

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Gyetvan,

Complainant

against

Docket #FIC 2024-0378

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

Respondents

June 11, 2025

The above-captioned matter was heard as a contested case on October 21, 2024 and December 9, 2024, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

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

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by email dated August 2, 2023, the complainant requested that the respondents provide him with a copy of the following records:
 - a. The final, signed and completed not currently embargoed dissertations for all graduated UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program students;
 - b. All enrollment verifications for all current and past UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program students;
 - c. All published student information, including but not limited [to] research summaries, research descriptions,

research interests, disclosed coursework enrollment, and directory information, published to current and past UConn webpages, for all UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program students;

- d. All records of external research-related materials, including but not limited to those disclosed via agreements about collaboration and memorandums of understanding, between UConn and outside organizations such as other universities or other physical research sites, for all UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program students;
- e. All records of external research-related materials submitted to outside organizations including but not limited to research grant applications materials submitted to outside organizations, such as the National Science Foundation and the National Institute of Health, and resumes/curricula vitae (including supervisors' resumes/curricula vitae referencing students) submitted to an outside organization, for all UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program students;
- f. All records involving submitted, denied, and/or awarded research grants and/or funding grants for all UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program faculty members since 1990;
- g. All records involving the externally submitted and awarded National Science Foundation, Award Number 2152202, grant titled "Transdisciplinary Convergence in Educational Neuroscience Doctoral Training Program" awarded to UConn's Department of Psychological Sciences and Department of Educational Psychology;
- h. All post-enrollment records created for all UConn Behavioral Neuroscience Program, Neuroscience

Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program students;

- i. All letters and statements of recommendation sent on behalf of current or former UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program students;
- j. All records involving any application for employment to all UConn Behavioral Neuroscience Program, Neuroscience Graduate/Biomedical Science Program, PNB Neuroscience Program, and Interdisciplinary Neuroscience Program faculty or postdoctoral positions in which the applicant had an academic dismissal from any academic program at any point in their academic history, in which the applicant transferred doctoral programs in their academic history and/or in which the applicant possessed two masters degrees prior to admission into a doctoral program;
- k. All records of UConn's Center for Students with Disabilities job descriptions and related duties from 2015-2022;
- l. All records of UConn's Center for Students with Disabilities employee training materials and/or manuals from 2015-2022;
- m. All records of UConn's Center for Students with Disabilities employee operations guidelines and policy materials from 2015-2022;
- n. All records of UConn's Center for Students with Disabilities policies, handbooks, guidelines, manuals, and procedures from 2015-2022;
- o. All records involving the creation of any new or revised UConn Center for Students with Disabilities policies, procedures, guidelines, handbooks, training manuals, and/or training materials, since 2015 including, but not limited to, "academic accommodations grievance procedures", discrimination complaint procedures", "documentation guidelines", "Rights and Responsibilities", learning and living environments

accommodations [sic], all UConn Center for Students with Disabilities website modifications [sic], and all UConn Dean of Students “Resources for Faculty and Staff” webpage alterations or such webpages’ removal;

- p. All records involving the April 2022 news articles titled “Students Discuss Issues With CSD Accommodations” published by UConn’s community newspaper, the Daily Campus, including but not limited to communication in connection to requests for commentary from UConn personnel, information gathered or created during or after interviews including audio recordings and notes, and information regarding the publishing and removals of such article;
- q. Documents demonstrating all steps take to implement the Task Force Recommended Actions as recommended in any Diversity and Inclusion Task Force Reports prepared by UConn’s Psychological Sciences Department;
- r. All records involving the creation of the “Template for Annual Reviews for Doctoral Students” and the “Annual Progress Review for Doctoral and MFA Students” implemented by UConn’s Graduate School in 2021;
- s. All records involving the creation of any new or revised UConn Graduate School Catalog policies or writing, in any Graduate Catalog since 2019 including, but not limited to, policies, appeals of any kind, advisor and advisory system policies, and/or any other academic regulations;
- t. All records involving the creation of any new or revised Policies and Rules for Graduate Study in Psychological Sciences handbook since 2019 including, but not limited to, policies, appeals of any kind, advisor or advisory system policies, and/or any other academic regulations;
- u. All records involving the removal of the “BNS Brochure” from UConn’s Department of Psychological Sciences website in or around 2022;
- v. All records evidencing and related to any policy changes resulting from the following civil action cases:

- (i) Doe v. Estafy, Samia, HHD-CV-14-5038473-S, in the Connecticut Superior Court; and
 - (ii) Gerson-Ostro v. University of Connecticut, 3:14-CV-01766-VLB, in the United States District Court for the District of Connecticut;
- w. All records evidencing and relating to policy changes resulting from the following Connecticut Commission on Human Rights and Opportunities cases:
 - (i) Mustafa Ibrahim v. University of Connecticut, 2240213;
 - (ii) Wayne Shaw v. University of Connecticut, 1930785;
 - (iii) Farah Djunaedi v. University of Connecticut, 2040181 (EOC: 16A202000281);
 - (iv) Gerson-Ostro v. University of Connecticut, 1340257;
 - (v) Tunisia Melendez v. State of CT, University of Connecticut, 2040031;
 - (vi) Dane Warner v. UCONN, 2040358 ;
 - (vii) Dane Warner v. UConn, 2140029 (EOC: 16A202001272); and
 - (viii) Michael Gyetvan v. UConn, 2040221.
- x. All records evidencing and relating to policy changes resulting from the following United States Department of Education Office for Civil Rights (“OCR”) complaints involving the University of Connecticut:
 - (i) OCR Case No. 01-19-2056;
 - (ii) OCR Case No. 01-21-2205;
 - (iii) OCR Case No. 01-22-2318;
 - (iv) OCR Case No. 01-22-2253;
 - (v) OCR Case No. 01-20-2217;
 - (vi) OCR Case No. 01-18-2056;
 - (vii) OCR Case No. 01-19-2056;
 - (viii) OCR Case No. 01-18-2057;
 - (ix) OCR Case No. 01-17-2282;
 - (x) OCR Case No. 01-16-2092;
 - (xi) OCR Case No. 01-15-2149; and
 - (xii) OCR Case No. 01-16-2103.
- y. All records evidencing and relating to policy changes resulting from the following UConn Office of Institutional Equity cases:

- (i) OIE Case Number, H17-0303;
- (ii) Case No. H22-0095;
- (iii) Student 1 v. Catherine Cocks, 16-0463;
- (iv) Student A v. Ann Charters, Ph.D., Case No. 16-0522;
- (v) Case No. 16-0535;
- (vi) Complainant v. Adam Fry, Ph.D., 17-0066;
- (vii) Complainant v. Bruce Cohen, Case No. 17-0159;
- (viii) Case No. 17-0160;
- (ix) Matter Concerning Terry Cook, Case No. 18-0036;
- (x) Case No. 18-0041;
- (xi) Case No. 18-0046;
- (xii) Case No. 18-0097;
- (xiii) Case No. 18-0161;
- (xiv) Case No. 18-211;
- (xv) Matter Concerning Michael Braunstein, Case No. 18-0330;
- (xvi) Case No. 19-0004;
- (xvii) Matter Concerning Annette Jakubisin-Konicki, Ph.D., Associate Professor; Kristin Bott, DNP, Assistant Professor; and Jamie Gooch, DNP, Clinical Instructor, Case No. 19-0024;
- (xviii) Case No. 19-0051;
- (xix) Matter Concerning Professor Marianne LaPointe, Case No. 19-0067;
- (xx) Matter Concerning Eric Rice, Ph.D., Case No. 19-0154;
- (xxi) Case No. 19-0240;
- (xxii) Matter Concerning Jennifer Napiorski, Case No. 19-0273;
- (xxiii) Matter Concerning Fred Lee, Case No. 19-0291;
- (xxiv) Matter Concerning Judith Landi, Case No. 19-0326;
- (xxv) Case No. 19-0355;
- (xxvi) Matter Concerning Allison Knight, Case No. 19-0358;
- (xxvii) Case No. 19-0364;
- (xxviii) Case No. 19-0377;
- (xxix) Case No. 20-0004;
- (xxx) Matter Concerning Peter Miniutti, Case No. 20-0063;
- (xxxi) Case No. 20-0087;

- (xxxii) Matter Concerning Kirstie Farr and Kenneth Lachlan, Case No. 20-0089;
- (xxxiii) Matter Concerning Rebecca Campbell-Montalvo, Case No. 20-0163;
- (xxxiv) Matter Concerning Philip Mannheim, Ph.D., Case No. 20-0167;
- (xxxv) Case No. 20-0174;
- (xxxvi) Case No. 20-0183;
- (xxxvii) Matter Concerning Jennifer Lucia, Case No. 20-0200;
- (xxxviii) Matter Concerning Mary Bruno, Case No. 20-0235;
- (xxxix) Matter Concerning Gerald Dunne and Jonathan Trump, Case No. 21-0038;
- (xl) Case No. 21-0114;
- (xli) Matter Concerning Dwight Atherton/Accessible Van Service, Case No. 21-0129;
- (xlii) Case No. 21-0130;
- (xliii) Matter Concerning Emily Sears and Jennifer Lucia, Case No. 21-0137;
- (xliv) Case No. 21-0170;
- (xlv) Matter Concerning Aryn Davidson, Case No. 21-0192;
- (xlvi) Matter Concerning Instructor of Record, Bryanna Anderson and Cheryl Slane, Case No. 22-0217;
- (xlvii) Matter Concerning Dwight Atherton/Accessible Van Service, Case No. 22-0217;
- (xlviii) Case No. 22-0264;
- (xlix) Matter Concerning Aryn Davidson, Case No. 22-0297;
- (l) Case No. 20-0312;
- (li) Case No. 22-0349;
- (lii) Case No. 22-0395;
- (liii) Case No. 19-0065;
- (liv) Case No. 20-0097;
- (lv) Case No. 21-0199;
- (lvi) Case No. 22-0231;
- (lvii) Case No. 22-0398;
- (lviii) Case No. 19-0354;
- (lix) Matter Concerning Jean McCarthy, Case No. 19-0258; and
- (lx) Case No. 18-0071.

- z. All records evidencing and relating to policy changes resulting from the following UConn Office of Diversity and Equity Cases:
 - (i) Student v. Dragon, C-13-0188;
 - (ii) Student v. Samia Estafy, C-14-0202;
 - (iii) ODE Matter No. 15-0013;
 - (iv) Student 1 v. Sherry Powell, C-15-0116;
 - (v) Student v. Daniel Burkey, C-16-0018;
 - (vi) Student 1 v. Coppolino, C-16-0043;
 - (vii) Student 1 v. Del Siegle, Ph.D. and E. Jean Gubbins, Ph.D., C-16-0300;
 - (viii) Student 1 v. Thomas Abbott, Ph.D. and Christopher Malinoski, Ph.D., C-16-0419;
 - (ix) Student 1 and Student 2 v. Garcia, et al., C-16-0004;
 - (x) ODE Complaint 16-0171; and
 - (xi) Student v. Rudzik, Bolduk, C-13-0345.
- aa. All records involving any external reviews or reviewers' reports of the Department of Psychological Sciences or involving any of the graduate programs within it, since the year 1990;
- bb. All job descriptions and duties identifying-records for remotely-performed graduate assistantships offered by UConn, from December 2015 to December 2019; and
- cc. The syllabus for every Psychology Department graduate offering, including but not limited to graduate courses, classes, seminars, lectures, and labs from 2015-2023.

3. It is found that, by email dated August 2, 2023, the respondents acknowledged the complainant's request. It is further found that the respondents informed the complainant that:

Your request will be...provided to appropriate University personnel to identify and compile the existing and responsive documents. Once compiled, the records will then be reviewed as to any applicable exemptions under the FOIA.... Once the records relevant to your request have been compiled and reviewed, we will contact you regarding the most appropriate manner of transferring the documents to you.

4. It is found that, by email dated August 11, 2023, the respondents informed the complainant that, with regard to the request set forth in paragraph 2.a, above, publicly available dissertations could be obtained online at <https://opencommons.uconn.edu/dissertations/>

(“opencommons”), and that such site would allow him to search and download dissertations made available to UConn from 2013 to the present. It is further found that the respondents informed the complainant that digitized dissertations were also available through another online site and they provided the complainant with the link to such site. It is further found that the respondents informed the complainant that, to inspect dissertations that exist only in paper format, he could make an appointment with the UConn Library. Finally, with regard to the requests set forth in paragraphs 2.b through 2. e, and 2.h through 2. j, above, the respondents requested that the complainant provide them with a timeframe for responsive records.

5. It is found that, by email dated September 12, 2023, the complainant responded to the respondents’ correspondence in paragraph 4, above, as follows:

First, the opencommons site does not contain all of the post-2013 digitalized dissertations. Dissertations which students designated as embargoed¹ are not available for review during the embargo period.

Second, the copies of post-2013 dissertations available online do not have signatures, so they are not the requested final, signed, and completed dissertations.

Third, the online links do not include information regarding the specific degree title and department for the students, making it impossible to search for and identify the requested dissertations.

Fourth, many dissertations require UConn credentials to view...[without such credentials], I do not have access to these dissertations.

Fifth, dissertations prior to 2023 which I am able to access...are available only for purchase for \$41.00...

[Sixth], the links provided do not provide access to the requested master’s degree dissertations, particularly for the pre-2013 timeframe.

As to the offered in-person inspection, I am located out of state (IL), making in-person inspection cost prohibitive. Additionally, it appears that many of the requested dissertations are, in fact, available digitally... making an in-person visit unnecessary. Additionally, it does not

¹ Embargoes are restrictions that allow only the title, abstract, and citation information about a dissertation to be released to the public, while the full text of the work is kept private for a specified period of time.

appear that the respective specific degree title and department name for each student is ascertainable through an in-person inspection of paper copies.... In sum, my [request in paragraph 2.a, above,] is still applicable, and I stand by my written request.

As a reminder, I am requesting, but my request is not limited to (because, for example, I am not able to ascertain field of study, degree or department information for the students), copies of the following students' dissertations...: [at which point the complainant listed 34 dissertations].

As to your clarification request on the timeframe for [certain requests], my requests are only limited by the inception of each respective program. I believe that these programs were established around 1985.

(Emphasis added).

6. It is found that, by email dated February 2, 2024, the complainant requested that the respondents provide him with a status update on the processing of his request.

7. It is found that, by February 21, 2024, the respondents provided the complainant with records responsive to requests set forth in paragraphs 2.a, 2.b, 2.r, 2.x, 2.z, 2.aa, and 2.cc, above; directed the complainant to a website containing the minutes of the Graduate Faculty Council in order to obtain the records responsive to the request set forth in paragraph 2.s, above; and informed the complainant that they did not maintain any records responsive to the requests set forth in paragraphs 2.p, 2.u, 2.v, or 2.w, above. It is further found that the respondents informed the complainant that they were continuing to process the remaining requests and would contact him as soon as additional responsive records were ready to be provided to him.

8. It is found that, by email dated March 8, 2024, the respondents informed the complainant that they suspected that the respondent University did not maintain its own digital copy of the 34 dissertations that he listed in his September 12, 2023 email, (see ¶ 5, above); however, they were having the University Archivist review the respondent University's collection of digital dissertations and, if the archivists confirmed that the respondent University does not maintain such dissertations, the respondents stated that they would assist the complainant in obtaining the outstanding dissertations through a file sharing site that the complainant had referenced. It is further found that the respondents informed the complainant that they would be conducting another search for email communications responsive to the requests set forth in paragraphs 2.r, and 2.s, above.

9. It is found that, between March 19, 2024 and April 5, 2024, the respondents provided the complainant with 15 digitized dissertations responsive to the request set forth in paragraph 2.a, above.

10. It is further found that, by email dated June 11, 2024, the respondents provided the complainant with 18 additional digitized dissertations responsive to the request set forth in paragraph 2.a, above, as well as supplemental records responsive to the requests set forth in paragraphs 2.b, and 2.cc, above; and records responsive to the request set forth in paragraph 2.q, above. It is further found that the respondents informed the complainant that they were working on compiling his request for OCR communications. See ¶ 2.x, above. Finally, with regard to the request set forth in paragraph 2.f, above, it is found that the respondents provided the complainant with a spreadsheet listing 2,107 grants, and indicated that, because *each* grant would be comprised of at least 200 pages, it would take a significant amount of time to review all of the responsive records.

11. By email dated June 30, 2024 and filed July 1, 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 of the requested records. The complainant requested that the Commission consider the imposition of civil penalty in this case.

12. 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.

13. 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.

14. 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.”

15. 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 October 21, 2024

16. At the first contested case hearing, while the complainant conceded that he had received some responsive records, he contended that the following eleven requests had not been fully satisfied: 2.g, 2.h, 2.j, 2.l, 2.m, 2.o, 2.r, 2.s, 2.t, 2.x, and 2.aa, above. At such hearing, the complainant also narrowed two requests and made a concession with regard to one other request, as follows:

- a. The complainant narrowed the request set forth in request 2.h, above, to one seeking only his post-enrollment records;
- b. The complainant narrowed the request set forth in request 2.r, above, to one seeking emails the respondents had sent to him; and
- c. The complainant conceded that the only records that remained outstanding with regard to the request set forth in paragraph 2.s, above, were emails.

17. The respondent Director of Public Records for the University of Connecticut (the “Respondent Director”) appeared and testified at both contested case hearings on behalf of the respondents.

18. It is found that the Respondent Director is charged with overseeing the processing of all FOI requests received by the respondent University.

19. With regard to the request set forth in paragraph 2.x, above, it is found that the Respondent Director provided the complainant with the records that she believed were responsive to the complainant’s request for “all records evidencing or relating to” policy changes that resulted from certain OCR complaints involving UConn. Subsequently, it is found that the complainant requested all emails between the respondents’ office and OCR.² It is found that, prior to the first contested case hearing, the Respondent Director agreed to conduct a search for such emails and informed the complainant that she was treating the request as a thirtieth request or request “2.dd”. The Commission notes that the respondents agreed that all responsive emails which were not provided to the complainant would be submitted to the Commission for in camera inspection.

20. It is found that, prior to the December 9, 2024 contested case hearing, the respondents provided the complainant with all records responsive to the request set forth in paragraph 2.j, above. In addition, the complainant indicated he was not challenging the

² The Commission notes that, unlike the additional requests for electronic mail searches that were crafted and defined at the second contested case hearing, see ¶¶ 22, 23 n.4, 25, 26, and 27, below, the complainant’s request for emails between the respondents’ office and OCR, and the respondents’ agreement to conduct such a search occurred prior to the contested case hearings on this matter.

sufficiency of the records provided by the respondents with regard to the requests set forth in paragraphs 2.l, 2.m, 2.o, 2.x, and 2.aa, above.

The Second Contested Case Hearing on December 9, 2024

21. At the time of the second contested case hearing, the complainant contended that, of the 29 requests set forth in paragraph 2, above, only the following six requests remained at issue: 2.g, 2.h, 2.r, 2.s, 2.t, and 2.u³, above.

22. With regard to the request set forth in paragraph 2.g, above, it is found that the respondents provided the complainant with all records pertaining to the grant entitled “Transdisciplinary Convergency in Educational Neuroscience Doctoral Training Program.” It is further found that, after such records were provided to the complainant, he requested emails involving the grant. In this regard, it is found that, at the second contested case hearing, the complainant requested that the respondents run the title of the grant through the electronic mail accounts of *all* UConn employees with a date range of August 1, 2012 to the date of the request.

23. With regard to the search for post-enrollment records responsive to the request set forth in paragraph 2.h, above, the Respondent Director testified, and it is found, that the respondents ran the complainant’s last name through the electronic mail accounts of *all* UConn employees from August 1, 2019 to August 2, 2023. It is further found that all non-exempt responsive records from August 15, 2019 (the date that the complainant was no longer enrolled at UConn) through August 2, 2023 (the date of the request at issue in this case) were provided to the complainant. The Commission notes that the respondents agreed that all responsive records which were not provided to the complainant would be submitted to the Commission for in camera inspection.⁴

24. With regard to the request set forth in paragraph 2.r, above, it is found that the respondents provided the complainant with all non-exempt records, including emails, pertaining to the creation of the “Template for Annual Reviews for Doctoral Students” and the “Annual Progress Review of Doctoral and MFA Students” implemented by the respondent University’s Graduate School in 2021. The Commission notes that the respondents agreed that all responsive records which were not provided to the complainant would be submitted to the Commission for in camera inspection.

³ The Commission notes that the complainant did not contend at the first contested case hearing that the request set forth in paragraph 2.u, above, had not been fully satisfied, but did raise this contention at the second contested case hearing. See ¶ 16, above.

⁴ The Commission notes that, at the second contested case hearing, the complainant contended that the running of his last name through all electronic mail accounts of *all* UConn employees may have been an insufficient search, and he requested that the respondents run his initials through the electronic email accounts of *all* UConn employees with a date range of August 1, 20219 through the date of the request. The complainant’s request that such additional search be conducted is addressed in paragraph 28, below.

25. With regard to the request set forth in paragraph 2.s, above, it is found that the respondents provided the complainant with all responsive policies by providing him with a link to the meeting minutes where such policies were discussed. It is further found that, after such records were provided to the complainant, he requested all emails relating to the subject matters in such request. In this regard, it is found that, at the second contested case hearing, the complainant requested that the respondents run the words “graduate catalogue” through the electronic mail accounts of all graduate deans; all associate deans of the graduate school; Cinamon Adams; all assistant deans of the graduate school; Stuart Duncan; and Megan Petsa, Director of Graduate Student Administration, with a date range of August 1, 2021 through the date of the request.

26. With regard to the request set forth in paragraph 2.t, above, the respondents contacted the department head of Psychological Sciences at the respondent University (the “Department Head”), requesting that records responsive to such request be forwarded to the Respondent Director. It is further found that the Department Head informed the Respondent Director that there were no responsive records. It is further found that the complainant then requested all emails relating to “the creation of any new or revised Policies and Rules for Graduate Study in Psychological Sciences handbook since 2019.” In this regard, it is found that, at the second contested case hearing, the complainant requested that the respondents run the words “department handbook” through the electronic mail accounts of all individuals who met about the handbook, including Barnes-Farrell; James Chrobak; Dixon⁵; Green; Quinn; Johson; Magley; Etan Markus; Milan; Naigles; and John Salamone, with a date range of August 1, 2019 through the date of the request.

27. With regard to the request set forth in paragraph 2.u, above, the respondents contacted the Department Head referred to in paragraph 26, above, requesting that records responsive to such request be forwarded to the Respondent Director. It is further found that the Department Head informed the Respondent Director that there were no responsive records. It is further found that the complainant then requested all emails relating to “the removal of the BNS Brochure from UConn’s Department of Psychological Sciences website in or around 2022.” In this regard, it is found that, at the second contested case hearing, the complainant requested that the respondents run the words “BNS Brochure” through the electronic mail accounts of the individuals from the psychological department, including James Chrobak, Etan Markus; Roselin “Holly” Fitch; Harvey Swadlow; Heather Read; Ean Stevenson; Maxim “Maksim” Volgushev; Robert Astur; John Salamone; and James Green, with a date range of August 1, 2019 through the date of the request.

28. In response to the searches formulated at the second contested case hearing, the respondents contended that the requests described in paragraphs 22, 23 n.4, 25, 26, and 27, above, should be considered new requests, and it is so found. Because the searches and related parameters were raised and defined during the second contested case hearing, such requests are

⁵ The Commission notes that, when the complainant did not have the full name of certain individuals, he provided only surnames; nonetheless, it appeared that the respondents understood to whom the complainant was referring.

beyond the scope of the request set forth in paragraph 2, above, and will not be further addressed herein.⁶

29. On February 5, 2025, the respondents submitted the records that they claimed were exempt from disclosure to the Commission for in camera inspection. Such records shall be identified as IC-2024-0378-1 through IC-2024-0378-590.

30. It is found that the complainant filed a complaint with the Connecticut Commission on Human Rights and Opportunities (“CHRO”) against the respondent University. It is further found that, at the time the complainant made the request for copies of records set forth in paragraph 2, above, and at the time of the contested case hearings on this matter, the CHRO matter was still pending.

31. The respondents claimed that the following records are exempt from disclosure pursuant to §1-210(b)(4), G.S., because they contain information pertaining to the respondent University’s litigation strategy and negotiations with respect to pending litigation: IC-2024-0378-1 through IC-2024-0378-130; IC-2024-0378-207 through IC-2024-0378-226; IC-2024-0378-244 through IC-2024-0378-251; IC-2024-0378-272; IC-2024-0378-273; IC-2024-0378-295 through IC-2024-0378-309; IC-2024-0378-354 through IC-2024-0378-363; IC-2024-0378-366 through IC-2024-0378-369; IC-2024-0378-550 through IC-2024-0378-555; and IC-2024-0378-585 through IC-2024-0378-588.

32. Section 1-210(b)(4), G.S., provides that disclosure is not required of “[r]ecords pertaining to strategy and negotiation with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled.”

33. Section 1-200(9), G.S., defines “pending litigation” to mean “(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency’s consideration of action to enforce or implement legal relief or a legal right.”

34. Our Supreme Court has determined, relying on Webster’s Third New International Dictionary, that “strategy” is defined as “the art of devising or employing plans or stratagems.” City of Stamford v. Freedom of Info. Comm’n, 241 Conn. 310, 318 (1997). Further, the court stated that “negotiation is defined as the action or process of negotiating,” and “negotiate is variously defined as: to communicate or confer with another so as to arrive at the settlement of some matter; meet with another so as to arrive through discussion at some kind of agreement or compromise about something; to arrange for or bring about through conference and discussion; work out or arrive at or settle upon by meetings or agreements or compromises; and to influence successfully in a desired way by discussion and agreements or compromises.”

⁶ The Commission notes that the respondents agreed that, upon receipt of a request for copies of such emails, they would conduct the searches described in paragraphs 22, 23 n. 4, 25, 26, and 27, above.

(Internal quotations omitted). Id.

35. The Supreme Court has also determined that “pending” claim or litigation includes claims or litigation “already in existence and in progress,” as well as imminent or threatened litigation not yet filed, see Bd. of Educ. v. Freedom of Info. Comm’n, 217 Conn. 153, 161 (1991), and that “finally adjudicated” means “completion of an appeal to the highest court” or “expiration of a party’s right to appeal,” see Planning and Zoning Comm’n of the Town of Monroe, et al. v. Freedom of Info. Comm’n, et al., 316 Conn. 1, 17-18 (2015).

36. Upon careful in camera inspection, it is found that the following records, or portions thereof, pertain to strategy or negotiations with respect to pending litigation involving the respondent University within the meaning of §1-210(b)(4), G.S.:

IC-2024-0378-2 through IC-2024-0378-11; IC-2024-0378-16 (lines 1 through 21); IC-2024-0378-21 (lines 1 through 19); IC-2024-0378-26 through IC-2024-0378-28; IC-2024-0378-29 (lines 1 through 15); IC-2024-0378-31 through IC-2024-0378-41; IC-2024-0378-42 (lines 1 through 13); IC-2024-0378-47 through IC-2024-0378-76; IC-2024-0378-77 (lines 1 through 20); IC-2024-0378-82 through IC-2024-0378-130; IC-2024-0378-207 through IC-2024-0378-226; IC-2024-0378-272 ; IC-2024-0378-273; IC-2024-0378-295 through IC-2024-0378-309; IC-2024-0378-356; IC-2024-0378-357 (lines 1 through 14); IC-2024-0378-359; IC-2024-0378-360; IC-2024-0378-366 through IC-2024-0378-369; IC-2024-0378-550 through IC-2024-0378-555; and IC-2024-0378-585 through IC-2024-0378-588.

37. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to provide a copy of the records, or portions thereof, identified in paragraph 36, above, to the complainant.

38. It is found, however, that the following records, or portions thereof, do not pertain to strategy or negotiations within the meaning of §1-210(b)(4), G.S.:

IC-2024-0378-1; IC-2024-0378-12 through IC-2024-0378-15; IC-2024-0378-16 (lines 22 through 35); IC-2024-0378-17 through IC-2024-0378-20; IC-2024-0378-21 (lines 20 through 34); IC-2024-0378-22 through IC-2024-0378-25; IC-2024-0378-29 (lines 16 through 28); IC-2024-0378-30; IC-2024-0378-42 (lines 14 through 35); IC-2024-0378-43 through IC-2024-0378-46; IC-2024-0378-77 (lines 21 through 35); IC-2024-0378-78 through IC-2024-0378-81; IC-2024-0378-244 through IC-2024-0378-251; IC-2024-0378-354; IC-2024-0378-355; IC-2024-0378-357 (lines 15 through 31); IC-2024-0378-358; and IC-2024-0378-361 through 363.

39. Accordingly, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to provide a copy of the records, or portions thereof, identified in paragraph 38, above, to the complainant.

40. Next, the respondents claimed that the the following records are exempt from disclosure 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”:

IC-2024-0378-131 through IC-2024-0378-206; IC-2024-0378-227 through IC-2024-0378-243; IC-2024-0378-252 through IC-2024-0378-271; IC-2024-0378-274 through IC-2024-0378-294; IC-2024-0378-310 through IC-2024-0378-353; IC-2024-0378-364; IC-2024-0378-365; IC-2024-0378-370 through IC-2024-0378-549; IC-2024-0378-556 through IC-2024-0378-584; IC-2024-0378-589 and IC-2024-0378-590.

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 condif[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 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. 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 as assessment.” Id. at 23.

47. Upon careful in camera inspection, it is found that the following records, or portions thereof, 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, and which were “transmitted in confidence,” within the meaning of §52-146r(a)(2), G.S.:

IC-2024-0378-131 through IC-2024-0378-152; IC-2024-0378-153 (lines 1 through 18); IC-2024-0378-154 (lines 6 through 32); IC-2024-0378-155 through IC-2024-0378-163; IC-2024-0378-167 through IC-2024-0378-206; IC-2024-0378-227 through IC-2024-0378-229; IC-2024-0378-232 through IC-2024-0378-238; IC-2024-0378-252 through IC-2024-0378-271; IC-2024-0378-274 through IC-

2024-0378-294; IC-2024-0378-310 through IC-2024-0378-353; IC-2024-0378-364; IC-2024-0378-365; IC-2024-0378-370 through IC-2024-0378-491⁷; IC-2024-0378-493 through IC-2024-0378-549; IC-2024-0378-556; IC-2024-0378-557 (lines 1 and 2); IC-2024-0378-559 through IC-2024-0378-584; IC-2024-0378-589; and IC-2024-0378-590.

48. It is concluded that records, or portions thereof, identified in paragraph 47, 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. 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 provide a copy of such records, or portions thereof, to the complainant.

49. However, upon careful in camera inspection, it is further found that the following records, or portions thereof, are not “confidential communications,” within the meaning of §52-146r(a)(2), G.S.:

IC-2024-0378-153 (lines 19 through 33); IC-2024-0378-154 (lines 1 through 5); IC-2024-0378-164 through IC-2024-0378-166; IC-2024-0378-230; IC-2024-0378-231; IC-2024-0378-239 through IC-2024-0378-243; IC-2024-0378-557 (lines 3 through 28); IC-2024-0378-558.

50. Accordingly, it is concluded that the records, or portions thereof, identified in paragraph 49, above, are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

51. It is therefore concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by declining to provide a copy of the records, or portions thereof, identified in paragraph 49, above, to the complainant.

Promptness Analysis and Request for the Imposition of a Civil Penalty

52. With regard to whether the respondents have acted promptly in responding to the instant request, this Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if

⁷ It is found that IC-2024-0378-492 is not responsive to the complainant’s request in this case. Accordingly, such record will not be addressed further herein.

immediate compliance is not possible, the agency should explain the circumstances to the requester.

53. It is found that the request set forth in paragraph 2, above, is a massive request for copies of public records, which involved searching for, gathering, and reviewing the records maintained by multiple individuals within the respondent University. It is further found that, as the respondents provided the complainant with records, the complaint finetuned and, at times, expanded the request. See, e.g. ¶ 19, above.

54. It is further found that, at the time the respondents received the request set forth in paragraph 2, above, there were fifty pending FOI requests in the Respondent Director's office. It is further found that, by the time of the first contested case hearing, the Respondent Director had spent approximately thirty hours⁸ processing the request set forth in paragraph 2, above, and had provided the complainant with hundreds of pages of responsive records. It is further found that, by the time of the second contested case hearing, the Respondent Director had spent an additional 10 hours processing the request and preparing a privilege log and had provided the complainant with hundreds of additional responsive records. It is further found that the Respondent Director processed the instant request prior to two requests that were pending at the time the instant request was received.

55. It is found that the respondents have worked diligently in this case and in accordance with the criteria set forth in Advisory Opinion #51

56. It is concluded therefore that the respondents did not violate the promptness requirements of §§1-210(a) and 1-212(a), G.S.

57. The Commission, in its discretion, declines to consider the imposition of civil penalties against the respondents.

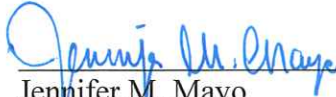
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within forty-five days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant, free of charge, copies of the records, or portions thereof, described in paragraphs 38 and 49 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.

⁸ It is found that, while the Respondent Director has one assistant, the Respondent Director alone processed the request at issue in this case.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 11, 2025.



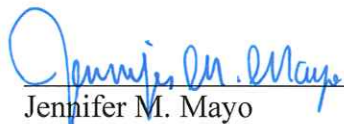
Jennifer M. Mayo
Acting Clerk of the Commission

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:

MICHAEL GYETVAN, c/o Attorney James T. Baldwin, Coles Baldwin Kaiser & Creager, LLC, 1 Eliot Place, 3rd Floor, Fairfield, CT 06824

DIRECTOR OF PUBLIC RECORDS, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT, c/o Attorney Lesley Salafia and Attorney Nathan P. LaVallee, Office of the General Counsel, University of Connecticut, 343 Mansfield Road, Unit 1177, Storrs, CT 06238



Jennifer M. Mayo
Acting Clerk of the Commission