Freedom of Info. Comm'n, 300 Conn. 511, 516 (2011) ("Lash"), citing 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). "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, 300 Conn. at 516-17.

26. Moreover, "[i]n 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." PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329 (2004).

27. 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. Under such circumstances, "it is not enough for the party invoking the privilege to show that a communication to legal counsel relayed information that might become relevant to the future rendering of legal advice. Instead, the communication must also either explicitly or implicitly seek specific legal advice about that factual information." (Citation omitted; internal quotation marks omitted.) Id. at 16. Moreover, when an attorney's primary role is that of a nonlegal professional advisor, there must be "a clear basis to conclude that information was being conveyed to [her] for the purpose of having [her] act in the role of legal advisor or that [she] was providing a legal opinion. Extrinsic evidence may undoubtedly provide context for making such an assessment." Id. at 23.

28. Moreover, it is well established that, generally, disclosure of an attorney-client privileged communication to a third party waives the privilege. See, e.g., Harp v. King, 266 Conn. 747, 767 (2003). However, "the presence of certain third parties...who are agents or employees of an attorney or client, and who are necessary to the [legal] consultation, will not destroy the confidential nature of the communication." Harrington, 323 Conn. at 25 (citations omitted).

29. Upon careful in camera inspection, it is found that the following in camera records 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): IC-2024-0398-3 through IC-2024-0398-6.

30. It is concluded that the records, or portions thereof, identified in paragraph 29, above, constitute communications or records protected by the attorney-client privilege, within the meaning of §1-210(b)(10), G.S. It is found, however, that the attorney-client privilege has been waived with respect to such records because the redacted portions contained therein appear to

have been provided to the complainant in other responsive records previously disclosed by the respondents. Accordingly, it is further concluded that the respondents violated 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.

31. After careful in camera inspection, it is found that the following records, or portions thereof, that the respondents claimed to be exempt pursuant to §1-210(b)(10), G.S., and protected by the attorney-client privilege on the Index, do not contain any 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"; nor are they "records prepared by the government attorney in furtherance of the rendition of legal advice," within the meaning of §52-146r(a)(2), G.S.: IC-2024-0398-1; IC-2024-0398-8; and IC-2024-0398-17.

32. It is therefore concluded that the in camera records described in paragraph 31, above, are not exempt from disclosure pursuant to §1-210(b)(10), G.S., as contended by the respondents.

33. Additionally, it is found that the respondents withheld from the complainant records responsive to his requests that were generated by the complainant himself, such as emails to the respondents as described in paragraph 5(a), above, and the complaint described in paragraph 7, above. It is further found, based upon the respondent director's testimony, that the respondents disclosed such records to the complainant only if they were contained within other intra-university communications, such as forwarded emails between university personnel.

34. It is found that the FOI Act does not permit a public agency to withhold from disclosure responsive records created by the requesting party.

35. Accordingly, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with respect to the records described in paragraph 33, above.

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

1. Within 10 days of the date of the Notice of Final Decision in this matter, the respondents shall disclose to the complainant, free of charge, the records, or portions thereof, described in paragraphs 29, 31, and 33 of the findings, above.

2. 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 July 9, 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:

PAUL MANOCCHIO, 4 Greenway Drive, Brooklyn, CT 06234

DIRECTOR OF PUBLIC RECORDS, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT, c/o Attorney Nathan P. LaVallee and Attorney Ralph E Urban, Office of the General Counsel, University of CT, 343 Mansfield Road, Unit 1177, Storrs, CT 06269

Jennifer M. Mayo
Acting Clerk of the Commission

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