

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Chandler Holcomb,

Complainant

against

Docket # FIC 2024-0383

Executive Director, State of Connecticut,
Commission on Human Rights and
Opportunities; and State of Connecticut,
Commission on Human Rights and
Opportunities,

Respondents

June 25, 2025

The above-captioned matter was heard as a contested case on March 18, 2025, at which time the complainant¹ and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

Pursuant to an order of the undersigned hearing officer, the matter was reopened for the purpose of taking additional evidence on the respondents' claims of exemption. The reopened hearing was held on May 29, 2025, at which time the complainant and the respondents appeared and presented additional evidence and argument on the complaint.

Immediately following the hearing on May 29, 2025, the respondents were ordered to submit additional evidence, in the form of an affidavit, regarding their claim that the records at issue in this matter were exempt from disclosure pursuant to §1-210(b)(4), G.S. Such exhibit was admitted as follows: Respondents' Exhibit 3 (after-filed): Affidavit of Kimberly Jacobsen.

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.

¹ On November 1, 2024, the complainant moved to substitute Attorney Chandler Holcomb of Berchem Moses PC as complainant in lieu of Attorney Christopher Henderson, formerly of Berchem Moses PC. By orders dated December 23, 2024, and January 29, 2025, the complainant was ordered to supplement such motion with additional facts to demonstrate Attorney Holcomb's interest as a party in these proceedings. A supplement to the motion to substitute was filed on January 31, 2025. On November 8, 2024, the respondents filed an objection to the motion to substitute, and on February 3, 2025, the respondents filed an objection to the complainant's supplemental filing. On February 11, 2025, the motion to substitute was granted by the hearing officer over the objection of the respondents.

2. It is found that the complainant and his firm, Berchem Moses PC, represent the City of Bridgeport in connection with a complaint that was pending before the respondent Commission on Human Rights and Opportunities (“CHRO”) alleging racial discrimination by the Bridgeport Police Department (“CHRO Case No. 2220370”).

3. It is found that by letter dated May 30, 2024, the complainant requested that the respondents provide him with copies of the following records with respect to CHRO v. City of Bridgeport, Case No. 2220370:

- (a) Any and all documents, emails, and other written communications in any medium pertaining to the decision to file the complaint, including but not limited to, communications provided to or considered by the Commission in connection with the meeting agenda item on which the Commission voted to file the complaint;
- (b) Any and all documents, emails, and other written communications in any medium between any Commission member or employee relating to the decision to investigate this complaint;
- (c) Any and all documents, emails, and other written communications in any medium between any Commission member or employee relating to the investigation of this complaint;
- (d) Any and all documents, emails, and other written communications in any medium relating in any way to the decision to initiate CHRO Case No. 2220370;
- (e) Any and all documents, emails and other written communications in any medium sent to, received by, or created by any Commission member or employee prior to June 9, 2022, that mention or refer to the Connecticut Racial Profiling Prohibition Project [“(Project”)”] “Traffic Stop Analysis & Findings, 2019”;
- (f) Any and all documents, emails, and other written communications in any medium between any Commission member or employee, and any member, employee, board member, or agent of the Project, including but not limited to, Ken Barone, James Fazzalaro, Jesse Kalinowski, Ph.D, and Matthew Ross, Ph.D;
- (g) Any and all documents concerning or referring to research done in preparation for the filing of the complaint;
- (h) Any and all communications or documents regarding the investigation of the complaint by any Commission official or employee;

- (i) The complete investigation file of the Commission in CHRO Case No. 2220370, excluding privileged and attorney work product documents;
- (j) All statements of witnesses, parties and former parties taken or provided during the Commission's investigation of CHRO Case No. 2220370; and
- (k) Audio recordings and transcripts of all statements and interviews of all witnesses taken or provided during the Commission's investigation of CHRO Case No. 2220370.

4. It is found that, by letter dated June 5, 2024, the respondents acknowledged the complainant's request. It is found that the respondents disclosed a copy of approximately 1100 pages of records responsive to the request described in paragraph 3, above. It is also found that the respondents notified the complainant that certain records requested did not exist, and that copies of other records were withheld pursuant to claims of exemption.

5. By complaint filed July 2, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for copies of the records described in paragraph 3, above.

6. 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.

