FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION
AFTER RECONSIDERATION

Michael Donnelly,

Complainant

against

Docket #FIC 2024-0656

Commissioner, State of Connecticut, Department of Administrative Services; and State of Connecticut, Department of Administrative Services,

Respondents

February 11, 2026

The above-captioned matter was heard as a contested case on March 25, 2025 and May 29, 2025, at which times the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint.

Pursuant to multiple orders of the undersigned Hearing Officer, the respondents submitted a number of affidavits, which shall be marked in evidence as follows:

Respondents' Exhibit 8 (after-filed): Affidavit of Ernestine Yuille Weaver, dated August 22, 2025

Respondents' Exhibit 9 (after-filed): Affidavit of Jasmine Bartholomew, dated September 3, 2025

Respondents' Exhibit 10 (after-filed): Affidavit of Jasmine Bartholomew, dated September 10, 2025

On October 29, 2025, following consideration of the October 7, 2025, Report of Hearing Officer (the "Proposed Final Decision") in this matter at its meeting, the Commission issued a Final Decision, dated October 22, 2025 (the "Final Decision"). In its Final Decision, the Commission determined that the respondents had violated the promptness and disclosure provisions of the Freedom of Information ("FOI") Act, with respect to their handling of the complainant's request for records.

Following the issuance of the Notice of Final Decision and Final Decision in this matter, on November 7, 2025, the respondents filed a Motion for Reconsideration, requesting that the Commission reconsider: (i) its finding that the respondents failed to prove that they properly

withheld those portions of the in camera records identified as preliminary drafts or notes on the in camera index; and (ii) its order that in complying with the Commission's orders for this matter, the respondents may only withhold "records that are subject to a mandatory exemption (i.e., not pursuant to §1-210(b), G.S.)."

At the Commission's regular meeting of November 19, 2025, the Commissioners unanimously voted to reconsider paragraphs 4 and 5 only of the order in the Final Decision, and to remand the matter to the undersigned Hearing Officer for further consideration.[1]

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 on May 31, 2024, the complainant submitted the following seven part request to the respondents, via email:

a. [Part 1] All documents comprising, referencing, or relating to communications including text messages, between Kosta Diamantis and Salvatore Monarca referencing asbestos abatement, Master Contract 16PSX0110 and/or Master Contract 20PSX0154.

b. [Part 2] All documents comprising, referencing, or relating to communications including text messages, between Kosta Diamantis and John Duffy referencing asbestos abatement, Master Contract 16PSX0110, and/or Master Contract 20PSX0154.

c. [Part 3] All documents comprising, referencing, or relating to communications including text messages, between Kosta Diamantis and Acranom Masonry, Inc. referencing asbestos abatement, Master Contract 16PSX0110, and/or Master Contract 20PSX0154.

d. [Part 4] All documents comprising, referencing, or relating to communications including text messages, between Kosta Diamantis and D'Amato Construction Co., Inc. referencing asbestos abatement, Master Contract 16PSX0110, and/or Master Contract 20PSX0154.

[1]In granting the respondents' Motion for Reconsideration, the Commission declined to reconsider any findings of fact and conclusions of law in its Final Decision. Accordingly, the scope of the undersigned Hearing Officer's reconsideration is limited to only those paragraphs of the Commission's order addressing which records the respondents may withhold in complying therewith.

e. [Part 5] All documents which address, discuss, or otherwise reference what projects can be let under either Master Contract 16PSX0110 or Master Contract 20PSX0154.

f. [Part 6] All documents which address, discuss, or otherwise reference the termination of signatories of either Master Contract 16PSX0110 or Master Contract 20PSX0154.

g. [Part 7] All documents which address, discuss, or otherwise reference the termination for convenience of any state contractor since 2019.

3. It is found that on June 3, 2024[2], the respondents acknowledged the complainant's request described in paragraph 2, above, and informed him that they would begin processing his request.

4. It is found that on October 22, 2024, the respondents uploaded records responsive to the complainant's request, described in paragraph 2, above, to their records request management platform, GOVQA. It is found that the respondents provided 11 pages of records to the complainant.

5. By letter of complaint received and filed on October 31, 2024, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to disclose all records responsive to his request described in paragraph 2, 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. (Emphasis added).

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

> [e]xcept as otherwise provided by any federal law or statute, all records maintained or kept on file by any public agency whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of

[2] Shortly after the complainant submitted his request described in paragraph 2, above, he received what appears to be an automated reply from the respondents' records request management platform, GOVQA, assigning a reference number to his request.

section 1-212, or (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 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that the respondents first began their search for records responsive to the complainant's request, described in paragraph 2, above, in mid-July 2024.

11. It is found that in conducting their search described in paragraph 10, above, the respondents searched one user account (kostantinos.diamantis@ct.gov) using the following keywords and/or search terms:

(Duffy NEAR(2) John) OR (Salvatore NEAR(2) Monarca) AND ("Acranom" OR "Duffy" OR "termination" OR "convenience" OR "16PSX0110" OR "20PSX0154" OR "D'Amato")

12. It is found that, as a result of the search described in paragraph 11, above, the respondents identified five records (i.e., the 11 pages of records described in paragraph 4, above.)

13. It is found that, during his communications with the ombudsman[3], the complainant indicated that, with respect to Parts 5 and 6 of his May 31 request, the respondents could limit their search to the email accounts for the following individuals: Michelle Gilman, Robert Burk, Gene Burk, Noel Petra, Doug Moore, Craig Russell, David Barkin, Sarah Tierney, and Eleanor Michael.

14. It is found that shortly after narrowing the accounts to be searched as part of the ombudsman process, the respondents conducted an additional search of the accounts listed in paragraph 13, above, using the following search terms:

Master AND Contract AND 16PSX0110 AND 20PSX0154 AND termination

15. It is found that, as a result of the search described in paragraph 14, above, the respondents identified over 90 additional records responsive to the complainant's May 31 request, and disclosed an additional 110 pages of records to the complainant.

16. At the March 25, 2025 hearing in this matter, the complainant indicated that although he narrowed Parts 5 and 6 of his May 31 request, he only did so in an effort to resolve the case

[3] The Commission notes that the parties agreed to the Hearing Officer's consideration of ombudsman communications pursuant to Regs. Conn. State Agencies §1-21j-29(d). Specifically, the parties both introduced into evidence the same series of emails between the respondents and the ombudsman occurring between December 10, 2024 and December 17, 2024. See Complainant's Exhibit I; see also, Respondents' Exhibit 2.

via the Commission's ombudsman process. As the matter had gone to a hearing, his request was no longer limited to the more narrowed searches described in paragraphs 13 and 14, above.

17. Regs. Conn. State Agencies §1-21j-29(d) provides in relevant part:

> [u]pon the commencement of a contested case, the executive director or his or her designee may appoint an ombudsman for that case. The ombudsman shall attempt to settle the case in whole or in part; and if the case is not settled, to limit the issues of fact and law necessary to be determined at the hearing, and to encourage stipulations which would expedite the proceedings at the hearing.

18. While §1-21j-29(d), contemplates that the parties will use the ombudsman process to settle the case or narrow the scope of the issues prior to a contested case hearing, nothing therein binds the parties to a particular position.

19. It is found that although the complainant limited the accounts to be searched for Parts 5 and 6 of his May 31 request during the ombudsman process, he never did so on the record during the contested case hearing.

20. Moreover, it is found that the complainant's basis for agreeing to limit the scope of his request during the ombudsman process was predicated on the respondents' representation that they "did not have the capability to do a global search across everyone in the department." However, this representation is inconsistent with the testimony of the respondents' witness described in paragraph 26, below.

21. Accordingly, it is found that unless specific individuals are named in applicable subparts, the complainant's May 31 request is reasonably interpreted as seeking *all* records maintained by the respondents, and not only those of specific individuals.

22. It is found that during the times relevant to this matter, the respondents conducted four separate searches for records responsive to the complainant's May 31 request - (i) the two searches described in paragraphs 11 and 14, above; (ii) a third search after the March 25, 2025 hearing in this matter; and (iii) a fourth search after the complainant informed the respondents that their third search used an incorrect contract number.

23. It is found that for the reasons set forth in the subparagraphs below, the respondents failed to prove that they conducted a thorough and diligent search with respect to *any* portion of the complainant's May 31 request:

a. It is found that the search described in paragraph 11, above, on its face, is insufficient to identify records responsive to *all* subparts of the complainant's May 31 request. Specifically, the search described in paragraph 11, above, was unreasonably narrow in that it: (i) only searched Kosta Diamantis's account; (ii) was limited to only records including the keywords (Duffy NEAR(2) John) (i.e., the name "John Duffy") and (Salvatore NEAR(2) Monarca) (i.e.,

the name "Salvatore Monarca"); and (iii) excluded any reference to asbestos abatement.[4]

b. It is found that the search described in paragraph 14, above, is similarly insufficient to identify records responsive to *all* subparts of the complainant's May 31 request. As found in paragraphs 21 and 22, above, for the purposes of the contested case hearing in this matter, Parts 5 and 6 of the complainant's May 31 request, were not limited to specific individuals.

c. It is found that shortly after the March 25, 2025 hearing in this matter, the respondents conducted a third search on their own initiative to address an issue with a search modifier used in their second search described in paragraph 14, above. Nevertheless, the respondents' third search was similarly insufficient as it again: (i) lacked any reference to asbestos abatement; and (ii) limited the accounts searched, despite such limitation not existing in the request. [5]

d. It is found that on May 30, 2025, the complainant informed the respondents that the search described in subparagraph c., above, used the incorrect contract number "20PSX0110" instead of "20PSX0154." It is found that while the respondents began processing a new search with the correct contract number (i.e., the fourth search) almost immediately, they did not remedy *any* of the deficiencies identified in subparagraphs a., b., and c., above.

e. It is found that each of the searches conducted by the respondents were limited to the contracts 16PSX0110 or 20PSX0154 and, therefore, were insufficient to identify all records responsive to Part 7 of the complainant's May 31 request.

f. It is found that despite, being clearly requested in Parts 1 through 4[6] of the complainant's May 31 request, the respondents never attempted to conduct a search for text messages.

