FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Nathaniel Clark,

Complainant

against

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

Respondents

FINAL DECISION

Docket #FIC 2025-0042

January 14, 2026

The above-captioned matter was heard as a contested case on May 21, 2025, at which time 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 November 20, 2024, the complainant requested copies of records related to the following three Commission on Human Rights and Opportunities ("CHRO") cases: (a) "2110401 – Clark v. DRS"; (b) "2110402 – Clark v. Biello"; and (c) "2110403 – Clark v. Bucari" (together, the "CHRO cases"). Specifically, the complainant requested all documents and communications related to such CHRO cases for a time period between the inception of each such case and September 1, 2024.

3. It is found that, by email, on or around December 2, 2024, the respondents acknowledged the complainant's records request.

4. It is found that, by email dated January 3, 2025, the respondents informed the complainant that they had completed a search and had located 821 responsive documents, including emails and attachments. It is also found that, by the same email, the respondents asserted that:

(a) they estimated the "FOI charges" would "substantially exceed $10"; and thus, the respondents were "requiring prepayment of those FOI charges";

(b) the "primary agency expense associated with satisfying [the complainant's] request for computer-stored public records is employee time engaged in providing the records";

(c) the hourly rate for working on the request would be "over $65.00" (which represented the effective hourly wage of the respondents' Assistant Attorney General ("AAG") assigned to handle the complainant's request) and that the respondents estimated it would take "employee engagement for at least 10 hours to provide [the complainant] the copies of records to satisfy [his] request", and accordingly, they were "requir[ing] a prepayment of at least $650";

(d) the complainant could think of such prepayment fee as a "retainer";

(e) "[o]nce the job is completed or the prepayment exhausted, [the respondents would] provide [the complainant] with a reconciliation bill, return any overpayment, and provide the fruits of that work. Time spent on search and retrieval of records will not be charged";

(f) "[i]f some work remains to be done after the exhaustion of [such] prepayment, [the complainant would] be given the option of making an additional payment at that time. The reason substantial time is estimated to be needed is because as a law office much work product and communication is confidential under the attorney-client privilege and ***such information must be identified and redacted***." (Emphasis added); and

(g) "[the respondents would] engage in providing [the complainant] with [his] copies of computer-stored information only after receipt of [the complainant's] prepayment."

5. It is found that, by email dated January 10, 2025, the respondents informed the complainant that:

> [y]ou are not being denied the documents. Many of the documents yielded contain communications which may be exempt by law; therefore you are unable to review prior to our review and analysis regarding the exemptions. Again, I refer you to my email of January 3, 2025, below. Once the requested payment is received, our attorneys will start the review process and notify you when the documents are ready for review or ready to be sent to you.

6. It is found that, by email dated January 14, 2025, the complainant replied to the respondents and asked, "If I am not being denied any records, as you assert, I should be able to come inspect them; when can I do that?"

7. It is found that, by email dated January 15, 2025, the respondents referred the complainant to their prior emails.

8. By letter of complaint, dated and filed January 16, 2025, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his right to inspect or receive copies of the records described in paragraph 2, above. The complainant also requested the imposition of a civil penalty against the respondents.

9. The Commission takes administrative notice of its final decisions in Adam Osmond v. Daniel O'Keefe, Commissioner, State of Connecticut, Department of Economic Community Development et al., Docket #FIC 2024-0517 (August 13, 2025) ("Osmond I")[1] and Adam Osmond v. Attorney General, State of Connecticut, Office of the Attorney General; and State of Connecticut, Office of the Attorney General, Docket #FIC 2024-0756 (November 20, 2025) ("Osmond II"), wherein the Commission was presented with substantially similar issues to those presented in this matter.

10. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

> [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 (1) inspect such records promptly during regular office or business hours, or ... (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

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

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

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[1] The Commission notes that the respondents in Osmond I have appealed the Commission's final decision. At the time of the Commission's consideration of the instant matter, that appeal is still pending.

14. The respondents assert that the Commission lacks jurisdiction to hear this matter because, in their view, the FOI Act does not permit the Commission to review an agency's estimate of costs required for prepayment under §1-212(c), G.S. Such argument ignores the plain language of the statute.

15. Section 1-212(c), G.S., clearly and unambiguously limits a public agency's ability to request prepayment of fees to *only* those fees that are either *required or permitted* under the FOI Act. See §1-212(c), G.S. ("[a] public agency may require prepayment of any fee ***required or permitted under the [FOI] Act***, if such fee is estimated to be ten dollars or more.") (Emphasis added).

16. Whether a fee is "required or permitted" is clearly within the purview of this Commission's jurisdiction and, thus, the Commission is well within its authority to determine whether the respondents' request for prepayment was predicated on fees that are impermissible under the FOI Act.

17. Accordingly, the Commission now turns to whether the respondents' request for prepayment included only those fees that were "required or permitted" under the FOI Act.

18. Section 1-211(a), G.S., provides as follows:

> [a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information 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. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212.

19. Section 1-212, G.S., provides in relevant part, as follows:

> (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 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 function necessary to provide the copy as requested,

> but not including search or retrieval costs except as provided in subdivision (4) of this subsection;
>
> (2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;
>
> (3) The actual cost of the storage device or media provided to the person making the request in complying with such request; and
>
> (4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. . . .

20. It is found that the labor costs that the respondents factored into their request for prepayment, included employee time spent: (a) entering the responsive records into the state's contracted document management system, Everlaw; (b) conducting a legal review to identify possible exemptions; (c) communicating with colleagues and "researching" to determine whether any information should be withheld; (d) redacting the information they deem to be exempt from such records; and (e) communicating with the complainant.

21. The respondents contend that the fee provisions contained in §1-212(b)(1), G.S., permit agencies to charge a fee for *all* labor costs associated with processing the complainant's request, except for those attributable to search or retrieval of such records. Accordingly, the respondents assert they could: (a) charge the complainant for the labor costs described in paragraph 20, above; and (b) use those costs as a basis for estimating prepayment.

22. The respondents cite no authority to support their reading of §1-212(b)(1), G.S. Rather, the respondents purport that the plain language of the statute requires such interpretation. Specifically, the respondents focus on the portion of §1-212(b)(1), G.S., permitting agencies to charge for "the hourly salary attributed to all agency employees engaged in providing the requested computer-stored records. . . ." The respondents assert that the phrase "engaged in providing" covers any time they spend working on a records request (except for search and retrieval costs). The respondents' interpretation not only severely conflicts with the plain language of the statute but also leads to absurd and unworkable results.

23. Section §1-1, G.S., requires that "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly."

24. Furthermore, §1-2z, G.S., requires that:

> [t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes.

> If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be construed.

25. The provisions of §1-212, G.S., set forth all permissible fees that an agency may charge in connection with providing *copies* of public records. See §1-212(a), G.S., ("[t]he fee for any ***copy*** provided in accordance with the [FOI] Act.") (Emphasis added); see also §1-212(b), G.S., ("[t]he fee for any ***copy*** provided in accordance with subsection (a) of section 1-211. . . .") (Emphasis added).

26. In the context of non-computer-stored records (i.e., paper records) the explicit terms of §§1-212(a)(A) and (B), G.S., limit permissible fees to copying fees of twenty-five cents *per page* for state agencies and fifty cents *per page* for all other public agencies.[2]

27. It is clear, therefore, that the fees a public agency may charge for paper records are solely derived from the costs attributable to providing the record in the prescribed medium. As an agency would not be able to provide original versions of paper records to requestors, they must make *physical copies* of such records to *provide* them to the requestor. In the case of paper records the *physical copy* is the prescribed medium in which the agency is obligated to *provide* records. Notably, nothing in §1-212(a), G.S., would permit the respondents to charge a fee for (or predicate their fee estimate on) any of the labor costs identified in paragraph 20, above.

28. As with §1-212(a), G.S., the fee provisions in §1-212(b), G.S., also specifically refer to fees for producing *copies*. See e.g., §1-212(b), G.S. ("In determining such costs for a ***copy***....") (Emphasis added). However, unlike paper records, in which a copy necessarily means a physical reproduction of the record, the meaning of the word "copy" with respect to computer-stored records is not self-evident, and the statute does not provide a contextual definition. Therefore, pursuant to §1-1, G.S., the Commission has defined the term "copy" in accordance with its commonly approved usage. See Osmond II, ¶ 27 ("to duplicate information and reproduce it in another part of a document, in a different file, or memory location, or ***in a different medium***.... Similarly, files ***can be copied from one disk or directory to another***, and data can be copied from the screen to a printer or to a data file.") (Emphasis in original).

29. Based upon the definitions of "copy" identified in paragraph 28, above, and as more thoroughly analyzed in Osmond II, this Commission has held that the use of the term "copy" in §1-212(b), G.S., refers to the reproduction or duplication of the computer-stored public record from one location or format to another. The legislature's consistent use of the word "copy" across §§1-212(a) and (b), G.S., evidences a clear intent to address the same issue in both instances – the cost associated with the production of a public record in a *given medium*. The reason why §1-212(b), G.S., has more categories of permissible charges as compared to §1-

[2] Section 1-212(a)(B), G.S., also provides that "[i]f any copy provided in accordance with said [FOI] Act requires a transcription, or if any person applies for a transcription of a public record, the fee for such transcription shall not exceed the cost thereof to the public agency."

212(a), G.S., is clearly attributable to the nature of computer-stored records, which may exist in varying file formats with varying degrees of interoperability across different computer systems.[3]

30. The Commission's interpretation of the legislature's intent is also consistent with how Connecticut courts have interpreted the provisions of §1-212(b), G.S. For instance, in Taconic Data Corp. v. Town Clerk, Town of Suffield et al., No. HHB-CV-97-0572137, 1998 WL 323437 (Conn. Super. Ct. June 10, 1998) ("Taconic Data Corp."), the court held that the Town Clerk improperly calculated fees for providing computer-stored public records, as such fees were derived from "the content of the electronic diskette as if produced on paper, and charged a corresponding $1.00 per page fee." In doing so, the court in Taconic Data Corp. noted that:

> Prior to the enactment of Public Act 91-347, §1-19a [now codified as §1-211, G.S.], required only that 'Any agency which maintains its records in a computer stored system ***shall provide a printout*** of any data properly identified. ***The 1991 amendment added the obligation to provide this nonexempt data in 'disk, tape, or any other electronic storage device or medium requested by that person . . .'***
>
> The Freedom of Information Act expresses a strong public policy in favor of the open conduct of government and ***free public access to government records***. Allowing the town clerks to charge ***thousands of dollars more than their costs in providing a copy of an electronic disk containing public information is highly offensive to the 'strong public policy' of 'free public access to government records.'*** The information in electronic disk format is available as a matter of right. There is no evidence to support the claim that §7-34a(a) [a statute providing for fees of paper copies of the same records] expresses a stronger public policy regarding town clerks', or towns', income. The contrary priority of policy is reflected in Glastonbury v. Freedom of [Info. Comm'n], 234 Conn. 704, 714 . . . (1995) [("Glastonbury")], which held: "***[a]lthough the legislature's narrowly tailored approach to the FOIA exclusions and exemptions may add a layer of complexity to agency administration, the legislature implicitly has decided that the associated costs are outweighed by the benefits derived from open government.***"
> . . .
>
> Sections 1-15 [now codified as §1-212, G.S.] and 1-19 [now codified as §1-210, G.S.] are provisions of the FOIA. 'The general rule under the Freedom of Information Act is disclosure with exceptions to the rule being narrowly construed.' New Haven v.

[3] The Commission notes that this was particularly true in 1991, when the language codified in §1-212(b), G.S., was enacted. See Osmond II, n. 7.

> FOIC, 205 Conn. 767, 774 . . . (1988); Superintendent v. FOIC, 222 Conn. 621, 626 . . . (1992); Perkins v. FOIC, 228 Conn. 158, 167 . . . (1993).
>
> Section 7-34a(a) is an exception to the FOIA, and must thus be narrowly and strictly construed. Limiting its application to paper copies gives full expression to the statutory language and carries out the strong public policy of free (or nor more than cost) access to public records.
> . . .
>
> The fee to the plaintiff for copies of [the requested records] in electronic format ***may not exceed the towns' reasonable costs in providing the copies in that format.***

(Emphasis added).

31. As found in paragraph 20, above, the respondents included in their fee estimate, their time for legal review of the records, talking with their colleagues about the records, redacting information where necessary, and communicating with the complainant. It is found that none of those tasks are attributable to the "computer-stored" nature of the requested records. The respondents would have to perform those same tasks regardless of whether such records were paper records or computer-stored records.

32. The respondents do not appear to assert, nor could they reasonably assert, that they are permitted to charge for time spent on legal review and redactions if such records were paper records pursuant to §1-212(a), G.S. Therein lies the absurdity of the respondents' interpretation of §1-212(b), G.S. Accepting such interpretation necessarily requires the conclusion that, in passing the language now codified in §1-212(b), G.S., the legislature meant to create two parallel fee provisions wherein fees for the *exact* same work were prohibited for requests for paper records but permitted simply if the requested records were stored in a computer.[4]

33. Additionally, the respondents ignore the fact that §1-212(b), G.S., specifically excludes from its provisions "a printout which exists at the time that the agency responds to the request for such copy . . . ." Although the term "printout" is not defined in the FOI Act, the Commission has held that, in the context of computer-stored records, it means a "[f]orm of computer system output, printed on a page by a printer…" (i.e. a "printout" or "hardcopy"). See Osmond II, ¶ 32. By its own terms, §1-212(b), G.S., excludes those records that, while stored on a computer, are maintained by the agency in physical form at the time of the request. This exclusion further underscores that the fee provisions of §1-212(b), G.S., are designed to address

[4] For example, in their post-hearing brief, the respondents indicate that "[r]eviewing the requested computer-stored information, largely emails, is not some frivolous choice of the Respondents. . . .," but is necessary given their various legal obligations (e.g., to protect the attorney-client privilege, or notify employees about the disclosure of their personnel or medical files). See R.Br., p. 12. There is no dispute that such obligations are significant. It is clear, however, that such obligations do not disappear based on *how* the records are stored. There is simply no principled reason why, by storing records in a computer (rather than on paper), a public agency may charge for any task associated with responding to a records request (with the exception of search and retrieval costs).

the costs associated with providing a computer-stored record in a particular format or medium because, if a record already exists as a printout, any costs associated with *providing* that record stem from making a copy for the requestor.

34. Just as it would be absurd for the legislature to prohibit or permit fees for the exact same work based on whether such records are paper records or computer-stored records, it is similarly absurd to assume that the legislature intended to condition such fees on whether a public agency has previously printed out a computer-stored record. As found in paragraph 31, above, any legal review, discussion with colleagues, or redactions are not dependent on whether such records are paper records or computer-stored records. It is found that such tasks are entirely dependent on the *contents of the records* and are not contingent on the medium on which the requestor seeks such records.

35. It is found that, as with the improperly calculated fees in Taconic Data Corp., the respondents' interpretation of §1-212(b), G.S., is "highly offensive to the strong public policy of free access to government records" and, therefore, must be rejected. (Internal quotation marks omitted). Taconic Data Corp., 1998 WL 323437, at *2-3.[5]

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[5] The respondents also argue that there was no "denial" of the complainant's request because the complainant was required to prepay the fees quoted by the respondents but refused to do so. This argument presumes the fees that form the basis for such estimate were proper. For the reasons set forth in paragraphs 25 through 34, above, the Commission rejects the respondents' argument outright. The Commission further notes that fees, such as the kind the respondents propose:

> would have the practical effect of denying the [public] access to records, that by statute, must be made available to the public. Such result would be inconsistent both with the act's broad policy favoring the disclosure of information and with the well established canon of statutory construction 'that those who promulgate statutes or rules do not intend to promulgate statutes or rules that lead to absurd consequences or bizarre results.

Hartford Courant Co. v. Freedom of Info Comm'n, 261 Conn. 86, 100 (2002) (concluding that the Department of Public Safety improperly calculated a fee of $20,375,000 for the complainant's request for "a digital copy of all of the fields of information typically produced on a Bureau of Identification rap sheet for every adult in the database" on either a tape or CD-ROM. The Court concluded, for various reasons, that such fee conflicted with §1-212(b), G.S.)

Similarly, at several points during the hearing in this matter, and in their post-hearing brief, the respondents referred to their $650 fee estimate as a "retainer."

The Commission finds the respondents' framing of their statutory obligation to provide public records as a service permitting a "retainer" to be an egregious misreading of the requirements of the FOI Act. A "retainer" is "a type of compensation agreement with lawyers for ***either reserving their employment or as compensation for future service***." (Emphasis added). *Retainer*, CORNELL LEGAL INFORMATION INSTITUTE https://www.law.cornell.edu/wex/retainer (last accessed October 29, 2025). The respondents are not in the complainant's employment, and the complainant is not the respondents' client. Furthermore, the respondents are not providing the complainant a "service;" as the complainant is entitled to receive non-exempt public records, and it is a primary duty of all public agencies to provide such records. See Comm'r of Dept. of Emergency Services and Public Protection v. Freedom of Info. Comm'n, Docket No. HHB-CV-18-6047741, 2020 WL 5540637, at *3 (Conn. Super. Ct. July 20, 2020) ("DESPP v. FOIC") ("The court interprets 'primary duty' in this sense as an important duty of the agency on par with the agencies [sic] other significant duties, or said another way, the agency's FOIA duty is not a second class duty. This appears to be an apt description. An agency's FOIA duty is a statutory duty or command. As such, it is not second class to any other statutory duty or command.")

36. Besides their unsupported interpretation of the "plain language" of §1-212(b)(1), G.S., the respondents also assert that the principles outlined in Pictometry Intern. Corp. v. Freedom of Info. Comm'n, 307 Conn. 648 (2013) ("Pictometry"), support their position that they may charge for any labor costs for processing a records request (excluding those for search and retrieval). Specifically, the respondents contend that, as the Court noted in Pictometry, the legislature did not intend to "subject state agencies to virtually limitless financial exposure." The respondents' reliance on Pictometry is misplaced.

37. The respondents cite to Pictometry as an instance where "[t]he Connecticut Supreme Court has previously ***addressed a computer-stored public information FOI fee dispute***...." See R. Br. at 15. However, the respondents misread the Court's holding in Pictometry.

38. Pictometry, in relevant part, involved a records request to a state agency for all imagery provided to such state agency by Pictometry International Corporation pursuant to an agreement for specialized aerial photographic services. Pictometry, 307 Conn. 648 at 654-55. Under that agreement, the state agencies could not "reproduce any of the licensed images for use by persons not covered by the licensing agreement unless the licensed user [i.e., the state agency] paid Pictometry a fee of $25 per image, which fee the licensed user was authorized to pass on to the person requesting the copy." Id. at 655.

39. In determining whether the state agencies could pass along the $25 fee described in paragraph 38, above, the Court explicitly stated that:

> We conclude, however, ***that the $25 per image copying fee is not a fee for the disclosure or copying of 'public records in a computer storage system'*** and, therefore is not governed by §§1-211(a) and 1-212(b)(3), even though the records in the present case happen to be stored in a computer. ***Rather, it is a fee for copying a copyrighted public record.***

(Emphasis added) Id. at 685.

40. The Court in Pictometry highlights the same absurdity described by the Commission in paragraphs 32 and 34, above. Specifically, in concluding that the $25 per image fee was not governed by §§1-211(a) and 1-212(b)(3), G.S., the Court noted that "***[i]t would be anomalous to conclude §1-211(a) and §1-212(b)(3) govern the fee that may be charged for copying a copyrighted record if the record is stored in a computer, but other rules govern the fee that can be charged for copying other copyrighted records.***" (Emphasis added). Id. So too would it be anomalous for the FOI Act to permit fees for labor costs, such as legal review and redactions for computer-stored records but not paper records.

41. Finally, the Court in Pictometry distinguished §1-212, G.S., from the fees associated with accessing copyrighted material and noted that:

> We conclude that § 1-212 was not intended to bar public agencies from charging for the costs of copying copyrighted materials in addition to the fees specifically authorized in § 1-212. First we conclude that the $25 fee that [the state agencies are] required to pay

> Pictometry for reproducing photographic images for use by a nonlicensed user ***is not a fee for a 'copy'*** in the sense that that word is used in § 1-212. That statute was clearly intended to place limits on the mechanical, material and labor costs of preparing copies that a public agency may pass on to the person requesting the copy. The $25 per image fee provided for in the licensing agreement is not, however, a fee for the ***mechanical, material or labor costs of reproducing copies of the copyrighted materials***. . . .

(Emphasis added). Id. at 686.

42. Consistent with paragraphs 25 through 29, above, the Court concluded that the fees under §1-212, G.S., are fees for *copies*. Notably, the fact that the Court does not distinguish between subdivisions (a) and (b) of §1-212, G.S., strongly suggests that both provisions serve the same purpose – to produce the record in a prescribed medium (either paper copies pursuant to §1-212(a), G.S., or in the requested medium pursuant to §1-212(b), G.S.)

43. The Commission in no way suggests that public agencies should be subject to "virtually limitless financial exposure."[6] The Commission recognizes that the process of providing a copy of a computer-stored record in a specified format or medium can be time intensive and may require an agency to expend funds *it otherwise would not have to*. Section 1-212(b), G.S., clearly permits fees to cover those costs. It does not, however, afford public agencies *carte blanche* to charge for an entirely separate category of fees simply because the records are stored on a computer as opposed to paper.

44. At the hearing in this matter, the respondents claimed multiple times that redactions would need to be "formatted" out of responsive records. Again, in their post-hearing brief, the respondents claimed that part of the fees included in their prepayment estimate were attributable to "formatting the copies of computer-stored public information to remove exempt data as necessary under the circumstances." See R. Br. at 11. It is found that the respondents have presented no authority to support their position that redacting computer-stored records constitutes "formatting".

45. In Osmond II, the Commission explicitly rejected the respondents' unsupported position described in paragraph 44, above, and instead employed the required methods of statutory construction to define "formatting". See §§1-1 and 1-2z, G.S.

46. This Commission has defined the term "formatting", as used in the context of computers and computer-stored records, to refer to the underlying structure and arrangement of

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[6] The Commission notes the respondents' testimony that they have located all responsive records in this matter; thus, unless such responsive records include copyrighted material that is subject to the same issues as the records in Pictometry, there is no issue of "virtually limitless financial exposure" based upon a licensing agreement requiring the respondents to pay a private company $25 for each copy disclosed to the complainant. See Pictometry at 683. In fact, the respondents specifically estimated that such financial exposure would likely be limited to $650, which would represent all labor and costs associated with providing the complainant with 821 responsive documents. To the extent that the respondents claim "[i]t is within the realm of possibility" that such copyrighted material might be included in the responsive records at issue here (see R. Br. at n. 7), such claim is purely speculative. Without first reviewing the records, the respondents cannot successfully claim any such issue exists here.

data for a given computer-stored file or record, independent of the contents of such file or record. See Osmond II, ¶¶ 46 through 50. Conversely, this Commission has also held that redactions are content-based edits to records. See Osmond II, ¶ 52.

47. Accordingly, it is found that because "formatting" has no bearing on a document's content, and redactions are content-based edits, redactions cannot, and do not, constitute "formatting" within the meaning of §1-212(b)(1), G.S. See also Osmond II, ¶¶ 54 through 57.

48. In arguing that redactions constitute "formatting," the respondents also ignore the crux of §1-212(b)(1), G.S., that any "formatting" must be *necessary* to the provision of the copy "on paper, disk, tape, or any other electronic storage device or medium ***requested***." (Emphasis added). See §1-211(a), G.S. In doing so, the respondents render the phrase "as requested" superfluous, and such interpretation must be rejected. Connecticut Podiatric Medical Ass'n v. Health Net of Connecticut, Inc., 302 Conn. 464, 474 (2011) ("[i]t is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . .[I]n construing statutes, 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. . . .").[7]

49. The Commission has long held that public agencies cannot charge a fee for the time spent redacting public records, and the Commission's position, as described in paragraphs 45 through 48, above, is consistent with both case law and its prior decisions.

50. Kozlowski v. Freedom of Info. Comm'n, Docket No. CV-96-0556965, 1997 WL 435860 (Conn. Super. Ct. July 29, 1997) ("Kozlowski"), is the only court case to consider the assessment of fees in relation to redactions. Kozlowski involved a request to the Department of Motor Vehicles ("DMV") to inspect records of work permit applications submitted to the department by motorists whose operator's licenses had been suspended or revoked. See Id. at *1. The DMV responded that it would permit access to inspect such records, but that the requestor would need to pay associated fees.

51. The records in Kozlowski were *paper records*[8] that contained certain sensitive information that the DMV was required, by law, to redact. In determining what fees could be assessed for access to such records, the Court reasoned that:

> [In order to permit the requestor to inspect the records], the department would have to ***copy the records***, redact the prohibited names and addresses, and only then allow [the requestor] to inspect the redacted copies of the information he desired. Thus, under the unique circumstances of this case, ***compliance with the***

[7] Again, redactions may be necessary for the respondents to comply with their legal obligations, but such obligations exist *regardless* of whether the records are stored in hard copy, on a computer, or in any other format yet to be created. Just as the respondents have a legal obligation with respect to protecting privileged communications, so too do they have a legal obligation to provide copies of non-exempt public records.

[8] This is clear from the DMV's assertion that "***there is no computerized index of work permit applications***." Kozlowski, 1997 WL 435860, at *1.

> ***complainant's request to inspect records necessarily required the department to make copies of those records.***
>
> . . .
>
> Since [the requestor's] request to inspect public records in this case ***required the department to make copies of those records*** in order to comply with the law, the department was entitled to charge [the requestor] any fees that applicable statutes permit. ***Of course, [the requestor] would be entitled to keep the copies for his own use.***

(Emphasis added). Id. at *2-3.

52. The court in Kozlowski clearly understood that, because the records at issue were paper records, the DMV would have to make another *copy* of such records, in order to redact the pertinent information. The only alternative would be for the DMV to redact the *original versions* of the record, which would destroy the original records, rendering them useless to the DMV.

53. Kozlowski centers on the cost of providing access (in that case through inspection) to a public record in a prescribed medium. Because such records were paper records, that prescribed medium, pursuant to §1-212(a), G.S., is a physical reproduction of the record (i.e., a paper copy). Nothing in the court's analysis remotely suggests that the DMV could also charge for the *time* it would take them to redact those copies after they were made.

54. The Commission, in Jessica Stedman v. Paul Vogel, Superintendent of Schools, Regional School District #1, et al., Docket #FIC 2018-0293 (February 13, 2019) ("Stedman"), applied Kozlowski, when the Regional School District # 1 (the "District") charged a requestor $.75 per page for redacted copies of records.

55. Unlike Kozlowski, however, the requestor in Stedman, requested computer-stored records (e.g., emails), and also requested that "***any copies be provided to her electronically via email.***" Id. at ¶ 3.

56. In Stedman, the Commission found that:

> the superintendent printed out the potentially responsive emails ***because it was easier for her to read them that way, rather than on her computer***, and because she believed that some of the emails might need to be redacted. Although the Commission appreciates that it may be easier for some people to review emails when they are in printed form, as opposed to reading them on a computer screen, ***the FOI Act does not permit a public agency to charge a fee for a copy of a nonexempt electronic record, when the requestor has asked that such record be provided electronically. The Commission takes administrative notice of the fact that there is no cost associated with transmitting a record electronically.***

(Emphasis added). Id. at ¶ 18.

57. The Commission's conclusion in Stedman, turned on whether it was *necessary* for the public agency to print out computer-stored records to make redactions. In Stedman, the Commission recognized that the records at issue were printed out as a matter of convenience for the respondent, as opposed to being necessary to make mandatory redactions. Id. at n. 2. ("The Commission notes, however, that if a public agency receives a request for a copy of, or to inspect a record that contains information that is ***required by law*** to be redacted, and the public agency must make a copy of the record in order to redact such information, the public agency may charge the requestor the statutory fee for that copy.") (Emphasis in original).

58. Additionally, such records were requested to be produced in an electronic format (specifically, email). Therefore, the District was not required to print out the records to provide them in the medium requested. Id. ("Accordingly it is concluded that the respondents violated §§1-211(a) and 1-212(b), G.S., by charging the complainant a copy fee of $.25 per page for unredacted ***paper copies, rather than providing them to her electronically, free of charge as she requested.***") (Emphasis added).

59. Notably, the District in Stedman,

> conceded at the hearing in [that] matter, that they violated §1-212, G.S., by charging a flat 'redaction fee' for redacted records in addition to the copying fee, which resulted in the complainant being charged $.75 per page for redacted copies. At the second hearing in [that] matter the respondents represented that they had refunded the complainant the amount of this redaction fee.

Id. at ¶ 20 (citing Kozlowski).

60. The Commission also notes that the respondents' assertion that they can charge for redactions appears to directly conflict with the legislature's own understanding of the matter. Specifically, as noted in Osmond I:

> the Commission takes administrative notice of the many legislative proposals introduced since 2023 seeking to allow law enforcement agencies to charge a redaction fee under certain circumstances for the disclosure of a record created by police body-worn recording equipment and dashboard cameras. *See* Senate Bill 1222, *An Act Concerning Fees for Copying, Reviewing and Redacting Records Created by Police Body-Worn Equipment & Dashboard Cameras* (2023); Senate Bill 431, *An Act Concerning Fees for Copying, Reviewing and Redacting Records Created by Police Body-Worn Recording Equipment Dashboard Cameras* (2024); Senate Bill 973, *An Act Permitting Redaction Fees for the Disclosure of Records Created by Police Body-Worn Recording Equipment or Dashboard Cameras under the Freedom of Information Act* (2025); and Senate Bill 1229, *An Act Concerning Fees for Copying, Reviewing and Redacting Records Created by Police Body-Worn Recording Equipment and Dashboard Cameras* (2025). The Commission further notes that if the respondents' interpretation of §1-212, G.S., were correct, there would

> be no need for a statute governing redaction of, and fee structure for, the disclosure of body-worn camera and dashboard camera records.

See Osmond I at ¶ 55. See also Osmond II at ¶¶ 71 through 72.

61. Based upon the foregoing, it is found that the plain language of §1-212(b), G.S., does not support the respondents' position that time spent redacting records are permissible charges under the FOI Act.

62. It is therefore found that the respondents' request for prepayment of fees was improperly predicated on labor costs not associated with providing copies of computer-stored records in a requested format as required by §1-211(a), G.S. (e.g., for legal review, including time spent making redactions, and communicating with colleagues).

63. Moreover, the plain language of §1-212(d)(2), G.S., specifically *requires* public agencies to waive fees when "***[t]he records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-210.***" (Emphasis added). Section 1-212(d)(2), G.S., is directly adverse to the respondents' position in this matter, particularly with respect to demanding a prepayment fee of a requestor for any costs associated with redactions.

64. The Commission notes that at several points throughout the hearing in this matter, and in their post-hearing brief, the respondents argued that a public agency's decision to waive fees, based upon whether it would benefit the general welfare, pursuant to §1-212(d)(3), G.S., is "unreviewable" by this Commission. See, e.g., R. Br. at 7, 18.

65. The respondents failed, however, to address §1-212(d)(2), G.S., which clearly prohibits them from charging for exempt records. The Commission also notes that, at the hearing in this matter, the complainant specifically attempted to question the respondents on this very point, and counsel for the respondents objected to the line of questioning on the grounds that it called for speculation. Counsel for the respondents argued that it was purely speculative to discuss such fee waiver until the respondents had actually incurred all labor costs and could then determine the respondents' actual expenses and the fees to be derived therefrom. The Commission finds the respondents' failure to raise §1-212(d)(2), G.S., in their brief to the Commission, and their failure to analyze its impact on their legal arguments, concerning.

66. The Commission also finds the respondents' circular arguments with respect to their perceived ability to charge prepayment fees, based upon redacting exempt information – when such fees would, ultimately, need to be waived pursuant to §1-212(d)(2), G.S. – likewise, very concerning.[9] In their brief, the respondents claim:

> scrutiny of an actual FOI fee bill might reveal a violation of the FOI Act's provisions for what expenses are part of the FOI fee, but a *retainer* and an *estimate* are not a FOI fee *bill*. The FOI Act plainly and unambiguously permits a public agency to require prepayment, and thus a requestor must actually make a prepayment in order to

[9] The Commission notes, somewhat astonishingly, that in their post-hearing brief, the respondents claim that "any FOI fee estimate freely given to a requestor is a kindness, not an FOI right or basis for a violation." R. Br. at 14.

> ultimately obtain an actual FOI fee bill. Only an actual FOI fee bill might reveal an unlawful charge that constitutes a violation of the FOI Act.

R. Br. at 14. (Emphasis in original). The respondents appear to claim that they can charge any prepayment fee they, alone, deem to be reasonable, based upon any labor costs they determine might be associated therewith, that such prepayment fee cannot be challenged by a requestor or reviewed by this Commission, that the respondents can include in such prepayment fee unlawful charges, and finally, that a requestor must pay the prepayment fee in order to obtain the actual FOI fee.

67. The Commission finds the respondents' argument severely conflicts with the spirit of the FOI Act and also leads to absurd and unworkable results.

68. It is found that it is entirely improper for the respondents to request prepayment of estimated fees predicated on costs that would ultimately need to be waived, pursuant to §1-212(d)(2), G.S.

69. It is further found that the respondents failed to prove that the estimated total for legitimate fees equaled or exceeded ten dollars, as required by §1-212(c), G.S.

70. Accordingly, it is concluded that the respondents violated the fee provisions of §1-212, G.S.[10]

71. Finally, it appears that, while the respondents acknowledged at the hearing that their obligations under the FOI Act are not a "lesser duty", such obligations are, in practice, treated by the respondents as subordinate to their other duties. This was made clear when the respondents' witness, AAG Antonia Howard, testified at the hearing in this matter that she considered herself to be "neglecting" her other duties when focusing on this request and that the respondents have a policy to charge requestors if an FOI response "takes employees away from their normal course of duty for a long period of time." This attitude permeates the entirety of the respondents' arguments and conflicts with their legal obligations. As the court recognized in DESPP v. FOIC, a public agency should consider its obligations under the FOI Act as a "primary duty" of that agency, "on par with the [agency's] other significant duties, or said another way, that the agency's FOIA duty is not a second class duty." Id. at *3. The respondents did not provide testimony or any other evidence that they have a practice of requiring their clients (i.e., public agencies) to pay prepayment fees in other instances nor did the respondents provide any evidence regarding what they consider to be in the "normal course of duty."

72. The Commission recognizes that public agencies have many obligations other than those outlined in the FOI Act. However, the way in which the FOI Act balances those obligations is through the promptness requirements of §§1-210(a) and 1-212(a), G.S.

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[10] The Commission notes that because the respondents' request for prepayment of estimated fees in this matter violated the fee provisions of §1-212, G.S., the Commission need not further address their arguments with respect to the complainant's alleged failure to apply for a "fee waiver" under §1-212(d)(3), G.S.

73. In determining whether public agencies have acted in a prompt manner when responding to a records request, the Commission considers many factors including "***the time constraints under which the agency must complete its other work***." See Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (January 11, 1982) (emphasis added). Accordingly, if a public agency must complete their other work under particular time constraints, they might reasonably take longer to produce records in response to a request (subject to the particular facts and circumstances of each case).

74. At the hearing in this matter, the respondents also asserted that their decision to charge a prepayment fee for some requestors – when the respondents consider the request to be "large" – and to not charge other requestors a prepayment fee – when the request is, evidently, not large enough – to be based upon an "unpublished, informal policy."[11]

75. It appears to the Commission that the respondents seek to use §1-212(b)(1), G.S., as a method to manage its various duties, particularly by minimizing its obligations under the FOI Act. In doing so, however, the respondents contort the language of §1-212(b), G.S., to derive an interpretation that flies in the face of the basic tenets of the FOI Act.

76. Accordingly, it is concluded that the respondents violated the promptness and disclosure provisions of §§1-210(a) and 1-212(a), G.S.

77. After consideration of the entire record, the Commission, in its discretion, declines to consider the imposition of a civil penalty against the respondents.

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 in this matter, the respondents shall provide the complainant with all records responsive to his request described in paragraph 2 of the findings, above, unredacted and free of charge.

2. In complying with paragraph 1 of the order, above, the respondents may withhold or redact such records, or portions thereof, that are the subject of a mandatory exemption, including the attorney-client privilege, set forth in §52-146r, G.S., as incorporated in §1-210(b)(10), G.S.

3. If any records, or portions thereof, are withheld pursuant to paragraph 2 of the order, above, the respondents shall submit an affidavit sworn to or attested by a person with the requisite knowledge that identifies and briefly describes the withheld record and the statutory basis for withholding such information. Such affidavit shall be submitted within thirty (30) days of the Notice of Final Decision in this matter.

4. If the respondents fail to comply with any order set forth in paragraphs 1 through 3, above, the complainant may file an appeal with the Commission, and such appeal may be

[11] The Commission is concerned by the arbitrary and ill-defined nature of such unpublished, informal policy and notes that any policy or rule of the respondents that "conflicts with the provisions of [§1-210(a), G.S.,] or diminishes or curtails in any way the rights granted by [such] subsection shall be void." See §1-210(a), G.S. The respondents are cautioned to reconsider their unpublished, informal policy with respect to charging prepayment fees, generally.

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).

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

Approved by Order of the Freedom of Information Commission at its regular meeting of January 14, 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:

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WILLIAM TONG, ATTORNEY GENERAL, STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL; AND STATE OF CONNECTICUT, OFFICE OF THE ATTORNEY GENERAL, c/o Attorney John Langmaid, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106

Jennifer M. Mayo
Acting Clerk of the Commission

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