STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by FINAL DECISION

Michael F. Magistrali,

Complainant

against Docket # FIC 2024-0638

Chairman, Board of Education, Torrington Public Schools; Board of Education, Torrington Public Schools; and Torrington Public Schools,

Respondents September 25, 2025

The above-captioned matter was heard as a contested case on March 17, 2025, May 19, 2025 and July 8, 2025, 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 letter dated October 9, 2024, the complainant requested that the respondents provide him with copies of the following records ("October 9, 2024 Request"):

> (1) A list of all cell phone numbers used by Board of Education [of the Torrington Public Schools ("BOE")] members ["BOE Members"] and staff[1] to conduct any Board business from 6/1/2023 through 9/30/2024, including the name of the individual to whom each such number was assigned.
>
> (2) Any records identifying any calls made to or from the above-referenced telephone numbers during the above-referenced period, including, but not limited to, call detail records, call logs, and telephone bills.
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> (3) Any records identifying any text messages sent to or from the above-referenced telephone numbers during the above-referenced period, including, but not limited to, text message logs and text

[1] It is found that the complainant ultimately limited his request to BOE Members and BOE staff who work in the Torrington Public Schools' central office ("BOE Central Office Staff").

> message content.
>
> (4) Any records identifying any internet activity performed on the above-referenced telephone numbers during the above-referenced period, including, but not limited to, internet usage logs, internet search history, and internet browsing history.
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> (5) Copies of any and all communication between BOE Staff and BOE members regarding health insurance.
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> (6) Copies of any and all communication between BOE Staff and BOE members regarding budget, budget performance, and/or audit covering the period of 7/1/2023 through 9/30/2024.
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> Please provide the requested documents … in their original format and in a reasonably usable format, such as a printout or electronic copy.

3. It is found that, by email sent on October 10, 2024, the respondents acknowledged the complainant's October 9, 2024 request, and stated that responding to the records request would "require extensive time and resources" due to its "extraordinarily broad scope . . . which is expected to generate an extraordinary number of documents." It is found that the respondents also explained to the complainant, in such October 10, 2024 email, that the potentially responsive records gathered by the respondents would be forwarded to counsel for the BOE for review prior to such records being disclosed.

4. It is found that the October 9, 2024 Request was one among four separate requests that the complainant submitted to the respondents within two months, three of which required the respondents to produce a substantial number of records to the complainant.[2]

5. As of October 25, 2024, the respondents had not yet provided the complainant with any records responsive to his six separate requests described in his October 9, 2024 Request.

6. By letter of complaint filed on October 25, 2024, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by not providing records responsive to his October 9, 2024 request.

7. Section 1-200(5), G.S., provides:

> "[p]ublic records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such

[2] It is found that the complainant submitted the three other separate requests on August 23, 2024, August 30, 2024, and September 17, 2024.

> data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

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

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

10. With the exception of the records described in paragraph 54, below, 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.

**Jurisdiction**

11. At the beginning of the March 17, 2025 hearing on this matter, the respondents orally made a motion to dismiss, claiming that the complaint should be dismissed because the respondents did not issue a written denial of the request. After brief argument from both sides on the respondents' motion to dismiss, the hearing officer denied the motion and herein renews such denial, based upon the findings and conclusions in paragraphs 12 through 16, below.

12. Section 1-206(b)(1), G.S., provides in relevant part that "[a]ny person denied the right to inspect or copy records under section 1-210 … or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] Commission, by filing a notice of appeal with said [C]ommission. A notice of appeal shall be filed not later than thirty days after such denial …." Thus, "the right of appeal to the [Commission] in §[1-206(b)(1)] is the right to appeal a denial" of a request. *Town of West Hartford v. Freedom of Info. Comm'n*, 218 Conn. 256, 262 (1991).

13. With respect to what constitutes a "denial" for purposes of allowing a requester to initiate an appeal to the Commission, §1-206(a), G.S., provides in relevant part that "[a]ny denial of the right to inspect or copy records provided for under section 1-210[, G.S.] shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request …. **Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.**" (Emphasis added.).

14. In *City of Bridgeport v. Freedom of Info. Comm'n*, 222 Conn. App. 17, 63 (2023), *cert. denied*, 348 Conn. 946 (2024), the Appellate Court concluded that a public agency's mere acknowledgment of a request accompanied by an assurance of future compliance does not

abrogate a requester's right to appeal under §1-206(a), G.S., if the agency fails to fully comply with a request within four business days. As the Court explained, "for purposes of filing a complaint with the [C]ommission, the [FOI Act] requires compliance with a request for public records—not simply 'assurances' that the agency will comply at some point in the future." *Id.*[3]

15. As found in paragraph 6, above, the complaint was filed on October 25, 2024.

16. Based on the foregoing, it is found that the respondents failed to comply with the October 9, 2024 request within four business days, and therefore the request had been "denied," within the meaning of §1-206(b)(1), G.S. It is therefore concluded that the Commission has jurisdiction to consider the merits of the appeal.