7. 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.

8. 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."

9. It is concluded that the records described in paragraph 3, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. At the March 18, 2025 hearing in this matter, the complainant requested that the Commission order the respondents to submit for in camera inspection a copy of all records responsive to the request described in paragraph 3, above, that had not already been provided to the complainant and that were not submitted to the Commission for in camera inspection and ruled upon in Docket #FIC 2023-0468; *Testa v. Executive Director, State of Connecticut, Commission on Human Rights and Opportunities, et al.* (Aug. 28, 2024) (“*Testa*”).²

11. Following the first hearing in this matter, the respondents were ordered to submit the records described in paragraph 10, above, for in camera inspection. On April 15, 2025, the respondents submitted a copy of such records to the Commission, along with an Index to Records Submitted for In Camera Inspection (“Index”). Such records shall hereinafter be referred to as IC-2024-0383-001 through 2024-0383-225, or the “in camera records.” On the Index, the respondents contended that the in camera records were exempt from disclosure pursuant to §§52-146r, 1-210(b)(10), 1-210(b)(4), and/or 46a-83(j), G.S.

Attorney-Client Privilege

12. First, the respondents contended that all of the in camera records were exempt from disclosure pursuant to §§52-146r and 1-210(b)(10), G.S., because such records consisted of communications protected by the attorney-client privilege.

13. Section 1-210(b)(10), G.S., provides, in relevant part, that “[n]othing in the [FOI] Act shall be construed to require the disclosure of ... communications privileged by the attorney-client relationship....”

14. 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 set forth in *Maxwell v. FOI Commission*, 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.

² At the hearings in this matter, the parties stipulated that the request and responsive records at issue are identical to those in *Testa*. However, in *Testa*, the respondents refused to comply with the Commission’s order to submit for in camera inspection a copy of *all* of the responsive records, contending that they were precluded from doing so by §46a-83(j), G.S. Because the respondents failed to prove that the withheld records were exempt from disclosure pursuant to §46a-83(j), G.S., such records were ordered disclosed by the Commission. On October 10, 2024, the respondents in *Testa* filed an administrative appeal with the Superior Court, challenging the Commission’s final decision. See *Commission on Human Rights and Opportunities v. City of Bridgeport, et al.*, Docket No. HHB-CV24-6090337-S. However, on May 13, 2025, the complainant in *Testa* filed with the Commission a withdrawal of that matter, based on the respondents’ compliance with the in camera order in the instant case. On May 20, 2025, the plaintiffs in the administrative appeal requested that the court remand the matter to the Commission based upon the May 13, 2025, withdrawal, and such motion was granted by the court. The Commission notes that consideration of the complainant’s withdrawal is pending with the Commission as of the date of the Report of Hearing Officer in the instant case.

15. Section 52-146r(2), G.S., defines “confidential communications” as:

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....

16. 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).

17. After careful in camera inspection, it is found that IC-2024-0383-0143 consists of a communication between attorneys of the respondents and one or more public officials or employees of the respondents. It is further found that such attorneys were acting in their professional capacity as attorneys with respect to such communication, that such communication related to legal advice sought by the respondents, and that such communication was made in confidence.

18. It is further found that IC-2024-0383-0144 through IC-2024-0383-0148 consist of a record prepared by one or more of the attorneys identified in paragraph 17, above, in furtherance of the legal advice sought by the respondents.

19. Based on the foregoing, it is found that IC-2024-0383-0143 through IC-2024-0383-0148 are “confidential communications,” within the meaning of §52-146r(a)(2), G.S.

20. Accordingly, it is concluded that IC-2024-0383-0143 through IC-2024-0383-0148 are exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents did not violate the FOI Act by failing to provide the complainant with copies of such records.

21. Because the Commission concludes that IC-2024-0383-0143 through IC-2024-0383-0148 are exempt from disclosure pursuant to §1-210(b)(10), G.S., the Commission need not address the respondents’ claim that such records are also exempt from disclosure pursuant to the remaining claims of exemption.