24. The respondents maintain that limiting their searches to specific accounts was reasonable under the circumstances because to conduct a search across all employee accounts

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[4]It is found that the complainant's use of the phrase "and/or" reasonably indicates that the phrase "asbestos abatement" was an independent search term that the respondents should have used to find responsive records.

[5] The respondents determined that the use of the Boolean operator "AND" in the search described in paragraph 14, above, inadvertently narrowed the scope of their search. On their own initiative, the respondents conducted a third search using: (i) the same accounts described in paragraph 13, above; and (ii) the following keywords "(16PSX0110 OR 20PSX0110 [sic]) AND termination)." The Commission notes, however, that the respondents used the incorrect contract number "20PSX0110," instead of the correct contract number "20PSX0154."

[6] It is found that the respondents reasonably interpreted Parts 5 through 7 of the complainant's May 31 request as not seeking text messages.

would not be feasible due to the scope of the search.[7] Specifically, an IT Analyst for the respondents testified that the search results are at risk of corruption if they exceed 10 gigabytes per file.

25. Nevertheless, the respondents' IT Analyst further testified, and it is found that: (i) they could conduct a search across all accounts maintained by the respondent DAS; and (ii) the respondents could design a search to split the results into smaller files such that no file exceeds the 10 gigabytes threshold.

26. It is found, therefore, that a search across all employees for the respondents was feasible without the risk of corrupting the search results.

27. With respect to Part 7 of the complainant's May 31 request, the respondents assert that they did not need to conduct a search because: (i) it would be "way beyond the scope of [the respondent] DAS;" (ii) no "particular document" was requested; (iii) the request could not easily be responded to as the search terms are not sufficiently descriptive; and (iv) because the respondent DAS does not have a file for such records, nor does it maintain a list of all state contractors, Part 7 of the complainant's May 31 request would have required research.

28. It is true that one public agency does not have the obligation to collect and disclose the records of another public agency. See Lash v. Freedom of Info. Comm'n, 300 Conn. 511, 521 n. 7 (2011). However, nothing in the complainant's May 31 request suggests that the respondents should collect and disclose records maintained by other public agencies. Rather, it is found that such request was sent directly to the respondents and *solely* requested records maintained by the respondent DAS.

29. With respect to the respondents' claim that Part 7 of the complainant's May 31 request would have required them to conduct "research," in Wildin v. Freedom of Info. Comm'n., 56 Conn. App. 683, 687 (2000), the Appellate Court concluded that a records request involves research if the respondents must exercise discretion to determine whether the records sought fall within the scope of the request. The court further noted, however, that a "record request that is simply burdensome does not make that request one requiring research." Id.

30. It is found that while the respondents are correct that Part 7 of the complainant's request does not request a "particular document," there is no such requirement in the FOI Act. Similarly, nothing in the FOI Act limits requests to only those records stored in a "specific file" or only those that could easily be cross-referenced.

31. It is also found that Part 7 of the complainant's May 30 request was sufficiently descriptive for the respondents to at least attempt to conduct a search. Specifically, it is found

[7] The respondents testified that a search for all accounts maintained by respondent DAS would be "outside the terms of services." It is unclear whether the respondents have entered into an agreement with another entity that would limit their ability to conduct a search of all accounts they maintain. The respondents are reminded that "no public agency shall enter into a contract with, or otherwise obligate itself to, any person if such contract or obligation impairs the right of the public under the Freedom of Information Act to inspect or copy the agency's nonexempt public records existing on-line in, or stored on a device or medium used in connection with, a computer system owned, leased or otherwise used by the agency in the course of its governmental functions." See, §1-211(b), G.S.

that such request identified a topic from which search terms or keywords could be derived (e.g., "termination for convenience") and a date range from which to limit the search (i.e., 2019).

32. It is found that the respondents failed to prove that they would have to exercise discretion to determine if a record was within the scope of Part 7 of the complainant's May 31 request. Accordingly, it is found that Part 7 of the complainant's request did not require "research" as defined in Wildin, and the respondents were obligated to conduct a thorough and diligent search for the records requested therein.

33. Finally, the respondents assert that they did not need to conduct a search for text messages because: (i) they do not maintain such records; and (ii) Mr. Diamantis was not employed by the respondents at the time of the complainant's May 31 request. Both arguments are unavailing.

34. Commission precedent makes clear that the fact that a record is maintained on a personal device or account does not shield such record from disclosure "if the *content* of the [record] relates to the conduct of the public's business." Docket #FIC 2024-0236, Deanna Bouchard v. Superintendent of Schools, Colchester Public Schools et al. (March 26, 2025) ("text messages maintained on the superintendent's cell phone that relate to his position, or official duties or actions as the superintendent, do relate to the conduct of the public's business within the meaning of §1-200(5), G.S."); see also, Docket #FIC 2014-309, Joe Wojtas and the New London Day v. Information Technology Director, Town of Stonington et al. (April 22, 2015).

35. Moreover, §1-200(5), G.S., provides that in addition to being related to the public's business, to constitute a public record a record must be "prepared, owned, used, received or retained by a public agency."

36. It is found that to the extent Mr. Diamantis sent or received text messages that would have been responsive to Parts 1 through 4 of the complainant's May 31 request, such records relate to the conduct of the public's business and were "prepared, owned, used, received or retained" by the respondents within the meaning of §1-200(5),G.S.

37. It is found that although Mr. Diamantis was no longer employed by the respondents at the time of the complainant's May 31 request, he may still maintain text messages: (i) from his time as an employee of the respondent DAS; (ii) which relate to the public's business; and (iii) are responsive to Parts 1 through 4 of the complainant's May 31 request.

38. It is found that the respondents never made any attempt to contact Mr. Diamantis to ascertain whether he had retained any text messages responsive to the complainant's May 31 request.

39. While it may be possible, or even likely, that Mr. Diamantis no longer retains responsive text messages, the respondents bear the burden of proving that they conducted a thorough and diligent search for records. It is found that by making no attempt to contact Mr. Diamantis regarding text messages responsive to the complainant's May 31 request, the respondents failed to meet that burden.

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

**Withheld Records**

41. It is found that while the respondents did provide the complainant with some records responsive to his May 31 request, they also redacted or entirely withheld records pursuant to: (i) the preliminary drafts and notes exemption (i.e., §1-210(b)(1), G.S.); and/or (ii) the attorney-client privilege (i.e., §1-210(b)(10), G.S.)

42. Pursuant to three orders[8] of the Hearing Officer, the respondents submitted to the Commission for in camera inspection 2,509 pages of records, which are fairly described on the in camera index as emails and attachments thereto. Such in camera records shall be referred to as IC-2024-0656-0001 through IC-2024-0656-2509.

43. It is found, however, that the respondents did not include with their in camera submission the records withheld pursuant to their fourth search (i.e., the search correcting the contract number) as described in paragraph 23.d., above.[9] It is found that, to the extent the respondents' fourth search resulted in withheld or redacted records not otherwise contained in their in-camera submission to the Commission, the respondents have failed to prove that such records are exempt from disclosure.

**Preliminary Drafts or Notes (§1-210(b)(1), G.S.)**

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[8] Despite being told on the record at the May 29, 2025, hearing to carefully read the Hearing Officer's Order to Submit In Camera Records, the respondents twice failed to comply with the formatting requirements contained therein, causing a significant delay in the Hearing Officer's receipt of such records by over three months. Moreover, during the respondents' second defective attempt to submit in camera records, the Hearing Officer noticed significant artifacts and errors that are commonly associated with the conversion of scanned records into a Word document. The Hearing Officer specifically instructed the respondents not to use Microsoft Word to convert the in camera records as doing so changes the records and carries a significant risk of conversion errors that may not seem obvious upon a cursory review, but could change the substance of the records. Nevertheless, despite this instruction the respondents, in their third attempt to deliver the in camera records indicated that they again used Microsoft Word to convert portions of such records. Given the significant delay caused by the respondents in producing the in camera records and the respondents' representation that such records were free of conversion errors or artifacts, the Hearing Officer accepted the respondents' third attempted delivery of in camera records. The Hearing Officer notes that there appears to be some conversion errors and artifacts (albeit minor formatting errors) in the respondents' in camera submission.

[9] As found in paragraph 23.d., above, the respondents were made aware of their error on May 30, 2025. The Hearing Officer's first order for in camera inspection was issued on June 3, 2025. As part of the June 3 in camera order, the respondents were directed to "submit to the [Commission] an unredacted copy of ***any records claimed to be exempt from disclosure in the above[-]captioned matter***. . . ." (Emphasis added). The Hearing Officer requested that the respondents submit an affidavit to, in part, confirm whether the records from their fourth search would be included with the in camera production. It is found that by this time, the Hearing Officer had already issued his third order for in camera records (issued on August 14, 2025). In such affidavit, the respondents unilaterally, and without seeking leave from the Hearing Officer, indicated that "[a]ny documents that are found to be exempt from the May 30 search will be submitted for in-camera review afterward." Accordingly, withheld or redacted records from the respondents' fourth search were not included in their submission of in-camera records, which ultimately occurred on September 4, 2025

44. Section 1-210(b)(1), G.S., provides that disclosure is not required of "preliminary drafts or notes ***provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure***." (Emphasis added).

45. The Connecticut Supreme Court ruled in Wilson v. Freedom of Info. Comm'n., 181 Conn. 324, 332 (1980) ("Wilson"), that:

> [w]e do not think that the concept of preliminary, as opposed to final, should depend upon who generates the notes or drafts, or upon whether the actual documents are subject to further alteration. . . .
>
> Instead, we believe that the term 'preliminary drafts or notes' relates to advisory opinions, recommendations, and deliberations comprising part of the process by which government decisions and policies are formulated. . . .
>
> . . . [p]reliminary drafts or notes reflect that aspect of the agency's function that precedes formal and informed decisionmaking. We believe that the legislature sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions. It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass.

46. The year following Wilson, the Connecticut General Assembly passed Public Act 81-431, which added to the FOI Act language now codified in §1-210(e)(1), G.S. That provision, which narrowed the exemption for preliminary drafts or notes provides in relevant part:

> [n]ot withstanding [§1-210(b)(1), G.S.], disclosure shall be required of:
>
> [i]nteragency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except that disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among members of the agency.

47. In Van Norstrand v. Freedom of Info. Comm'n., 211 Conn. 339, 343 (1989) ("Van Norstrand"), the Supreme Court provided further guidance regarding "preliminary drafts." Citing the dictionary definition, the Court stated that the term "preliminary" means "something that precedes or is introductory or preparatory," and "describes something that is 'preceding the main discourse or business.'" Id. According to the Court, "[b]y using the nearly synonymous words 'preliminary' and 'draft,' the legislation makes it very evident that preparatory material are not required to be disclosed." Id.

48. Accordingly, §§1-210(b)(1) and 1-210(e)(1), G.S., together, permit nondisclosure of records of an agency's preliminary, predecisional, deliberative process, provided that the agency has determined that the public interest in withholding the records clearly outweighs the public interest in disclosure, and provided that such records are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or reports. See Shew v. Freedom of Info. Comm'n., 245 Conn. 149, 164-166 (1998).

49. With respect to the "balancing test" required by §1-210(b)(1), G.S., it is well established that the responsibility for making the determination as to what is in the public interest is on the agency that maintains the records. See Van Norstrand 211 Conn. 339, at 345. However,

> [a]lthough the statute places the responsibility for making that determination on the public agency involved, the statute's language strongly suggests that the agency may not abuse its discretion in making the decision to withhold disclosure. ***The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded.***

(Citation omitted; emphasis added; quotation marks omitted).

50. It is found that while the respondents presented some evidence as to the preliminary nature of the relevant portions of the in camera records, they did not present evidence indicating the *reasons* they considered when conducting the balancing test.

51. It is found that the following testimony is the extent of the respondents' evidence pertaining to the balancing test:

> [Respondents' Counsel]: Do you also look to see whether a document is a preliminary draft or note?
>
> [Witness]: Yes.
>
> [Respondents' Counsel]: And what is your basis for determining whether something is a preliminary draft or note?
>
> [Witness]: If it's being circulated for review, input, edit, comments. If it's being returned with such review, edits, comments; and if it's not the version that's been either signed off on or released outside of the agency.
>
> [Respondents' Counsel]: Did you perform a balancing test on the state's interest and the public's right to transparency, when determining whether something was a preliminary draft or note?
>
> [Witness]: Yeah. Sometimes even though it would be exempt from disclosure because it is a preliminary draft the - you know - harm in releasing it is nonexistent.

. . .

[Hearing Officer]: You had mentioned that you withheld several documents from production, is that correct?

[Witness]: Yes.

[Hearing Officer]: And those were [for] attorney-client privilege or preliminary notes and drafts?

[Witness]: Yes.

[Hearing Officer]: You went through some - the analysis you did generally, did you do the same analysis for the specific documents you withheld?

[Witness]: Yes.

52. It is found that, based on the testimony outlined in paragraph 51, above: (i) the respondents weighed "the state's interest"[10] in withholding the records against the public's interest in disclosure; and (ii) that sometimes the respondents release preliminary drafts because they determined there would be no harm in doing so.

53. While the standard in Van Norstrand is highly deferential, it is clear that the respondents have the burden of showing that the reason for their determination to withhold records was not "frivolous or patently unfounded."

54. It is found that because the respondents have not identified the reasons that the public interest in withholding the relevant records clearly outweighs the public interest in disclosure, they have failed to prove that they properly withheld those portions of the in camera records identified as preliminary drafts or notes on the in camera index.

**Attorney-Client Privilege (§1-210(b)(10), G.S.)**

55. The respondents assert that all of the in camera records are permissively exempt pursuant to the attorney-client privilege.

[10] The plain language of §1-210(b)(1), G.S., requires public agencies to consider the "public interest in withholding such documents" not the "state's interest." While it is likely that the respondents' use of "state's interest" was inadvertent, "[i]t is a basic tenet of statutory construction that the legislature [does] not intent to enact meaningless provisions. . . .[I]n construing statues, we presume that there is purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . ." Connecticut Podiatric Medical Ass'n v. Health Net of Connecticut, Inc., 302 Conn. 464, 474 (2011). Thus, the "state's interest" in withholding a preliminary draft is not what should be considered as part of the requisite balancing test. Accordingly, it is found that the only evidence in the record concerning the requisite balancing test suggests that the respondents applied the wrong standard.

56. 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 common law or the general statutes. . . ."

57. 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."

58. Section 52-146r(a)(2), G.S., defines confidential communications" to mean:

> all oral or 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.

59. 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 confidentially 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.

60. 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).

61. Moreover, "[i]n Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice." PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329-330 (2004).

62. The Supreme Court, however, has also recognized that "[n]ot every communication between an attorney and client falls within the [attorney-client] privilege." Harrington v.

Freedom of Info. Comm'n, 323 Conn. 1, 14 (2016) ("Harrington"). In Harrington, the court made clear that:

> [t]he burden of establishing the applicability of the privilege rests with the party invoking it. . . .Any privilege there may be is not a blanket one. The limitation, in connection with this communication, frames the special relationship that must be found for each document separately considered. . . . Because the application of the attorney-client privilege tends to prevent the full disclosure of information and the true state of affairs, it is both narrowly applied and strictly construed.

Harrington, 323 Conn. 1, at 12.

63. Specifically, Connecticut courts have long recognized that "a client's identity and information related to where and when a client has conversations with his or her attorney do not fall within the attorney client privilege." See Clerk of Common Council v. Freedom of Info. Comm'n, 215 Conn. App. 404, 420-421 (2022); see also, Ullman v. State, 230 Conn. 698, 712 (1994) ("the mere fact that a meeting took place between [an attorney] and his client did not constitute a communication and such information is not privileged for that reason."); see also, New Haven v. Freedom of Info. Comm'n, 4 Conn. App. 216, 220 (1985) ("[q]uestions as to where and when a client had conversations with his attorney have been found not to be within the attorney-client privilege.")

64. Upon careful inspection of the in camera records:

a. It is found that to the extent that the respondents redacted: (i) the "to", "from", "cc", "bcc" and "sent" fields of any email header; or (ii) the salutations, closings, or signature line/block of any email contained in the in camera records, such redactions are improper. It is found that such portions of the in camera records are, in essence, a client's identity and information related to where and when a client has conversations with his or her attorney and, thus, are not protected by the attorney-client privilege.[11]

b. It is found that those portions of the in camera records identified in Appendix A of this decision are not exempt from disclosure pursuant to §§1-210(b)(10) or 52-146r, G.S., as: (i) the respondents failed to prove one or more criteria for the attorney-client privilege outlined in paragraphs 56 through 63, above; (ii) the in camera record, or portion thereof, on its face, is not protected by the attorney-client privilege; or (iii) the privilege did apply, but the substance of the record, or portion thereof, had been actually disclosed by the respondents, thereby waiving the privilege.

c. With respect to the remaining in camera records, it is found that such records constitute communications or records protected by the attorney-client

[11] This also includes all other non-substantive portions of such emails such as website or social media icons, confidentially notices, or quotes in a signature line.

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 found that the respondents may permissively withhold those portions of the in camera records.

65. Accordingly, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., except with respect to the in camera records determined to be exempt from disclosure in paragraph 64.c., above.

**Promptness**

66. The Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means "quickly and without undue delay, taking into account all factors presented by a particular request.

67. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requestor, if ascertainable; and the importance to the public of completing other agency business without the loss of personnel time involved in complying with the request. In addition, common sense and goodwill ought to be the guiding principles.

68. As found in paragraph 4, above, the respondents first provided records to the complainant in October of 2024, approximately 5 months after the complainant submitted his May 31 request.

69. It is found that the respondents did not provide any evidence explaining the delay in producing such records despite the fact that their first search only identified 11 pages of responsive records.

70. It is found that although the respondents provided the complainant with additional records as described in paragraphs 14 and 23.c., above, they did not provide any evidence why such records could not have been provided to the complainant sooner.

71. Accordingly, it is found that the respondents failed to act quickly and without undue delay in providing the complainant with the records described in paragraphs 12, 14, 23.c, and 43, above.

