FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by | FINAL DECISION

Jacqueline Rabe Thomas,

Complainant

against | Docket #FIC 2025-0162

Secretary, State of Connecticut,
Office of Policy & Management;
and State of Connecticut,
Office of Policy & Management,

Respondents | February 25, 2026

The above-captioned matter was heard as a contested case on July 21, 2025 and October 15, 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 email dated February 6, 2025, the complainant requested that the respondents provide her with a copy of the following records:

> a. [A]gency budget options and draft legislative proposals provided to [the respondents] since August 1, 2024; and
>
> b. [C]orrespondence sent to agencies requesting budget options.

3. It is found that, by email dated February 6, 2025, the respondents denied the request set forth in paragraph 2.a, above, stating, in relevant part, that:

> Budget options and legislative proposals submitted to [the respondent office] and the Governor's Office are draft proposals authored by the Executive Branch agencies, which are preliminary and predecisional in nature and subject to further discussion, deliberation, negotiation,

> revisions or rejection by [the respondent agency] and ultimately the Governor. Accordingly, the budget option proposals and draft legislative proposals are exempt as draft documents subject to the deliberative process and related common law privileges in accordance with Connecticut General Statutes §§ 1-210(b)(1), 1-210(b)(10), and 1-210(e)(1)....

It is further found that, with respect to the request set forth in paragraph 2.b, above, the respondents informed the complainant that they had located 7 pages of responsive records, which at a cost of $0.25 cents per page, totaled $1.75. It is further found that the respondents instructed the complainant to submit a check for said amount payable to the Treasurer, State of Connecticut, and addressed to Attorney Gareth D. Bye, counsel for the respondents.

4. By email dated and filed March 7, 2025, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with a copy of all the requested records.

5. 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.

6. 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.

7. 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."

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

9. In addition, the Commission notes that §§1-211(a) and 1-212(b), G.S., provide respectively and in relevant part, that:

> (a) Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the [FOI] Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made....
>
> (b) The fee for any copy provided in accordance with subsection (a) of section 1- 211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only: (1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection....

<u>The First Contested Case Hearing on July 21, 2025</u>

10. At the July 21, 2025 hearing, the complainant testified and it is found that, historically, she has requested and received copies of agencies' budget options ("budget options") and agencies' draft legislative proposals ("legislative proposals"). Specifically, it is found that, during the previous two administrations, the complainant requested and received copies of such records from the respondents. It is also found that previously, under the current administration, the complainant has requested and received copies of agencies' baseline budgets and legislative proposals from the respondents.[1] The complainant contended therefore that the respondents violated the FOI Act when they denied her request for a copy of the

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[1] It is found that "budget options" consist of a state agency's request for adjustments and revisions to its estimates of expenditure requirements, during the second year of a two-year budget cycle (biennium), that the agency believes are necessary to implement agency policies and operational goals, pursuant to Conn. Gen. Stat. Sec. 4-177, G.S.; while an agency's "legislative proposals" consist of an agency's proposals for legislation needed to implement such agency policies and operational goals. It is also found that an agency's "baseline budget" refers to the funding level required to maintain the same quantity and quality of services in the upcoming fiscal year, as those provided in the current year of the biennium.

records referenced in paragraph 2.a, above.[2]

11. Rather than provide evidence regarding whether and how they maintained the requested records or in support of a claim(s) of exemption to disclosure with respect to such records, the respondents spent the majority of the time allotted to them at the first hearing: presenting argument concerning a previous request for the same records that the complainant alleged she had sent to the respondents on August 12, 2024, which the complainant ultimately withdrew; presenting argument concerning the complainant's "veracity" about having made such prior request; and cross-examining the complainant in an attempt to demonstrate the *Commission's* bias. Regarding this last matter, respondents' counsel's questions on cross-examination included the following:

> Counsel for the respondents: You persistently pursue government records as you strongly believe in the need of transparency in government?
>
> Complainant: Correct.
>
> Counsel for the respondents: You agree that transparency is an important tool to assure accountability in open government, right?
>
> Complainant: Sure, yes.
>
> Counsel for the respondents: And that is one of the reasons that you make use of the Connecticut FOI statutes, correct?
>
> Complainant: Correct.
>
> Counsel for the respondents: And you have received several awards related to your craft and your dogged pursuit of transparency, correct?
>
> Complainant: Correct.
>
> Counsel for the respondents: In fact, you were a joint awardee of the Mitchell W. Pearlman Freedom of Information Award from the NGO Connecticut Foundation for Open Government, for your research, writing and pursuit of transparency, correct?
>
> Complainant: Yes.

[2] It is found that, on February 6, 2025, the respondents provided the complainant with a copy of the correspondence records requested in paragraph 2.b, above. Accordingly, such records will not be further addressed herein.

Counsel for the respondents: And, in fact, the FOIC Board Member Ms. Farrish presented you with that joint award, didn't she?

Complainant: Correct.

Counsel for the respondents: And, Colleen Murphy, the Executive Director and General Counsel of the FOIC, was on the selection committee for the award committee, wasn't she?

Complainant: I do not know the answer to that.

At such point in the hearing, the hearing officer queried the respondents' counsel as to the purpose of his line of questioning and inquired whether the respondents were going to present evidence regarding any claim of exemption to disclosure, to which counsel responded:

Counsel for the respondents: This is cross examination…I have a right to ask some questions…under the UPA (sic) we are [here to present evidence on exemptions], but I also have a right to cross examine this witness….This gets into the issue of bias, hearing officer.

Hearing Officer: From the FOIC?

Counsel for the respondents: Yes.

Hearing Officer: Do you want to have a continued hearing? [Be]cause we are going to run out of time if we talk about Ms. Rabe's awards and her belief in transparency. We really want to talk about why the records were not provided to her.

Counsel for the respondents: May I proceed, please?

…

Hearing Officer: It seems to me… I am here to hear about why the records were not disclosed and [the respondents] want to talk about the FOIC's bias.... I mean anyone can ask for these records and you can say 'no.' I am just here to find out the reason behind the 'no.'

Counsel for the respondents: I respectfully understand that. I still stand up under the UPA (sic). I have a right to cross-examine this witness.

> Hearing Officer: Yes, as long as it is relevant. This is not …relevant to the reasons why OPM denied the request for records. The exemption to disclosure is relevant.[3]
>
> Counsel for the respondents: I have a limited ability to make a record, and I am trying to use my time efficiently right now. I will not have a chance to ask this witness questions again. I need to make my record now.
>
> Hearing Officer: But did you deny her request because the FOIC …gave [her] an award?
>
> Counsel for the respondents: No, absolutely not.
>
> Hearing Officer: You denied her request because you are claiming that the records are--
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> Counsel for the respondents: …exempt under the statute.
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> Hearing Officer: So, you need to tell me about those exemptions so that I can--
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> Counsel for the respondents: We will get there…I just want to read into the record a statement that's in a publication from this organization that was put out by Ms. Farrish, where she says, 'our winners stood out for their perseverance,' and it goes on and she says and this is a quote, 'I wish to thank the Pearlman Award Committee…' and it goes on 'and Colleen Murphy for their hard work in honoring those who have followed the legacy of Mitchell W. Pearlman.' On that committee, on this board, are no less than three people from the FOI Commission, okay? I've made my point.
>
> Hearing Officer: I didn't have anything to do with choosing Ms. Rabe as the winner of that award. I wasn't even at the

[3] The Commission notes that the Connecticut Supreme Court has made it *exceedingly* clear that a requester's motivation for requesting a copy of a public record or the requester's status (such as being a reporter) are not relevant to the issue of whether the requested records are disclosable under the FOI Act. *See Chief of Police, Hartford Police Dep't v. Freedom of Info. Comm'n,* 252 Conn. 377, 387, 746 A.2d 1264, 1270 (2000) ("whether records are disclosable under the act does not depend in any way on the status or motive of the applicant for disclosure, because the act vindicates the public's right to know, rather than the rights of any individual."); *see also* Regs. of Conn. State Agencies, §1-21j-37(a) (stating in relevant part, that "[a]ny oral or other evidence may be received [during a contested case hearing], but the presiding officer shall, as a matter of policy, exclude irrelevant...evidence.).

presentation. I'm just interested in exemptions to disclosure.

Following the above discourse, the respondents' counsel interrupted the hearing officer and continued to cross-examine the complainant regarding her beliefs about government transparency and her level of understanding that the FOI Act and the General Statutes contain exemptions to disclosure permitting public agencies to withhold public records.

12. As the first hearing was concluding, the respondents' counsel stated that the respondents were claiming exemptions pursuant to §§1-210(b)(1) and (e)(1), G.S. (preliminary drafts and notes); and §1-210(b)(10), G.S. (deliberative process). Counsel then contended that the respondents do not maintain budget options in a hardcopy, PDF format, as agencies now electronically submit the data comprising their budget options to the respondents. Counsel further represented that the respondents do maintain legislative proposals in a hardcopy format, but that they were "standing behind those exemptions" for such records. However, the respondents did not present any evidence at the first hearing to prove their claims of exemption or to establish how they receive and/or maintain budget options or legislative proposals.

<u>The Second Contested Case Hearing on October 15, 2025</u>

13. At the start of the second hearing on this matter, the complainant represented that, while the respondents had informed the hearing officer at the first hearing that they had sent the complainant a February 6, 2025 email with a link to the requested legislative proposals, such email actually contained a link to the Governor's proposed budget and legislation. S*ee* Complainant's Ex. G.

14. However, the complainant further represented that, at the first hearing, the respondents submitted into evidence a six-page document entitled "2025 Legislative Proposals." *See* Respondents' Ex. 4. It is found that the respondents had not previously provided this document to the complainant. It is further found that, following the first hearing, the complainant had an opportunity to review the document and determined that it was responsive to her request for legislative proposals set forth in paragraph 2.a, above. The Commission notes that, on February 6, 2025, the respondents denied the complainant's request for such records claiming that they were exempt from disclosure, and that, ironically, at the first hearing, the respondents specifically renewed their claim of exemption with respect to such records. *See* ¶¶ 3, 12, above. The Commission further notes that, at the time of the first hearing on this matter, 165 days had elapsed from the date the complainant made her request for records in this case.

15. The respondents' Deputy Secretary appeared at the second hearing on this matter and testified on behalf of the respondents.

16. It is found that, prior to 2020, agency heads submitted their budget options to the respondents in a hardcopy PDF format. It is further found that, on or around 2020, the respondents developed an automated software system known as the automated budget system (the "ABS"). It is further found that the respondents maintain such system internally and provide the ABS software to state agencies to submit their expenditure requirements, including

their budget options in the second year of the biennium. It is further found that, beginning in 2020, most state agencies started entering their budget options data into the ABS.

17. It is found that, with regard to the request set forth in paragraph 2.a, above, the complainant seeks a copy of agency heads' original budget options submissions provided to the respondents on or shortly prior to October 1, 2024.[4] It is further found that the complainant seeks such records in either a hardcopy format or by way of an extraction of data comprising such records from the ABS (or a combination of both hardcopy records and an extraction of the data from the ABS).

18. In response to a question posed by the hearing officer as to whether the respondents could extract data maintained in the ABS to respond to the complainant's request for a copy of the agency heads' budget options submissions, the respondents' Deputy Secretary responded: "yes."

19. The Deputy Secretary further testified that, while agency heads were required to enter their budget options data in the ABS by October 1, 2024, an agency head *may* thereafter amend, withdraw or otherwise change the original submissions. It is found that the witness could not testify with certainty whether, in fact, any agency head had amended or otherwise revised its agency's data submission, or whether the ABS could be programmed so that the originally submitted data could be extracted and provided to the complainant.

20. In addition, the Deputy Secretary further testified that, while agency heads were no longer required to submit budget options in a PDF format, he could not testify with certainty whether any agency heads *nonetheless* submitted their budget options to the respondents in such a format.

21. At the conclusion of the second hearing, the hearing officer ordered the respondents to address the following three issues by way of a post-hearing affidavit: (1) did the respondents receive any budget options in a PDF format, as opposed to or in addition to receiving the data comprising such options by way of the ABS; (2) can the respondents retrieve the original budget options data submitted in the ABS; and (3) did any agencies *not* change their original budget options data entered in the ABS.[5]

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[4] *See* Respondents' Ex. 2 ("May I please have a copy of the budget options…submitted to OPM by state agencies since August 1, 2024"). Because both complainant's Ex. 2 and respondents' Ex. 3 make clear that "**[t]he due date for [agencies' budget] options is October 1, 2024**," the administrative record is also clear that the complainant in this case requested a copy of budget options submitted to the respondents by agency heads on or shortly prior to the October 1, 2024 due date (bold in both originals).

[5] The Commission notes that, because two hearings had been conducted on this matter and it still was not clear as to whether the respondents maintained any records responsive to the complainant's request, the hearing officer gave the complainant the following option: (1) the hearing officer could schedule a third hearing with an order directing the respondents to appear at such hearing with an Information Technology ("IT") specialist prepared to testify about the capabilities of the ABS, or (2) the hearing officer could order the respondents to submit an affidavit addressing the questions posed in paragraph 21, above. The complainant did not object to the respondents submitting a post-hearing affidavit.

22. On November 17, 2025, the respondents filed the affidavit of Melissa Scully, Executive Secretary to the respondents' Office of Legal Affairs, and the affidavit of Scott McWilliams, Fiscal and Program Policy Section Director for the respondents. The affidavits have been marked as respondents' post-hearing Ex. 6 and Ex. 7, respectively.

23. Based on Ms. Scully's affidavit, it is found that seven agencies submitted their budget options to the respondents in a hardcopy, PDF format. Accordingly, it is found that Ms. Scully's affidavit was responsive to the first question posed in paragraph 21, above.

24. In paragraphs 6 and 7 of Mr. McWilliams' affidavit, he avers:

> (6) agencies may delete any predecisional budget options they create or change any information for any budget options they create **until they click the ABS submit button** in the budget options module.
>
> (7) OPM budget analysts may un-submit predecisional options, allowing agencies to add, change or delete budget options in the ABS.

(Emphasis added).

25. In addition, in paragraph 8 of Mr. McWilliams' affidavit, he avers:

> (8) The ABS only has the most recent draft predecisional budget option version and does not maintain a history of changes to the evolving draft budget options. Hence, no person at OPM can retrieve an extract of an original agency budget option submission.

26. Because the complainant requested a copy of the budget options that were *submitted* to the respondents by state agencies since August 1, 2024, the fact that agencies may "delete or change" information in their budget options "until they click...submit," was not responsive to the third question posed in paragraph 21, above.

27. Moreover, because the respondents provided no evidence as to whether any agency actually amended or changed the data it entered into the ABS, the averments in paragraph 8 of Mr. McWilliams' affidavit provided no clarity as to whether there are some *original, unchanged* data submissions in the ABS that can readily be extracted from the system in order

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Accordingly, the hearing officer ordered the respondents to submit an affidavit addressing the questions posed in paragraph 21, above. The hearing officer suggested that the affiant be an IT professional. The Commission notes that the respondents did not provide one scintilla of evidence about the capabilities and limitations of the ABS from any of its IT professionals, which is bewildering as the respondents' IT professionals developed and implemented the system, and are responsible for the system's continued maintenance and, thus, would appear to be the individuals most qualified to explain the system's capabilities and limitations.

to respond to the complainant's request.

28. Accordingly, by written order dated January 21, 2026, the hearing officer requested that the respondents provide an additional affidavit addressing the following issues: (1) whether any agencies did *not* change their original budget options *submitted* to the respondents through the ABS; (2) does the respondent office "un-submit" an agency's original budget options on its own accord or only upon the request of an agency that it do so; (3) whether an agency, after it submits its budget options, must contact the respondent office and request that it be allowed to delete or otherwise change its original budget options; and (4) do the respondents maintain a record of which agencies requested that they be allowed to delete or change their budget options subsequent to the statutory due date for such submissions, or a record of the agencies whose original budget options were "un-submitted" by the respondent office.

29. On January 29, 2026, the respondents filed the affidavit of Gregory Messner, Executive Budget Officer for the respondents. The affidavit has been marked as respondents' post-hearing Ex. 8.

30. In paragraph 7, of Mr. Messner's affidavit, he avers, in relevant part, that: "...neither the ABS system nor OPM budget staff keep ***a log or record of deletions, edits, alterations or other changes*** to the budget options ***in the ABS***...the ABS system only has the most recent draft pre-decisional budget option versions and does not maintain a history of changes...." (Emphasis supplied).

31. It is found, however, that Mr. Messner's affidavit does not specifically address the first or fourth questions posed in paragraph 28, above—that is, whether any agencies did ***not*** change their original budget options ***submitted*** to the respondents through the ABS, and whether the respondents maintain a ***record*** of which agencies ***requested*** that they be allowed to delete or change their budget options subsequent to the statutory due date for such submissions, or a ***record*** of the agencies whose original budget options were ***"un-submitted"*** by the respondent office.[6]

<u>The Respondents' Legal Arguments</u>

32. While the respondents conceded that they have an obligation under the FOI Act to extract responsive, non-exempt data from the ABS and provide such data to the complainant in

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[6] With respect to the relevance of the fourth question posed in paragraph 28, above, it is found that Mr. Messner's affidavit makes clear that an agency, seeking to amend the budget option data it originally enters in the ABS must request and obtain permission from the respondents to do so:

> After [an agency's] budget option is [submitted] in the ABS, however, the submitting agency cannot alter or amend the submission without obtaining permission from the OPM Budget analyst to alter or withdraw a budget option submission.

Messner Affidavit ¶ 6.

response to her request, they contended that, even if they could extract the original data submissions, such data is exempt from disclosure pursuant to §§1-210(b)(1) and (e)(1), G.S. (preliminary drafts and notes), and §1-210(b)(10), G.S. (deliberative process privilege). In this regard, the respondents represented that they were raising their claims of exemptions "academically" because, at the time that the second hearing was concluding, they still had not determined whether they maintained any agencies' original budget submissions in a PDF format or whether they could extract the data comprising such submissions from the ABS.

33. In this regard, the respondents argued that the agencies' budget options are pre-decisional, preliminary drafts because agency heads provide their budget options data to the respondents, who in turn rely on such data in making recommendations to the Governor concerning his final "budget book." In fact, the respondents testified that they "provide" agencies' budget options data to the Governor with their budget recommendations. According to the respondents, because the Governor is the final decision maker, the complainant is entitled to receive a copy of the Governor's final budget book, but she is not entitled to a copy of the records relied upon in creating such a record.

34. First, regarding the exemptions raised by the respondents, the Commission notes that the Appellate Court has recently opined whether an agency must first gather and review responsive public records before raising a claim of exemption to disclosure, or whether an agency may simply claim an exemption to disclosure before determining whether it actually maintains such records. *See Town of Greenwich, et al. v. Freedom of Info. Comm'm, et al.*, 226 Conn. App. 40 (2024) ("*Greenwich*") (remanding case to the Commission with an order that the respondents either develop a program or contract with an outside entity to develop a program in order to search the database at issue and, thereafter, review any responsive records, and raise exemptions, if appropriate).

35. In *Greenwich*, the plaintiffs contended that because of the nature of the records, it was not necessary for them to determine whether they maintained the requested records, if any, to claim that they constituted preliminary drafts. *See Greenwich*, 226 Conn. App. at 59. The Appellate Court disagreed:

> We agree with the commission and conclude that, without first conducting a search to determine whether the records requested by [the defendant] exist and, to the extent they exist, reviewing such records, the plaintiffs cannot satisfy their burden of establishing that those records are exempt from disclosure pursuant to §1-210(b)(1).
>
> Our Supreme Court has recognized that, [w]here the nature of the documents, and, hence, the applicability of an exemption, is in dispute, it is not only within the commission's power to examine the documents themselves, it is contemplated by the act that the commission do so.... [T]he commission [has] a central role in resolving disputes administratively under the act. To fulfill this role effectively, the commission's determinations must be

> informed. It should not accept an agency's generalized and unsupported allegations relating to documents claimed to be exempt from disclosure....
>
> No matter what method is used before the commission [to prove an exemption to disclosure], however, one thing is clear: It is the agency that bears the burden of providing the exemption....

Greenwich, 226 Conn. App. at 59-60, cert. denied, 349 Conn. 924 (2024), and cert. denied, 349 Conn. 924 (2024) (internal quotation marks omitted), citing *Wilson v. Freedom of Info. Comm'n*, 181 Conn. 324, 339-41 (1980) ("*Wilson*").

36. Second, for the reasons set forth below, the exemptions upon which the respondents rely, namely §§1-210(b)(1) and (e)(1), G.S., and §1-210(b)(10), G.S., to shield the requested records from disclosure are not applicable in this case.

37. Section 1-210(b)(1), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of: "[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure[.]"

38. Section 1-210(e)(1), G.S., additionally provides, in relevant part, that:

> (e) Notwithstanding the provisions of subdivisions (1) . . . of subsection (b) of this section, disclosure shall be required of:
>
> (1) Interagency 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 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 the members of such agency....

39. Section 1-210(b)(10), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require the disclosure of:

> Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship, marital relationship, clergy-penitent relationship, doctor-patient relationship, therapist-patient relationship or <u>any other privilege established by the common law</u> or general

> statutes, including such records, tax returns, reports or communications that were created or made prior to the establishment of the applicable privilege under the common law or the general statutes.

(Emphasis supplied).

40. The respondents appear to argue that the "deliberative process" privilege is a common law privilege, which was incorporated into the FOI Act by way of the 2011 amendments to §1-210(b)(10), G.S. *See* Public Act, 11-242 (July 13, 2011).

41. The deliberative process privilege has so little presence in Connecticut's common law that it is necessary to look to federal law for a description of what the law says and the rationale behind it. The deliberative process privilege "has been applied to protect from disclosure intra-governmental documents 'comprising part of the process by which governmental decisions are formulated.'" *Zinker v. Doty*, 637 F.Supp. 138, 140 (D. Conn. 1986). It is a privilege that is based on the policy of "protecting the decision making process of government agencies," with a focus on the protection of documents "reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975) (internal citations omitted.)

42. In 1980, the Connecticut Supreme Court interpreted the phrase "preliminary drafts and notes" in §1-210(b)(1), G.S., of the FOI Act as identical to the deliberative process privilege found in 5 U.S.C. §(b)(5) of the federal Freedom of Information Act, with the exception that, under Connecticut's FOI Act, the public agency carried the additional burden to show that "the public interest in withholding such document clearly outweighs the public interest in disclosure." See *Wilson*, 181 Conn. at 333-340.

43. The year following *Wilson*, the Connecticut legislature adopted Public Act 81-431 and added to the FOI Act the language now codified in §1-210(e)(1), G.S., *See* ¶ 38, above.

44. It is found that with the adoption of Public Act 81-431, the Connecticut Legislature made clear that the Connecticut FOI Act required more robust disclosure than is required by the deliberative process privilege permitted at the federal level. The Commission will not read the general "common law" language in the 2011 amendments to §1-210(b)(10), G.S., which do not mention the deliberative process privilege, as implicitly overruling the specific provisions contained in §1-210(e)(1), G.S., nor would such a reading be proper. It is a well settled principle of construction that the specific terms covering the given subject matter will prevail over general language of the same statute which might otherwise prove controlling:

> Where there are two provisions in a statute, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one case or subject within the scope of a general provision, then the particular provision must prevail; and if both cannot apply, the particular provision will be treated as an exception to the

general provision….

Tomlinson v. Tomlinson, 305 Conn. 539, 552–53 (2012) (citations omitted). Furthermore, "implied repeal of a statute is not favored and will not be presumed where, as here, the old and the new statutes can coexist peaceably." *Nash v. Yap*, 247 Conn. 638, 648, 726 A.2d 92, 97 (1999).

45. Accordingly, it is concluded that the specific provisions of §§1-210(b)(1) and 1-210(e)(1), G.S., not §1-210(b)(10), G.S., control the analysis in this case.

46. First, the Commission notes that because the respondents have failed to determine whether they maintain the requested budget options data, they cannot support a claim of exemption pursuant to §1-210(b)(1), G.S. *See Shew v. Freedom of Info. Comm'n*, 245 Conn. 149, 167 (1998) (holding that "the case must be remanded for a determination by the town as to whether the public interest in withholding such documents clearly outweighs the public interest in disclosure….It is undisputed that the town manager never reviewed the documents; *consequently, he could not have conducted the balancing test mandated by the statute."*) (Emphasis added).

47. Second, it is found that the fact that agency heads provide their budget options data to the respondents, who in turn relied on such data in making recommendations to the Governor concerning his final budget book, necessitates a determination that such records must be disclosed pursuant to the provision of §1-210(e)(1), G.S. This issue was likewise recently addressed by the Appellate Court in *Lindquist v. Freedom of Info. Comm'n*, 203 Conn. App. 512 (2021) ("*Lindquist*"). *See* ¶¶ 48-53, below.

48. In *Lindquist*, the plaintiff, a faculty member of the University of Connecticut Health Center (the "health center"), received his annual review pursuant to the health center's bylaws. *Lindquist*, 203 Conn. App. at 515. Under such bylaws, during the evaluation process, the faculty member undergoing review meets with the department's chairperson to discuss the past year's performance. *Id.* After a review of the faculty member's various responsibilities, the chairperson assigns an aggregate evaluation to the faculty member as being "superior," "acceptable" "marginal," or "not acceptable." *Id.* at 516.

49. As found in *Lindquist*, at the next step of the evaluation process, a file is prepared for the Merit Plan Executive Committee (the "committee") to review the chairperson's evaluation for consistency among all departments. An overall review of "acceptable" does not require further review by the committee, unless the faculty member contests the rating. *Id.* However, overall evaluations of "not acceptable," "marginal," and "superior" must be reviewed by the committee. *Id.* If the committee disagrees with the chairperson's evaluation, it will recommend a different rating and refer the file to the dean for a final decision. *Id.* In such a case, the committee provides two categories of information to the dean for final decision-making: (1) a joint recommended rating by the committee, and (2) the final individual committee members' comments and ratings of the person being evaluated. *Id.* While the health center provided the plaintiff faculty member with the first category of information, it claimed that the second category of information was exempt from disclosure pursuant to §1-

210(b)(1), G.S.

50. The Appellate Court disagreed with the health center's claim, stating:

> The plaintiff argues that the committee members' final comments and ratings are memoranda, reports, or recommendations, and that they were not preliminary, as that term is used in §1-210(b)(1), because they were available to and relied on by the dean in making his final performance rating of the plaintiff. We agree with the plaintiff that the final comments and ratings of the committee members constitute recommendations [within the meaning of §1-210(e)(1), G.S.].

Lindquist, 203 Conn. App. at 532-33.

51. In response to the health center's argument that requiring disclosure of such evaluation records would have a chilling effect on faculty members' discussions and/or willingness to serve the committee, the Appellate Court stated:

> To the extent we consider the health center's policy argument that requiring disclosure of the final comments and ratings by committee members will chill the discussion that is a necessary part of the peer review process and discourage faculty members from serving on the committee, we are not persuaded. The health center can protect from disclosure the comments and ratings by the committee members by choosing not to disclose them to the [ultimate decision maker], and [accordingly]...the committee members could discuss freely their views of the person they are evaluating, without worry that their comments and ratings would be made public.

Lindquist, 203 Conn. App. at 541, n.9. Thus, according to the Appellate Court, once the committee members' comments and ratings were provided to and relied upon by the decision maker, they became part of the process by which government decisions or policies are formulated, within the meaning of §1-210(e)(1), G.S.

52. In this matter, as in *Lindquist*, the budget options data entered into the ABS, referenced in paragraph 16, above, and the hardcopy budget options, referenced in paragraph 23, above, which were provided to the respondents to assist the Governor in creating the budget book, are subject to disclosure because *once so provided* such records become "[i]nteragency ...memorandum or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated," within the meaning of §1-210(e)(1), G.S.

53. Accordingly, it is concluded that neither the PDF records nor the budget options data referenced in paragraph 52, above, are exempt from disclosure pursuant to the provisions of §§1-210(b)(1), 1-210(e)(1), or 1-210(b)(10), G.S.

54. It is therefore concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they refused to provide the complainant with the PDF records and the budget options data referenced in paragraph 52, above.

55. In addition, our Supreme Court previously construed the provisions of §§1-211(a) and 1-212(b), G.S., in *Hartford Courant Co.* v. *Freedom of Info. Comm'n*, 261 Conn. 86 (2002) ("*Hartford Courant*"), wherein it reasoned:

> [t]he flexibility and breadth of this statute is ... illustrated by the language providing that a copy of such data shall be provided 'on paper, disk, tape or any other electronic storage device or medium requested by the person ....There is no indication in the language of §1-211 that the scope of that statute is restricted to document formats currently in existence. Indeed, such a conclusion is belied by the fee provisions contained in §1-212(b), [G.S.]....

Hartford Courant, 261 Conn. at 93 (emphasis in original) (internal citation omitted.).[7]

56. With regard to whether the respondents have acted promptly in complying with the complainant's 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

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[7] The Commission further notes that §1-211(c), G.S., provides, in relevant part, that:

> On and after July 1, 1992, before any public agency acquires any computer system, equipment or software to store or retrieve nonexempt public records, it shall consider whether such proposed system, equipment or software adequately provides for the rights of the public under the [FOI] Act at the least cost possible to the agency and to persons entitled to access to nonexempt public records under the [FOI] Act....

While the respondents have failed to gather and provide the complainant with the data comprising agencies' original budget options entered in the ABS on or around October 1, 2024, the Commission recognizes in the context of the instant matter that, in the past, members of the public could readily access hardcopy records containing such information from the respondents. *See* ¶ 10, above. Moreover, because the Commission concludes in this case that the requested data is not exempt from disclosure, it appears that, with the implementation of the ABS, the respondents have failed to comply with the requirements of §1-211(c), G.S.

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.

57. As noted above, the respondents denied the complainant's request for the legislative proposals twice, only to provide the complainant with a link to such records 165 days after she had made her request in this case. *See* ¶¶ 3, 12, 14, above.

58. It is further found that the respondents did not conduct a search to determine whether they maintained any of the budget options in a PDF format until they were ordered to do so at the conclusion of the second hearing on this matter. *See* ¶¶ 21, 23, above. Accordingly, assuming, in the light most favorable to the respondents, that they conducted the search for the PDF records on October 15, 2025, it is found that 251 days had elapsed from the date the complainant made her request for records in this case to the date they began their search for responsive records.

59. Moreover, the Commission notes that the respondents had multiple opportunities to present evidence regarding the requested records and their maintenance of such records. It is found that, rather than providing evidence at either of the hearings regarding whether they maintained agency budget options in a PDF format or regarding the capabilities of *their* ABS; gathering and reviewing such records; and, thereafter, raising informed exemptions to disclosure, the respondents chose to spend their time cross-examining a pro se complainant on perceived Commission bias[8] and on her lack of candor, objecting to questions posed by the hearing officer and generally obfuscating the substantive issues in this case.

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[8] The Commission notes that the respondents' counsel's unsubstantiated claim of bias is a serious contention, carrying with it heavy reputational risks, among others, for an organization. There is no question that in an administrative agency proceeding, the parties are entitled to be heard and have the matters at issue determined by an impartial and unbiased tribunal. However, because a contention of bias strikes at the heart of impartiality, it should not be levied lightly. Under Connecticut law, there exists a presumption that agency administrators who serve as adjudicators are unbiased. *See Clisham v. Bd. of Police Comm'rs of Borough of Naugatuck*, 223 Conn. 354, 362 (1992) ("*Clisham*"). To overcome such presumption, the [respondents] "must demonstrate actual bias, rather than mere potential bias, of the [Commission] members challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable." *Chisham*, 223 Conn. at 362. (Internal quotations and citations omitted); *see also Peatie v. Wal-Mart Stores, Inc.*, 112 Conn. App. 8, 27, n.10 (2009) ("In the present case, counsel's argument of bias is completely unsubstantiated by the [] record. Counsel has come dangerously close to crossing the invisible line delineating proper and improper conduct...."); CT R RPC Rule 8.2 (providing, in relevant part, that "(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer....").

60. It is concluded that the complainant's right under the FOI Act to prompt access to non-exempt responsive public records was denied by the respondents.

61. It is therefore also concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., when they refused to provide the complainant with the PDF records and the budget options data referenced in paragraph 52, above.

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

1. Within seven (7) days of the date of the Notice of Final Decision in this matter, the respondent Secretary shall file an affidavit with the Commission attesting to the fact that he has received a copy of such Notice of Final Decision and Final Decision.

2. Within forty-five (45) days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with a copy of the hardcopy budget options, identified in paragraph 23, of the findings, above, free of charge.

3. Within forty-five (45) days of the date of the Notice of Final Decision in this matter, the respondents shall determine which agencies requested and received permission to amend their data submission, and subsequently did *in fact* amend the original data they entered into the ABS; thereafter, the respondents shall extract the data from the ABS comprising the budget options submissions that were not amended. If the respondents are unable to perform the extraction, the respondents shall engage an outside professional to assist them with such extraction in order to provide the extracted data to the complainant within forty-five (45) days of the date of the Notice of Final Decision in this matter.

4. Due to the respondents' violations in this case, in complying with paragraph 3 of the Order, above, the respondents shall bear the cost of compliance and, thus, shall not charge the complainant for either the amount that equals the hourly salary attributed to all agency employees who will be engaged in performing the extraction services, or, in the alternative, the amount that equals the cost to the respondents of engaging an outside professional to assist them with such extraction.

5. Within forty-five (45) days of the date of the Notice of Final Decision in this matter, the respondents shall implement a system to preserve the original budget options data that agency heads enter in the ABS so that data is not overwritten.

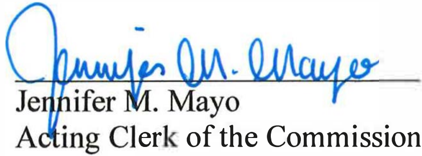
6. Henceforth, the respondents shall strictly comply with the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S.

7. In complying with paragraphs 2 and 3 of the Orders above, the respondents may withhold or redact such records, or portions thereof, that are subject to a mandatory exemption.

8. If any records, or portions thereof, are withheld pursuant to paragraph 7 of the Order above, the respondents shall submit an affidavit sworn to by a person with requisite knowledge, which identifies and briefly describes the withheld records, or portions thereof, and

the statutory basis for withholding such records. Such affidavit shall be submitted to the Commission within fifteen (15) days of the disclosure orders set forth in paragraphs 2 and 3, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 25, 2026.



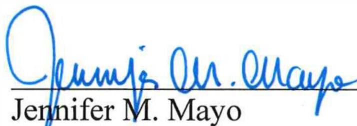
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JACQUELINE RABE THOMAS, Hearst CT Media, PO Box 330238, West Hartford, CT 06133-0238

SECRETARY, STATE OF CONNECTICUT, OFFICE OF POLICY & MANAGEMENT; AND STATE OF CONNECTICUT, OFFICE OF POLICY & MANAGEMENT, c/o Attorney Gareth D. Bye and Attorney Kara A.T. Murphy, Office of Policy and Management, 450 Capitol Avenue, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission

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