22. However, it is found that IC-2024-0383-0001 through IC-2024-0383-0142 and IC-2024-0383-0149 through IC-2024-0383-0225 constitute communications between the prosecuting attorneys of the respondent CHRO and a staff member of the Connecticut Racial Profiling Prohibition Project who was being presented as an expert witness in administrative hearings pending before the CHRO’s Office of Public Hearings. It is found that such witness is not a

public official or employee of the respondent CHRO, nor do the respondents' attorneys represent the Connecticut Racial Profiling Prohibition Project or its staff.

23. Based on the foregoing, and a careful in camera inspection, it is found that IC-2024-0383-0001 through IC-2024-0383-0142 and IC-2024-0383-0149 through IC-2024-0383-0225 do not constitute "confidential communications," within the meaning of §52-146r(a)(2), G.S. It is therefore concluded that such in camera records are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

Attorney Work Product

24. The respondents next claimed that IC-2024-0383-0001 through IC-2024-0383-0142 and IC-2024-0383-0149 through IC-2024-0383-0225 were exempt from disclosure pursuant to §1-210(b)(10), G.S., because such records consist of attorney work product.

25. Section 1-210(b)(10), G.S., also provides, in relevant part, that "[n]othing in the [FOI] Act shall be construed to require the disclosure of" records exempted by "any...privilege established by the common law"

26. In Docket #FIC 2019-0707; *Ian Cooke v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, et al.* (Oct. 9, 2024) ("Cooke"), the Commission concluded that the attorney work product doctrine is a "privilege established by the common law," within the meaning of §1-210(b)(10), G.S.³ In accordance with the Supreme Court's formulation in *Stanley Works v. New Britain Redevelopment Agency*, 155 Conn. 86, 95 (1967), a public record is protected by the work product doctrine, and therefore exempt from mandatory disclosure pursuant to §1-210(b)(10), G.S., if (1) it was prepared in anticipation of litigation, (2) the attorney was performing duties normally attended to by attorneys in connection with the creation of the record in question, and (3) if the record was not created by an attorney, the attorney's work formed an essential step in the creation of such record.

27. However, like the attorney-client privilege, the work product doctrine is subject to waiver when attorney work product is voluntarily disclosed to a third party. *Harp v. King*, 266 Conn. 747, 767 (2003). The disclosure of confidential communications or attorney work product to a testifying expert witness is a voluntary disclosure to a third party that occasions the waiver of the privilege or doctrine. *Morganti Group, Inc. v. Stamford Phase Four JV, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-X07-HHD-CV-18-6117069S, 2022 WL 620372 at *3 (Feb. 2, 2022), *reconsideration granted on other grounds*, CV-X07-18-6117069S, 2022 WL 1072983 (Mar. 3, 2022).

28. Based on the foregoing, and a careful in camera inspection, it is found that the following in camera records are not exempt from disclosure pursuant to the attorney work product doctrine because such records were not prepared by the respondents' attorneys in anticipation of litigation, nor did the respondents' attorneys' work form an essential step in the creation of such

³ Prior Commission decisions that reached a contrary conclusion with regard to whether such doctrine is a privilege established at common law were overruled by *Cooke*. The Commission notes that its final decision in *Cooke* is the subject of a pending administrative appeal. See *Ian T. Cooke v. Freedom of Info. Comm'n*, Docket No. HHB-CV24-5037203-S.

records: IC-2024-0383-0001 lines 27-48; IC-2024-0383-0002 lines 1-27, IC-2024-0383-0003 lines 22-42; IC-2024-0383-0004 lines 30-38; IC-2024-0383-0005 lines 23-41; IC-2024-0383-0007 through IC-2024-0383-0097; IC-2024-0383-0099 through IC-2024-0383-0142; IC-2024-0383-0149 lines 1-21; IC-2024-0383-0151 lines 19-34; IC-2024-0383-0152 lines 1-18, lines 34-51, and lines 69-77; IC-2024-0383-0153 lines 1-19; IC-2024-0383-0154 lines 1-19; IC-2024-0383-0155 lines 1-19; IC-2024-0383-0156 through IC-2024-0383-0157; IC-2024-0383-0159 through IC-2024-0383-0204; IC-2024-0383-0208 lines 1-23; IC-2024-0383-0209 lines 21-32; IC-2024-0383-0210; IC-2024-0383-211 lines 18-34; IC-2024-0383-0212; IC-2024-0383-0213 lines 1-20; IC-2024-0383-0215 through IC-2024-0383-0221; IC-2024-0383-0223 lines 1-20.

29. It is also found, based on the foregoing and a careful in camera inspection, that although the remaining in camera records constitute communications by the respondent CHRO's prosecuting attorneys that were prepared in anticipation of litigation and in which the attorneys were performing duties normally attended to by attorneys in connection with the creation of the records in question, the respondents' voluntary disclosure of such information to the expert witness described in paragraph 22, above, constituted a waiver of the work product privilege as to such records.

30. Accordingly, it is concluded that the records described in paragraph 29, above, are not exempt from disclosure as attorney work product.

Section 1-210(b)(4), G.S.

31. Next, the respondents contended that IC-2024-0383-0001 through IC-2024-0383-0142 and that IC-2024-0383-0149 through IC-2024-0383-0225 were exempt from disclosure pursuant to §1-210(b)(4), G.S.

32. Section 1-210(b)(4), G.S., provides that disclosure is not required of:

[r]ecords pertaining to strategy and negotiations 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. The phrase "pending litigation" as defined in §1-200(9), G.S., means:

(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. It is found that, at the time of the request at issue in this matter, the respondents were a party to pending litigation in matters that were before the Office of Public Hearings of the

respondent CHRO, and that such matters had not been finally adjudicated or otherwise settled, within the meaning of §1-200(b)(4), G.S.

35. The Supreme Court in *Stamford v. Freedom of Info. Comm'n*, 241 Conn. 310 (1997), cited with approval the definitions in Webster's Third New International Dictionary of the words "strategy" and "negotiations" within the meaning of §1-210(b)(4), G.S.:

Strategy is defined as 'the art of *devising or employing plans or stratagems*.' [Emphasis in original] 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 discussions and agreements or compromises.'

Id. at 318.

36. With respect to the definition of "strategy", the court provided additional guidance in *Bloomfield Educ. Ass'n v. Frahm*, Docket No. CV-93-0703802, 1993 WL 280109 at *3, *aff'd*, 35 Conn. App. 384, *cert. denied*, 231 Conn. 926 (1994) ("*Bloomfield*").⁴ There, the court stated that, with respect to records constituting "strategy", "one would expect such records to be of an *internal nature*, i.e. designed to communicate information to another who stands on the same side of an issue as the author of the plan or method or strategy. Such records might typically comprise discussion of different avenues of approach to a problem, an evaluation of likelihood of success, and a discussion of possible repercussions if a particular tack is followed."

37. Based upon the foregoing, and a careful in camera inspection, it is found that the in camera records described in paragraph 31, above, do not pertain to "strategy" with respect to the pending litigation at issue, within the meaning of §1-210(b)(4), G.S.

38. In *Bloomfield*, the court also provided guidance with respect to the definition of "negotiations." The court stated that "the word 'negotiations' implies offers and counteroffers between the parties to narrow the gap between those parties." Id. at *4.

39. Based upon the foregoing, and a careful in camera inspection, it is found that the in camera records described in paragraph 31, above, do not pertain to "negotiations" with respect to the pending litigation at issue, within the meaning of §1-210(b)(4), G.S.

⁴ The Commission notes that *Bloomfield* discussed the meaning of "strategy" and "negotiations" in connection with §1-210(b)(9), G.S. However, these definitions have been applied by the Commission in cases involving §1-210(b)(4), G.S. See e.g., Docket #FIC 2024-0062; *Jim Haddadin v. Greater Bridgeport Transit District, et al.* (Jan. 8, 2025).

40. It is therefore concluded that IC-2024-0383-0001 through IC-2024-0383-0142 and IC-2024-0383-0149 through IC-2024-0383-0225 are not exempt from disclosure pursuant to §1-210(b)(4), G.S.

41. It is further concluded that the respondents violated the FOI Act by failing to provide the complainant with a copy of the following in camera records: IC-2024-0383-0020 through IC-2024-0383-0087; IC-2024-0383-0091 through IC-2024-0383-0092; IC-2024-0383-0159 through IC-2024-0383-0204; and IC-2024-0383-0215 through IC-2024-0383-0221.

Section 46a-83(j), G.S.