72. It is concluded, therefore, that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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

1. Within thirty (30) days of the Notice of Final Decision After Reconsideration, in this matter, the respondents shall provide the complainant with copies of all records, or portions thereof, that are: (i) described in paragraph 64.a., above; or (ii) listed in Appendix A of this decision, unredacted and free of charge.

2. Within forty-five (45) days of the Notice of Final Decision After Reconsideration, in this matter, the respondents shall provide the complainant with copies of all records identified as a result of their May 30, 2025 search described in paragraphs 23.d., and 43, of the findings, above, except those records or portions thereof, identified in paragraph 64.c., of the findings, above, unredacted and free of charge.

3. Within sixty (60) days of the Notice of Final Decision After Reconsideration, in this matter, the respondents shall: (i) conduct a thorough an diligent search of all parts of the complainant's request described in paragraph 2 of the findings, above; (ii) submit to the Commission via email, at foi@ct.gov, with copy to the complainant, an affidavit sworn to or attested by a person with the requisite knowledge detailing the search that was conducted pursuant to this order. The respondents shall attach to such affidavit the corresponding eDiscovery report containing the same types of information as described in Respondents' Exhibits 4, 5, and 6. The respondents shall provide to the complainant a copy of all records resulting from such search, except for those records, or portions thereof, identified in paragraph 64.c., of the findings, above, unredacted and free of charge.

4. In complying with paragraphs 1 through 3 of this order, above, and except as otherwise noted therein, the respondents may withhold only those records, or portions thereof, for which the respondents are otherwise required, by federal law or state statute (as set forth in §1-210(a), G.S.), to withhold, including the attorney-client privilege, set forth in §52-146r, G.S., as incorporated in §1-210(b)(10), G.S.

5. If any records are withheld, in whole or in part, pursuant to paragraph 4 of this order, above, the respondents shall submit an affidavit sworn to or attested by a person with the requisite knowledge identifying, and briefly describing, such records, as well as the basis in law requiring them to withhold such records, in whole or in part. Such affidavit shall be submitted to the Commission within sixty (60) days of the Notice of Final Decision After Reconsideration, in this matter.

6. Within fourteen (14) days of the date of the Notice of Final Decision After Reconsideration, in this matter, the respondents shall contact the Commission's public education officer to schedule training regarding the requirements of the FOI Act. Such training shall be mandatory for all employees or officials of the Department of Administrative Services who worked on the May 31 request at issue in this matter; however, the respondents are strongly encouraged to make such training open and available to all DAS employees or officials who wish to attend.[12]

[12] The respondents coordinated and received the training ordered in paragraph 6 of the Commission's Order, above, after the initial Notice of Final Consideration was issued in this matter (i.e., prior to the Hearing Officer's

7. If the respondents fail to comply with any order set forth in paragraphs 1 through 6, above, the complainant may file an appeal with the Commission and such appeal may be afforded expedited treatment. The respondents are cautioned that if, after a hearing, the Commission concludes that they have violated any order herein, the Commission will consider the imposition of a civil penalty for such violation(s).

8. The respondents are admonished for failing to comply with multiple orders and directives of the Hearing Officer, thereby wasting scarce state resources.

9. Henceforth, the respondents shall strictly comply with the disclosure and promptness provisions of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 11, 2026.

Jennifer M. Mayo
Acting Clerk of the Commission

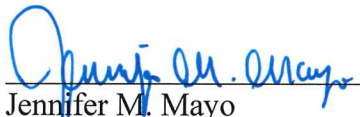
Reconsideration of this matter), but before the Commission's adoption of the Report of the Hearing Officer After Reconsideration. In so doing, the respondents have complied with paragraph 6 of the Commission's Order, above, and are not required to coordinate and receive such training again pursuant to such order.

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 DONNELLY**, Harris Beach Murtha Attorneys at Law, 280 Trumbull Street, 12th Floor, Hartford, CT 06103

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES**, c/o Attorney Ernestine Weaver, Department of Administrative Services, 450 Columbus Blvd, Suite 1501, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission

FIC 2024-0656/FD/JMM/February 11, 2026

## APPENDIX A

As noted in paragraph 64.b., of the decision in Docket #FIC 2024-0656, the following in camera records, or portions thereof, are not exempt from disclosure pursuant to the attorney-client privilege.

IC-2024-0656-0001 (lines 5-7 and 29-40)

IC-2024-0656-0002

IC-2024-0656-0003 through IC-2024-0656-0006

IC-2024-0656-0007 (lines 5-6 and line 9 (after the third word))

IC-2024-0656-0008 through IC-2024-0656-0009

IC-2024-0656-0010 (lines 4-5)

IC-2024-0656-0011 through IC-2024-0656-0012

IC-2024-0656-0049 (lines 5-6 (excluding after the word "Attachments" up to the ",")

IC-2024-0656-0058 through IC-2024-0656-0231[13]

IC-2024-0656-0232 (lines 4-6)

IC-2024-0656-0233 through IC-2024-0656-414[14]

IC-2024-0656-0441 (lines 15 and 37-38)

IC-2024-0656-0442 (line 31)

IC-2024-0656-0457 (line 33)

IC-2024-0656-0458 (lines 11-12)

IC-2024-0656-0459 (line 10)

IC-2024-0656-0469 (lines 5-6 and 33-40)

IC-2024-0656-470

IC-2024-0656-471 (lines 5-6 and 35-42)

IC-2024-0656-0472

IC-2024-0656-0473 (lines 4-9 and 32)

IC-2024-0656-0474 (lines 16 and 33)

IC-2024-0656-0475 (lines 3 and 27)

IC-2024-0656-0476 (lines 1-13 up to the "?" and 29-33)

IC-2024-0656-0477 (lines 1-8 up to the "?", 10-11 up to the first "?", 15-18 up to the "?", and 26-40)

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[13] The Commission takes administrative notice of the respondents' filings in Superior Court related to Department of Administrative Services v. Bestech, Inc., et al., judicial district of Hartford, HHD-CV24-6186364-S (December 17, 2024) (hereinafter "DAS v. Bestech, Inc"). It is found that the records identified above were actually disclosed therein. See Entry No. 101.00 of the record in DAS v. Bestech, Inc.

[14] The substance of the records identified above were actually disclosed in DAS v. Bestech, Inc. See Entry No. 100.31 and 101.00.

IC-2024-0656-0478 through IC-2024-0656-0484

IC-2024-0656-0489 (lines 5-6)

IC-2024-0656-0490 through IC-2024-0656-0492

IC-2024-0656-0522 (lines 5 after the word "an" and 15-16)[15]

IC-2024-0656-0524 through IC-2024-0656-0525

IC-2024-0656-0595 (line 35)

IC-2024-0656-0596 (lines 14-15)

IC-2024-0656-0597 (line 10)

IC-2024-0656-0604 through IC-2024-0656-0605[16]

IC-2024-0656-0606 through IC-2024-0656-0607

IC-2024-0656-0608 through IC-2024-0656-0638[17]

IC-2024-0656-0639 (lines 5-22)

IC-2024-0656-0640 through IC-2024-0656-1198[18]

IC-2024-0656-1199 through IC-2024-0656-1230

IC-2024-0656-1231 (lines 5-22)

IC-2024-0656-1231 through IC-2024-0656-1790

IC-2024-0656-1791 through IC-2024-0656-1793[19]

IC-2024-0656-1794 through IC-2024-0656-1825

IC-2024-0656-1826 (lines 5-22)

IC-2024-0656-1827 through IC-2024-0656-2385

IC-2024-0656-2386 (lines 5-6 and 26-27)

IC-2024-0656-2387 through IC-2024-0656-2388

IC-2024-0656-2389 (lines 6-8 and 40)

IC-2024-0656-2390 (lines 9 and 21)

IC-2024-0656-2391 (lines 3 and 20-33 up to the "?")

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[15] The respondents improperly numbered the lines on this record. To be clear, lines 15-16 include the entire box in between those two line numbers and the content therein.

[16] The Commission takes administrative notice of the statement publicly available on the respondents' website at https://portal.ct.gov/-/media/DAS/Office-of-Grants-Administration/20PSX0154-Policy-Statement.pdf. It is found that the substance of the in camera records identified above are actually disclosed in such statement.

[17] Although an attorney is copied on some portions of the emails, it is unclear to what extent, if any, they were providing legal advice or receiving information to enable them to give sound and informed advice. Accordingly, it is found that the respondents failed to prove that these records were protected pursuant to the attorney-client privilege.

[18] It is found that while IC-2024-0656-1193 through IC-2024-0656-1196 contain notes and comments, it is unclear which, if any, were provided by an attorney, or relate to legal advice.

[19] While an attorney for the respondents is briefly mentioned on of the emails contained herein, it is unclear whether and to what extent such emails pertained to legal advice.

IC-2024-0656-2392 (lines 7-11 up to the "?", 13-14 up to the first "?",18-21 up to the "?", and 30-36).

IC-2024-0656-2393 through IC-2024-0656-2399

IC-2024-0656-2403 (lines 5, 17, and 28)

IC-2024-0656-2404 (lines 25 and 31)

IC-2024-0656-2405

IC-2024-0656-2406 (lines 5 and 17)

IC-2024-0656-2407 (lines 15, 21, and 24-34)

IC-2024-0656-2408 through IC-2024-0656-2409

IC-2024-0656-2442 (line 8)

IC-2024-0656-2446 through IC-2024-0656-2507