**Search for Records**

17. It is found that, on February 21, 2025, March 15, 2025, April 15, 2025, May 2, 2025, May 9, 2025, and June 11, 2025, the respondents provided the complainant with responsive records on a rolling basis; thus, by the time of the last hearing on this matter, the respondents had provided the complainant with six installments of records. It is found that the respondents provided the complainant with a total of 10,885 pages in response to the October 9, 2024 Request.

18. The complainant contended at the hearings on this matter, however, that the respondents failed to provide all records responsive to the following requests set forth in paragraph 2, above: (1), (2), (3), and (4).[4] The complainant also contended that the respondents failed to conduct a reasonably thorough search for all of the responsive records and that he believed there should be additional responsive records. He also claimed that the records were not promptly provided.

19. The respondents contended that they conducted a diligent and thorough search for responsive records and, except for the withheld records discussed in detail below, the respondents disclosed all responsive records, without redactions, to the complainant, free of charge. The respondents also maintained that they complied with the FOI Act's promptness requirements.

20. The complainant, the respondent Board's former Director of Finance and Operations, and the City of Torrington's Director of Information Technology ("Torrington IT Director") appeared and testified on behalf of the complainant. The BOE Director of Information Technology ("BOE IT Director") and the Superintendent of Schools ("Superintendent")

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[3] As the Court further explained, this does not mean that an agency that fails to fully comply with a request within four business days necessarily will be found to have violated the FOI Act. Rather, "the question of when an appeal can be filed is distinct from the question of whether the agency violated the [A]ct." *City of Bridgeport*, 222 Conn. App. at 50 n.10. Section 1-206(a), G.S., "does not mandate that a public agency's failure to disclose requested records within four business days after receiving a records request constitutes a violation of the [A]ct," but "merely ensures an expedient right of appeal for those who do not desire to await a written denial." *Id.* at 49-50 & n.10.

[4] At the first hearing on this matter, the complainant acknowledged that the respondents had provided responsive records to the requests set forth in paragraphs 2(5) and 2(6), above, and that he was not contesting the responses to such requests. Accordingly, whether the respondents fully complied with such requests will not be addressed herein.

appeared and testified at the hearing on this matter on behalf of the respondents along with an Associate Attorney, respondents' counsel ("Associate Attorney").

21. With respect to the request described in paragraph 2(1), above, it is found that, on March 15, 2025, the respondents provided the complainant with a list of phone numbers for the cell phones issued by the respondents to the BOE members and the BOE Central Office Staff ("District-issued cell phones"). It is further found that the list identified the individuals to whom each such phone number was assigned. In addition, it is found that the respondents also provided a text message that contained a similar list of cell phone numbers and corresponding names. It is found that, based upon the testimonial evidence, the respondents do not maintain any other lists of cell phone numbers used by the BOE Members and BOE Central Office Staff to conduct BOE business.

22. At the hearings on this matter, the complainant contended that he did not receive a list of personal cell phone numbers used by BOE members for the public's business. The respondents contended that they do not maintain any such list; nevertheless, the respondents provided the complainant with affidavits from the BOE members, in which each Board member identified their phone numbers associated with their personal cell phone to the extent that they used such phone to conduct BOE business. While the complainant contends that such affidavits do not constitute a list of phone numbers and that certain individuals' numbers are missing, the FOI Act does not require the respondents to create records, including the affidavits that were provided to the complainant. Moreover, the respondents testified, and it is found, that they do not maintain a list of personal cell phones of the BOE Members and BOE Central Office Staff.

23. It is found that the records provided to the complainant, described in paragraphs 21 and 22, above, constitute all records maintained by the respondents that are responsive to the complainant's request described in paragraph 2(1), above.

24. Based on the facts and circumstances of this case, it is found that at the time of the October 9, 2024 Request, the respondents did not maintain a list of the personal cell phone numbers of the BOE Members and BOE Central Office Staff as requested by the complainant.

25. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the request described in paragraph 2(1), above.

26. With respect to the request described in paragraph 2(2), above, it is found that, on April 15, 2025, the respondents provided the complainant with invoices from T-Mobile for the time period June 1, 2023 through September 30, 2024, which included telephone bills, telephone call detail records and telephone call logs for each District-issued cell phone provided to BOE Members and BOE Central Office Staff.

27. At the hearings on this matter, the complainant contended that the respondents failed to provide him with copies of the call detail records and call logs for the personal cell phones for BOE Members and BOE Central Office Staff.

28. With respect to whether records of phone calls made on the personal cell phones of the BOE Members and BOE Central Office Staff are public records within the meaning of §1-

200(5), G.S., the Commission has previously held that if the content of calls, emails or texts sent and/or received by a public employee on his or her personal computer or phone relate to the conduct of the public's business, such records are "public records," within the meaning of §1-200(5), G.S. *See, e.g., Wojtas and the New London Day v. Information Technology Director, Town of Stonington, et al.,* Docket #FIC 2014-309 (April 22, 2015); *Willis v. Director, Park and Recreation Department, Town of Woodbury*, Docket #FIC 2013-298 (January 8, 2014); *Chapman v. Monika Thiel, Selectman, Town of New Fairfield*, Docket #FIC 2011-307 (April 7, 2012); *Stamford Professional Fire Fighters Association v. Chief, Springdale Fire Co*., Docket #FIC 2010-795 (October 12, 2011); *Shea v. Planning and Zoning Commission, Town of Stonington*, Docket #FIC 2006-679 (October 24, 2007). Accordingly, it is concluded that records of phone calls made on the personal cell phones of the BOE Members and BOE Central Office Staff are public records within the meaning of §1-200(5), G.S., to the extent that such cell phone calls relate to the conduct of the public's business.

29. In their post-hearing brief, the respondents contended that, for BOE Members who attested that they used their personal cell phones to conduct Board business, the respondents do not maintain information related to the personal cell phones of Board members, and that the respective BOE Members have confirmed that they do not maintain call detail records or call logs pertaining to their personal cell phones covering the time period requested.

30. Despite the respondents' contentions, it is found that none of the BOE Members testified at the hearings on this matter and their affidavits did not aver that they searched their records for call detail records and call logs for calls made on their personal cell phones related to the public's business. In addition, it is found that the respondents failed to present any evidence, testimonial or otherwise, to support the respondents' statement that the BOE Members "have confirmed that they do not maintain such records." Likewise, it is found that the respondents failed to provide any such testimony or affidavits for the BOE Central Office Staff.

31. It is found that the respondents failed to prove that they provided the complainant with all records responsive to the request described in paragraph 2(2), above.

32. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the request described in paragraph 2(2), above.

33. With respect to the request described in paragraph 2(3), above, it is found that the complainant contended that he received no text message logs for the District-issued cell phones nor the personal cell phones of BOE Members and BOE Central Office Staff who used their personal cell phones to conduct the public's business. The complainant also contended that he did not receive all of the responsive text messages from the District-issued cell phones as well as personal cell phones of the BOE Members and BOE Central Office Staff relating to the conduct of the public's business. The respondents contended that they provided all responsive text messages and that there are no records responsive to the request for text message logs.

34. At the third hearing on this matter, the BOE IT Director testified, and it is found, that she contacted T-Mobile, the cell phone carrier for the District-issued cell phones, and requested that it provide usage data and text message content for the respective District-issued cell phones. She testified, and it is found, that she was told that T-Mobile was unable to provide her with the

requested information. It is further found that, since T-Mobile would not supply the records, she met with each BOE Member and BOE Central Office Staff member separately and used a software known as TouchCopy to retrieve the text messages from the respective District-issued cell phones, which she then uploaded and converted to PDF format. It is also found that the BOE IT Director sent the responsive text messages to BOE counsel for review and redaction.

35. The BOE IT Director and the Superintendent both testified, and it is found, that counsel for the BOE gave specific instructions to the BOE Members and BOE Central Office Staff to search their phones for text messages responsive to the request described in paragraph 2(3), above, and to provide such messages to counsel for review. Both the BOE IT Director and the Superintendent testified that it was their understanding that the BOE Members and BOE Central Office Staff complied with such instructions.

36. It is found that the respondents submitted affidavits in which the BOE Members averred that they performed a search of their cell phones used to conduct BOE business, in order to identify any responsive public records located in that cell phone and that any responsive records were provided to BOE counsel who then provided all responsive, non-exempt public records to the complainant.

37. At the third hearing on this matter, the complainant moved to preclude such affidavits because each affidavit included the wrong name of the BOE IT Director. The undersigned hearing officer denied the motion and allowed the respondents to provide corrected affidavits. On July 11, 2025, the respondents submitted revised affidavits with the name of the BOE IT Director corrected; however, such affidavits provided no explanation as to why the error in the initial affidavits were overlooked by all signatories. While the error in the initial affidavits raises a certain level of doubt that the signatories read the affidavits before signing them, it is found, nonetheless, based upon all of the evidence in the record, that the respondents instructed the BOE Members to search their personal cell phones if they used such phones to conduct the public's business. It is also found that BOE Members and BOE Central Office Staff provided responsive records to counsel for the BOE to review and provide to the complainant, and the respondents provided the complainant with numerous pages of such text messages.

38. Accordingly, with respect to the request for text messages described in paragraph 2(3), above, it is found that the respondents provided the complainant with all responsive records, except for the records the respondents redacted or withheld pursuant to a claim of exemption.[5]

39. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the text messages requested in paragraph 2(3), above.

40. With respect to the text message logs, the Torrington IT Director testified, and it is found, that the City of Torrington issues cell phones to certain employees and that the carrier for such phones is also T-Mobile. He further testified, and it is found, that he was able to log into the City of Torrington's T-Mobile online account and access the text message logs, which included the date of each text, the origination of the text message and the destination of the text

[5] The withheld records which the complainant contested are discussed in detail.

message.

41. It is found, however, that the BOE IT Director did not search the BOE's online T-Mobile account for text message logs. The BOE IT Director testified, and it is found, that she solely relied on an email from T-Mobile indicating that T-Mobile cannot provide records responsive to the request for usage data and she conducted no further search with respect to text message logs. It is found that the respondents received invoices and bills in the mail for the District-issued cell phones; however, the BOE IT Director did not search those records to see if they contained text message logs. In addition, none of the respondents' other witnesses testified that they searched for such records nor searched the T-Mobile online account for the BOE.

42. It is found that the respondents failed to prove that they conducted a reasonably thorough and diligent search for the text messages logs and provided the complainant with all records responsive to the request for text message logs described in paragraph 2(3), above.

43. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the request for text message logs described in paragraph 2(3), above.

44. With respect to the request described in paragraph 2(4), above, the respondents contended that they provided the complainant with all responsive screenshots of internet search/browsing history. At the hearings on this matter and his post-hearing brief, the complainant did not specifically dispute the respondents' contention.

45. It is found that the BOE IT Director manually searched the Safari and/or Google Chrome history on each District-issued cell phone for the BOE Members and the BOE Central Office Staff and took screenshots of any history responsive to the request described in paragraph 2(4), above.

46. It is also found, however, that the respondents failed to provide evidence concerning the details and scope of the search for internet search/browsing history by the BOE Members and BOE Central Office Staff on their personal cell phones that were used to conduct the public's business.

47. It is found therefore that the respondents failed to prove that they conducted a reasonably thorough and diligent search for internet search/browsing history and provided the complainant with all records responsive to the request described in paragraph 2(4), above.

48. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the request described in paragraph 2(4), above.

**Withheld Records**

49. By motion filed July 2, 2025, the complainant requested in camera inspection of certain records withheld by the respondents in response to his October 9, 2024 Request.

50. On July 8, 2025, in accordance with an order of the undersigned hearing officer, the respondents submitted 94 pages of records to the Commission for in camera inspection along

with an In Camera Index. Such records will be referred to as IC-2024-0638-1 through IC-2024-0638-94.

51. With respect to the withheld records, or portions thereof, the respondents contended that the withheld information was exempt from disclosure pursuant to: §§1-200(5), 1-210(b)(2), 1-210(b)(9), 1-210(b)(10), 1-210(b)(17), and 10-151c, G.S.

**§1-200(5), G.S.**

52. The respondents claimed that the majority of the redacted information generally described as "[p]ersonal conversation unrelated to the conduct of the public's business" (among similar other descriptions) on the In Camera Index was not a public record within the definition of §1-200(5), G.S., because it does not relate to the conduct of the public's business.

53. As noted in paragraph 7, above, §1-200(5), G.S., provides, in relevant part that: "[p]ublic records or files means any recorded data or information relating to the conduct of the public's business ...."

54. Upon careful in camera inspection, it is found that the following in camera records, or portions thereof, are not public records within the meaning of §1-200(5), G.S., because they do not relate to the conduct of the public's business, and therefore the respondents did not violate the FOI Act by withholding such records, or portions thereof, from the complainant: IC-2024-0638-4 (line 1); IC-2024-0638-11 (lines 8-9); IC-2024-0638-16 (lines 7-14); IC-2024-0638-17 (lines 7-11); IC-2024-0638-18 (line 13); IC-2024-0638-19 (lines 7-9); IC-2024-0638-20 (lines 8-14); IC-2024-0638-21 (lines 6-16); IC-2024-0638-22 (line 14); IC-2024-0638-23 (lines 1-8); IC-2024-0638-24 (lines 9-10); IC-2024-0638-26 (lines 11-19); IC-2024-0638-27; IC-2024-0638-28 (lines 1-12); IC-2024-0638-30 (line 1); IC-2024-0638-33; IC-2024-0638-34 (lines 1-13); IC-2024-0638-35 (lines 8-13); IC-2024-0638-36 (lines 1-17); IC-2024-0638-37; IC-2024-0638-38; IC-2024-0638-39; IC-2024-0638-40 (lines 4-9); IC-2024-0638-41; IC-2024-0638-42 (lines 1-4, 6-11); IC-2024-0638-44 (lines 2-6); IC-2024-0638-45 (lines 3-20); IC-2024-0638-46 (lines 12-14, 21-23); IC-2024-0638-47 (lines 1-24, 30-37); IC-2024-0638-48 (lines 1-20); IC-2024-0638-49 (lines 4-5, 18-29); IC-2024-0638-52 (lines 11-17); IC-2024-0638-53 (lines 1-12); IC-2024-0638-55 (lines 6-13); IC-2024-0638-56 (lines 1-3, 18); IC-2024-0638-57 (lines 4-5); IC-2024-0638-58 (lines 13-17); IC-2024-0638-59 (lines 1-3); IC-2024-0638-60 (lines 2-10); IC-2024-0638-61 (lines 13-17); IC-2024-0638-62 (lines 1-2); IC-2024-0638-63 (lines 7-12, 14-15); IC-2024-0638-64 (lines 6-7, 10, 15); IC-2024-0638-65 (lines 3-12); IC-2024-0638-66 (lines 1-2, 5-8); IC-2024-0638-68 (lines 1-3, 6-15); IC-2024-0638-69 (lines 6-7); IC-2024-0638-70 (lines 12-17); IC-2024-0638-71 (lines 1-5); IC-2024-0638-72 (lines 1-2, 5-10); IC-2024-0638-73 (lines 2, 9-15); IC-2024-0638-74 (lines 1-16); IC-2024-0638-75 (lines 7-17); IC-2024-0638-76 (lines 1-2); IC-2024-0638-77 (lines 33-38); IC-2024-0638-78 (lines 1-6, 8, 13-16); IC-2024-0638-79 (lines 10-11); IC-2024-0638-80 (lines 11-15); IC-2024-0638-82 (lines 3-4); IC-2024-0638-83 (lines 7-9); IC-2024-0638-84 (lines 1-5); IC-2024-0638-85 (lines 1-2, 5-10); IC-2024-0638-73 (lines 2, 9-15); IC-2024-0638-74 (lines 1-16); IC-2024-0638-85 (line 5); IC-2024-0638-86 (lines 14-18); IC-2024-0638-87 (lines 12-13); IC-2024-0638-88 (line 11); IC-2024-0638-89 (lines 8-9); IC-2024-0638-90 (lines 14, 17-18, 20); IC-2024-0638-91 (lines 1-2); IC-2024-0638-92 (lines 1-4); IC-2024-0638-93 (lines 9-10, 14-15, 26-27); and IC-2024-0638-94 (lines 2-6).

**§1-210(b)(2), G.S.**

55. Next, the respondents claimed that IC-2024-0638-29 (lines 8-9) is exempt from disclosure pursuant to §1-210(b)(2), G.S.

56. Section 1-210(b)(2), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require disclosure of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

57. The Supreme Court set forth the test for the exemption contained in §1-210(b)(2), G.S., in *Perkins v. Freedom of Info. Comm'n*, 228 Conn. 158, 175 (1993). The claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that such information is highly offensive to a reasonable person.

58. It is found that the respondents failed to prove that they timely notified the employees about the request for IC-2024-0638-29 (lines 8-9) in this case, and that the subject employee objected to the disclosure of such record in accordance with §1-214, G.S.[6]

59. It is found that the text message containing IC-2024-0638-29 (lines 8-9) does not constitute "personnel" or "similar" files within the meaning of §1-210(b)(2), G.S.

60. It is found that the respondents failed to prove that IC-2024-0638-29 (lines 8-9) does not pertain to legitimate matters of public concern or that the disclosure of IC-2024-0638-29 (lines 8-9) would be highly offensive to a reasonable person.

61. It is therefore concluded that respondents failed to prove that IC-2024-0638-29 (lines

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[6] Section 1-214, G.S., provides in relevant part that:

> (b)(1) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (A) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned, and (B) the collective bargaining representative, if any, of each employee concerned. …
>
> (c) A public agency which has provided notice under subdivision (1) of subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given.…

8-9) is exempt from disclosure by virtue of §1-210(b)(2), G.S.

62. It is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to disclose IC-2024-0638-29 (lines 8-9) to the complainant.

**§1-210(b)(9), G.S.**

63. Next, the respondents contended that IC-2024-0638-5 (lines 15-17); IC-2024-0638-6 (lines 3-4); IC-2024-0638-7; IC-2024-0638-8 (lines 1-5); and IC-2024-0638-9 are exempt from disclosure pursuant to §1-210(b)(9), G.S.

64. Section 1-210(b)(9), G.S., provides, in relevant part, that nothing in the FOI Act shall require disclosure of "records, reports and statements of strategy or negotiations with respect to collective bargaining[.]"

65. Section 1-210(b)(9), G.S., "does not exempt every record pertaining to collective bargaining from disclosure, *only those that reveal strategy or negotiations*." *Bloomfield Educ. Ass'n v. Frahm,* 35 Conn. App. 384, 388*, cert. denied,* 231 Conn. 926 (1994)("*Bloomfield*"). (Emphasis added). In *Bloomfield*, the Appellate Court concluded that the legislature, by inserting the terms "strategy" and "negotiations," intended to qualify the exemption. *Bloomfield*, at 389. The court reasoned: "[h]ad the legislature meant to exempt all records, reports, and statements with respect to collective bargaining, then it would not have included the words 'strategy' and 'negotiations.'" *Id.*

66. Strategy is defined as "a careful plan or method and the art of devising or employing plans or stratagems toward a goal. … Negotiations is a broad term … but in general it means the deliberation which takes place between the parties touching a proposed agreement." (Citations omitted; internal quotation marks omitted.) *Bloomfield*, 35 Conn. App. at 390. "A key element of negotiations is the existence of an offer of possible settlement. In decisions concerning labor disputes, courts have described negotiations as the 'process of submission and consideration of offers until an acceptable offer is made, and accepted....'" *Bloomfield*, 35 Conn. App. at 390.

67. Based upon a careful in camera inspection, it is found that IC-2024-0638-5 (lines 15-17); IC-2024-0638-6 (lines 3-4); IC-2024-0638-7; IC-2024-0638-8 (lines 1-5); and IC-2024-0638-9 pertain to the respondents' specific negotiation strategy related to the collective bargaining process, within the meaning of §1-210(b)(9), G.S.

68. Accordingly, it is concluded that IC-2024-0638-5 (lines 15-17); IC-2024-0638-6 (lines 3-4); IC-2024-0638-7; IC-2024-0638-8 (lines 1-5); and IC-2024-0638-9 are exempt from disclosure pursuant to §1-210(b)(9), G.S.

69. Accordingly, it is concluded that the respondents did not violate the FOI Act by withholding IC-2024-0638-5 (lines 15-17); IC-2024-0638-6 (lines 3-4); IC-2024-0638-7; IC-2024-0638-8 (lines 1-5); and IC-2024-0638-9 from the complainant.

**§1-210(b)(10), G.S.**

70. The respondents claimed that IC-2024-0638-51 (lines 12-13, 17-18) and IC-2024-0638-81 (lines 9-10) are exempt from disclosure pursuant to §1-210(b)(10), G.S., because such information is protected by the attorney-client privilege.

71. 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 … or any other privilege established by the common law or the general statutes …."

72. 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."

73. 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.

74. 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.*

75. 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). "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).

76. Upon careful in camera inspection, it is found that IC-2024-0638-51 (lines 12-13, 17-18) 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), G.S.

77. It is concluded that IC-2024-0638-51 (lines 12-13, 17-18) constitute communications or records protected by the attorney-client privilege, within the meaning of §1-210(b)(10), G.S. It is also 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 disclose a copy of such record to the complainant.

78. After careful in camera inspection, it is found that IC-2024-0638-81 (lines 9-10), on its face, failed to meet one or more of the criteria for the attorney-client privilege outlined in paragraphs 73 and 75, above.

79. It is therefore concluded that IC-2024-0638-81 (lines 9-10) is not exempt from disclosure pursuant to §1-210(b)(10), G.S., and the attorney-client privilege, as contended by the respondents.

80. 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 IC-2024-0638-81 (lines 9-10) to the complainant.

**§1-210(b)(17), G.S.**

81. The respondents claimed that IC-2024-0638-1 (lines 7-8), IC-2024-0638-2 (lines 2, 5), IC-2024-0638-3 (lines 6-7, 10), IC-2024-0638-31, IC-2024-0638-50 (lines 6-10, 12-13), and IC-2024-0638-88 (line 19) are exempt from disclosure pursuant to §1-210(b)(17), G.S.

82. Section 1-210(b)(17), G.S., provides that disclosure is not required of "Education records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g…."

83. Section 20 U.S.C. §1232g(b)(1) provides, in relevant part: "No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records[.]"[7]

84. "Education records" are defined at 20 U.S.C. §1232g(a)(4)(A) as "those records, files, documents, and other materials which (i) contain information directly related to a student and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution."

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[7] P.A. 25-124, AN ACT CONCERNING AN AMENDMENT TO THE FREEDOM OF INFORMATION ACT CONCERNING EDUCATION RECORDS revised §1-210(b)(17), G.S., which allows public agencies to withhold records that are not subject to disclosure under the Family Educational Rights and Privacy Act [FERPA], 20 USC 1232g, by replacing the word "educational" with the word "education," to align the language in §1-210(b)(17), G.S., with the term used in FERPA.

85. It is found that IC-2024-0638-1 (lines 7-8); IC-2024-0638-2 (lines 2, 5); IC-2024-0638-3 (lines 6-7, 10); IC-2024-0638-31; IC-2024-0638-50 (lines 6-10, 12-13); and IC-2024-0638-88 (line 19) contain information directly related to a student or students and are maintained by an educational agency or institution or by a person acting for such agency or institution.

86. It is found, therefore, that IC-2024-0638-1 (lines 7-8); IC-2024-0638-2 (lines 2, 5); IC-2024-0638-3 (lines 6-7, 10); IC-2024-0638-31; IC-2024-0638-50 (lines 6-10, 12-13); and IC-2024-0638-88 (line 19) are education records within the meaning of §1-210(b)(17), G.S.

87. It is therefore concluded that IC-2024-0638-1 (lines 7-8); IC-2024-0638-2 (lines 2, 5); IC-2024-0638-3 (lines 6-7, 10); IC-2024-0638-31; IC-2024-0638-50 (lines 6-10, 12-13); and IC-2024-0638-88 (line 19) are exempt from disclosure pursuant to §1-210(b)(17), G.S., and did not violate the FOI Act by withholding such records.

**§10-151c, G.S.**

88. Next, the respondents contended that IC-2024-0638-5 (lines 28-30, 34-35), IC-2024-0638-14 (lines 15-17), and IC-2024-0638-15 (lines 11-13) constitute records of teacher performance and evaluation under §10–151c, G.S., and are therefore exempt from disclosure.

89. Section 10-151c, G.S., provides, in relevant part, that:

> Any records maintained or kept on file by the Department of Education or any local or regional board of education that are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210, provided that any teacher may consent in writing to the release of such teacher's records by the department or a board of education. Such consent shall be required for each request for a release of such records. Notwithstanding any provision of the general statutes, records maintained or kept on file by the Department of Education or any local or regional board of education that are records of the personal misconduct of a teacher shall be deemed to be public records and shall be subject to disclosure pursuant to the provisions of subsection (a) of section 1-210. Disclosure of such records of a teacher's personal misconduct shall not require the consent of the teacher. For the purposes of this section, "teacher" includes each certified professional employee below the rank of superintendent employed by a board of education in a position requiring a certificate issued by the State Board of Education.

90. In *Lieberman v. Aronow*, 319 Conn. 748, 760-61 (2015), the court examined §10-151c, G.S., stating that "although §10-151c is also silent on what constitutes a record of 'performance and evaluation,' it is part of a larger statutory scheme requiring evaluations of teachers. General Statutes §10-151b (a) requires superintendents to evaluate teachers on an annual basis and provides in relevant part that '[a]n evaluation pursuant to this subsection shall

include, but need not be limited to, strengths, areas needing improvement, strategies for improvement and multiple indicators of student academic growth....' This statutory language, which mandates performance evaluations and describes what the evaluations are to address, supports the conclusion that records of 'performance and evaluation' would be a part of this formal process performed at the direction of a superintendent and not something raised by a colleague or another individual not mandated to conduct evaluations." *Id.* at 760-61. The court concluded further that, under §10-151c, G.S., the phrase "records of teacher performance and evaluation" shall be construed in a manner which is "narrow in scope and [is] not intended to include any document that contains evaluation content…" *Id.* at 761.

91. In this case, it is found that IC-2024-0638-5 (lines 28-30, 34-35); IC-2024-0638-14 (lines 15-17); and IC-2024-0638-15 (lines 11-13) consist of statements in texts messages that might concern teacher performance; however, the respondents failed to prove that the records were part of formal faculty and staff evaluations as described in *Lieberman*.

92. Based upon the foregoing and a careful in camera inspection, it is found that the IC-2024-0638-5 (lines 28-30, 34-35); IC-2024-0638-14 (lines 15-17); and IC-2024-0638-15 (lines 11-13) do not constitute "records of teacher performance and evaluation" within the meaning of §10-151c, G.S.

93. It is therefore concluded that IC-2024-0638-5 (lines 28-30, 34-35); IC-2024-0638-14 (lines 15-17); and IC-2024-0638-15 (lines 11-13) are not exempt from disclosure pursuant to §10-151c, G.S., and that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide such records to the complainant.

**Promptness**

94. At the beginning of the hearing on March 17, 2025, the respondents contended that the complaint did not allege that the respondents failed to comply with the promptness requirements of the FOI Act.

95. Our Supreme Court has made clear that "[a]s a practical matter, the FOIA is used repeatedly by members of the public who are unschooled in technical, legalistic language distinctions." *Perkins v. Freedom of Info. Comm'n*, 228 Conn. 158, 167 (1993) ("*Perkins*"). The Supreme Court, in disagreeing with the trial court in *Perkins*, also said: "[T]he trial court … relied on distinctions that are overly formal and legalistic in light of the public policy expressed by the FOIA. The overarching legislative policy of the FOIA is one that favors 'the open conduct of government …. As we have repeatedly noted, '[o]ur construction of the FOIA must be guided by the policy favoring disclosure…." *Perkins*, at 166-167.

96. It is found that the complainant alleged that as of the date of the complaint, no records had been provided to him. In addition, it is found that the complainant attached to the complaint an email dated October 10, 2024 from the respondents' counsel, who stated "[p]lease note that your request will require extensive time and resources to respond to the extraordinarily broad scope of your request which is expected to generate an extraordinary number of

documents."[8] It is found that the complainant also attached to the complaint an email from the complainant replying to the respondents' October 10, 2024 email, indicating that he disagreed that the response to his request would require such an extensive amount of time. Based on the facts and circumstances in this case, it is found that the complaint, which must be interpreted broadly, fairly put at issue whether the respondents complied with the FOI Act's promptness requirements.

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

98. It is found that the amount of work the respondents performed to produce the records that they disclosed to the complainant as of the dates of the hearings on this matter was quite substantial. As found in paragraph 17, above, by the time of the third hearing on this matter, the respondents had provided the complainant with at least six installments of responsive records totaling 10,885 pages. It is found that the BOE IT Director required a substantial amount of time to search for records, contact T-Mobile for responsive records, and to meet with BOE Members and BOE Central Office Staff to retrieve records from their District-issued phones. It is further found that two associate attorneys reviewed tens of thousands of pages of records, which took over 100 hours, in order to provide such records to the complainant. It is also found that the respondents first worked to respond to the complainant's initial three records requests, which were filed less than two months prior to the October 9, 2024 Request. In addition, it is found that counsel for the respondents spent several hours answering the complainant's questions concerning the responses to such other records requests. It is also found that the complainant stated at the March 17, 2025 hearing on this matter that promptness would only become an issue if he did not receive the records by October 2025. However, it is found that the complainant did not expressly convey to the respondents the time by which the complainant needed the information contained in the records, aside from this statement at the March 17, 2025 hearing.

99. It is concluded that, under the facts and circumstances of this case, the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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[8]See *Dlugokecki v. Vieira*, 98 Conn. App. 252, 258 (2006) ("A complaint includes all exhibits attached thereto."); *City of Waterbury v. Fusco Corp.*, 2013 WL 3871418, at *3 (Conn. Super. July 3, 2013) ("Attachments are considered part of the complaint and are to be considered in ruling on motions to strike.").

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:

a. instruct the BOE Members and BOE Central Office Staff to conduct a search for call detail records, call logs and bills for calls made on their personal cell phones used to conduct the public's business responsive to the request described in paragraph 2(2) of the findings, above;

b. perform a diligent and thorough search for text message logs for District-issued cell phones responsive to the request described in paragraph 2(3) of the findings, above, (including BOE's online T-Mobile account and hard-copy T-Mobile bills sent to the BOE via regular mail);

c. instruct the BOE Members and BOE Central Office Staff to conduct a search for text message logs responsive to the request described in paragraph 2(3) of the findings, above, of text messages made from their personal cell phones used to conduct the public's business;

d. instruct the BOE Members and BOE Central Office Staff to conduct a search for internet search/browsing history responsive to the request described in paragraph 2(4) of the findings, above, on their personal cell phones that were used to conduct the public's business; and

e. provide an affidavit to the complainant and to the Commission detailing the nature and scope of the above searches. If no responsive records are located, the respondents shall so state in the affidavit. If responsive records are located, the respondents shall so state in the affidavit and immediately provide copies of such records to the complainant, free of charge.

2. Within thirty 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 62, 80, and 93 of the findings, above.

3. 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 September 25, 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 F. MAGISTRALI**, 140 Main Street, Torrington, CT 06790

**CHAIRMAN, BOARD OF EDUCATION, TORRINGTON PUBLIC SCHOOLS**; **BOARD OF EDUCATION, TORRINGTON PUBLIC SCHOOLS**; **AND TORRINGTON PUBLIC SCHOOLS**, c/o Attorney Jessica L. Ritter and Attorney Thomas B. Mooney, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103

Jennifer M. Mayo
Acting Clerk of the Commission

FIC 2024-0638/FD/JMM/September 25, 2025