42. Finally, the respondents contended that the following in camera records were also exempt from disclosure pursuant to §46a-83(j), G.S.: 2024-0383-0001 through IC-2024-0383-0019, IC-2024-0383-0088 through IC-2024-0383-0090; IC-2024-0383-0093 through IC-2024-0383-0142; IC-2024-0383-0149 through IC-2024-0383-0158; IC-2024-0383-0205 through IC-2024-0383-0214; and IC-2024-0383-0222 through IC-2024-0383-0225.

43. Section 46a-83(j), G.S., provides

No commissioner or employee of the commission may disclose, except to the parties or their representatives, what has occurred in the course of the commission's processing of a complaint, provided the commission may publish the facts in the case and any complaint that has been dismissed and the terms of conciliation when a complaint has been adjusted. Each party and his or her representative shall have the right to inspect and copy documents, statements of witnesses and other evidence pertaining to the complaint, except as otherwise provided by federal law or the general statutes. (Emphasis added).

44. Section 46a-83(j), G.S., prohibits disclosure of “what has occurred in the course of the [CHRO’s] processing of a complaint.” At the hearings in this matter, the respondents contended that such provision precludes disclosure of records pertaining to the respondents’ investigative process, which precedes the certification of a complaint for a public hearing. With respect to the records described in paragraph 42, above, the respondents contended that such records pertained to both the investigative and public hearing phases of the matters that are the subject of the in camera records, and therefore are exempt from disclosure pursuant to §46a-83(j), G.S.

45. The respondents relied on *Green v. Freedom of Info. Comm’n*, 178 Conn. 700 (1979) (“*Green*”) in support of their contention that the records described in paragraph 42, above, are exempt from disclosure pursuant to §46a-83(j), G.S. In *Green*, the issue presented was whether complaints filed with, or issued by the CHRO, were subject to disclosure under the FOI Act prior to their disposition by dismissal or adjustment. The Supreme Court concluded that disclosure of complaints before they have been dismissed or adjusted is precluded, explaining that “[t]he obvious purpose of providing confidentiality is to encourage compromise, while premature disclosure might force the parties into public postures, which would inhibit or prevent

settlements.” Id. at 124. However, the Court also clearly stated that it did not “intend to imply that a complaint *certified for prosecution before a hearing tribunal* is not subject to the disclosure provisions of [Section 1-210].” Id. at 124 n.3.

46. It is found that the circumstances in this case are distinguishable from those in *Green* insofar as the in camera records described in paragraph 42, above, pertain to complaints that were certified for public hearing. It is further found that the respondents did not present evidence to demonstrate that the in camera records described in paragraph 42, above, constitute investigative records the disclosure of which would reveal what occurred in the course of the respondent CHRO’s “processing of a complaint,” within the meaning of §46a-83(j), G.S.⁵

47. Based on all of the foregoing, and a careful in camera inspection, it is found that the respondents failed to prove that the records described in paragraph 42, above, are exempt from disclosure pursuant to §46a-83(j), G.S.

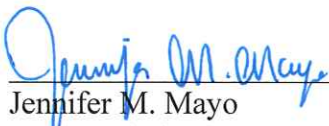
48. It is therefore concluded that the respondents violated the FOI Act when they failed to provide copies of such records to the complainant.

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 date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant, free of charge, a copy of the in camera records, with the exception of IC-2024-0383-0143 through IC-2024-0383-0148.

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 June 25, 2025.


Jennifer M. Mayo
Acting Clerk of the Commission

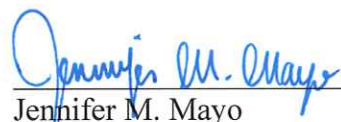
⁵ The Commission also notes that the respondents’ contention that §46a-83(j), G.S., precludes disclosure of the records described in paragraph 42, above, is undercut by their disclosure of such records to a third party in anticipation of a public hearing in the matters that are the subject of the records.

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:

CHANDLER HOLCOMB, c/o Attorney Bryan L. LeClerc, Berchem Moses PC, 75 Broad Street, Milford, CT 06460

EXECUTIVE DIRECTOR, STATE OF CONNECTICUT, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES; AND STATE OF CONNECTICUT, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, c/o Attorney Renee Vanden Wall Bake, Commission on Human Rights and Opportunities, 450 Columbus Blvd., Suite 2, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission