

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Nathaniel Clark,

Complainant

against

Docket #FIC 2024-0234

William Tong, Attorney General,
State of Connecticut, Office of
the Attorney General; and
State of Connecticut, Office
of the Attorney General,

Respondents

March 12, 2025

The above-captioned matter was heard as a contested case on August 26, 2024, and November 20, 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 March 31, 2024, the complainant requested that the respondents provide him with a copy of the following records:

- a. ...all records and communications relating to Attorney Marilee Clark's request to be represented by the Attorney General's office between March 25th and 31st of this year; and
- b. ...all records and communications relating to Paul Mounds Jr.'s request to be represented by the Attorney General's office between March 4th and 13th of this year.

3. It is found that, by email dated April 4, 2024, the respondents acknowledged the complainant's request, indicating that they were in the process of searching for and gathering records responsive to the request. It is further found that the respondents indicated that, once all records had been gathered, they would be reviewed for statutory exemptions and, once such process was completed, the complainant would be notified.

4. It is found that, by email dated April 24, 2024, the respondents provided the complainant with 63 pages of records responsive to his request. It is further found that some of the records had been redacted.

5. It is found that, by email dated April 25, 2024, the complainant inquired as to whether any responsive records had been withheld in their entirety.

6. It is found that, by email dated April 25, 2024, the respondents informed the complainant that no records were withheld in their entirety; rather, certain redactions had been made to the responsive records that have been provided to the complainant.

7. By email dated and filed April 26, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with all portions of the requested records. In addition, the complainant requested that the Commission consider the imposition of civil penalties.

8. 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.

9. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

10. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

11. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

12. At the hearings on this matter, the complainant challenged the redactions made to the responsive records.

13. The respondents contended that they made minimal and permitted redactions to the responsive records. Specifically, the respondents contended that all of the information redacted from the in camera records is exempt from disclosure pursuant to §1-210(b)(10), G.S. (attorney client privilege). The respondents also contended that most of the information redacted from the in camera records is also exempt from disclosure pursuant to §1-210(b)(4), G.S. (pending litigation).

14. On September 4, 2024, the respondents submitted the records at issue to the Commission for in camera inspection. Such records shall be identified as IC-2024-0234-1 through IC-2024-0234-63.

15. The respondents' Assistant Deputy Attorney General for Administration and Management appeared and testified at the continued contested case hearing on behalf of the respondents.

16. At the second contested case hearing, the complainant testified that he was not challenging the redactions with regard to personal or private information, such as information pertaining to family matters or revealing private cell phone numbers. After careful in camera inspection, it is found that the redactions to the following in camera records concern personal and/or private information of the kind the complainant indicated he was not challenging: IC-2024-0234-17; IC-2024-0234-21; IC-2024-0234-26; and IC-2024-0234-63. Accordingly, the redactions contained in such records will not be addressed further herein.

17. With respect to the respondents' contention that all of the redactions to the in camera records pertain to information that is exempt from disclosure pursuant to the provisions of §1-210(b)(10), G.S., such provisions permit an agency to withhold from disclosure records of "communications privileged by the attorney-client relationship."

18. 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."

19. 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. (Emphasis added).

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

21. The Supreme Court has adopted a four part test to determine whether communications are subject to the attorney client privilege: “(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney; and (4) the communications must be made in confidence.” Shew v. Freedom of Info. Comm'n, 245 Conn. 149, 159 (1998). “The burden of establishing the applicability of the privilege rests with the party invoking it.” Harrington v. Freedom of Info. Comm'n, 323 Conn. 1, 12, (2016) (“Harrington”). If it is clear from the face of the records, extrinsic evidence is not required to prove the existence of the attorney-client privilege.” Lash v. Freedom of Info. Comm'n, 300 Conn. 511, 516-17 (2011).

22. 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).

23. It is found that all except one of the in camera records consist of email communications between and among attorneys general from the Office of the Attorney General concerning federal civil litigation filed in the United States District Court for the District of Connecticut (the “federal lawsuit”). It is found that the one other record is an email communication between a Deputy Associate Attorney General from the Office of the Attorney General and the Governor’s then-General Counsel concerning the same subject matter.

24. It is found that, on October 15, 2021, the complainant filed a federal lawsuit against: Mark Boughton, in his official capacity as the Commissioner of the Department of Revenue Services; John Biello, individually, and in his official capacity as the Acting Commissioner of the Department of Revenue Services; and Louis Bucari, Jr., individually, and in his official capacity as the First Assistant Commissioner of the Department of Revenue Services. It is further found that such federal lawsuit was pending at the time the complainant made his request for copies of public records from the respondents, and at the time of the contested case hearings on this matter. It is further found that all of the defendants in the federal lawsuit are represented by the Office of the Attorney General, as are two fact witnesses who were subpoenaed by the complainant to testify at depositions.

25. It is found that, while the respondents submitted 63 pages to the Commission for in camera inspection, only certain pages within the submission contained redactions pursuant to the attorney-client privilege. The respondents included pages that did not contain redactions with the in camera submission so that the totality of the records could be read in context.

26. Upon careful in camera inspection, it is found that the redacted portions of the in camera records were prepared by government attorneys who are representing public agency clients. It is further found that such records were created in the course of the attorney-client relationship and were designed to facilitate the rendition of sound and informed legal advice. It is further found that the redacted portions of the in camera records relate to legal advice sought in confidence by the public agency clients. It is further found that the confidentiality has not been waived.

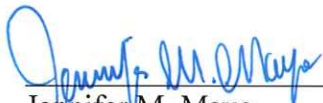
27. It is therefore concluded that the redacted portions of the in camera records are records privileged by the attorney-client relationship, within the meaning of §1-210(b)(10), G.S.

28. It is further concluded that the respondents did not violate the disclosure requirements of §§1-210(a) and 1-212(a), G.S., when they declined to disclose the in camera records to the complainant without redactions.¹

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 12, 2025.



Jennifer M. Mayo
Acting Clerk of the Commission

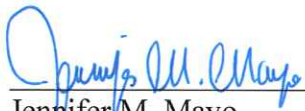
¹ Because the Commission has determined that the redacted portions of the in camera records are exempt from disclosure pursuant to the attorney-client privilege pursuant to §1-210(b)(10), G.S., the Commission need not address the respondents' secondary claim of exemption pursuant to §1-210(b)(4), G.S.

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:

NATHANIEL CLARK, 19 Country Club Road, South Glastonbury, CT 06073

WILLIAM TONG, ATTORNEY GENERAL, STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL; AND STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL, c/o Assistant Attorney General Julian A. Quinones Reyes, Connecticut Office of the Attorney General, 165 Capitol Ave., 5th Floor, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission