

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kenneth J. Krayeske,

Complainant

against

Docket #FIC 2025-0172

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,

Respondents

March 11, 2026

The above-captioned matter was heard as a contested case on July 17, 2025, at which time the complainant and the respondents appeared 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 on March 4, 2024, the complainant submitted a records request to the respondents for emails sent to or from Angel Quiros, William Mulligan, Sharonda Carlos, and Nicole Anker pertaining to the Correctional Advisory Committee's hiring process for the Correctional Ombudsman position, spanning from July 1, 2022 to the date of the request.
3. It is found that on July 25, 2024, the respondents provided the complainant with a number of partially redacted records responsive to the complainant's request described in paragraph 2, above.
4. It is found that shortly after receiving the partially redacted records from the respondents described in paragraph 3, above, the complainant inquired as to the reason for such redactions.
5. It is found that on March 4, 2025, having not received any such explanation regarding the redacted portions of the requested records, the complainant again inquired as to the respondents' rationale for such redactions. It is further found that later that day, the respondents provided a "privilege log" containing a brief description of the redacted portions of the records, along with the statutory basis for such redactions.

6. By complaint received and filed on March 13, 2025, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by improperly withholding certain portions of the records provided to him on July 25, 2024, described in paragraph 3, above. The complainant also requested that this Commission assess a civil penalty against the respondents for such alleged violations.

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

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[e]xcept as otherwise provided by any federal law or statute, all records maintained or kept on file by any public agency whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

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

10. It is concluded that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that after the complaint was filed in this matter, but before the July 17, 2025 contested case hearing, the respondents provided the complainant with an unredacted version of some, but not all, of the records previously redacted, as described in paragraph 3, above.¹

12. Pursuant to the order of the undersigned Hearing Officer issued on the record during the July 17, 2025 contested case hearing, the respondents submitted to the Commission for in camera inspection 27 pages of in camera records, which are fairly described as email

¹ The respondents testified that when they had initially reviewed the requested records, a portion thereof included correspondence with an individual who had previously provided legal advice to the respondents in his capacity as an Assistant Attorney General but had since retired. In preparing for the hearing in this matter, the respondents identified that the correspondence with this individual occurred after he retired and was not protected by the attorney-client privilege.

correspondence. Such in camera records shall be referred to as IC-2025-0172-01 through IC-2025-0172-27.

13. The respondents assert that the following portions of the in camera records are exempt pursuant to the attorney-client privilege (i.e., §§1-210(b)(10) and 52-146r, G.S.):

IC-2025-0172-01 (lines 7 and 32)

IC-2025-0172-2 (lines 13 through 19)

IC-2025-0172-06 (lines 33 through 43)

IC-2025-0172-07 (lines 17 through 43)

IC-2025-0172-08 (lines 36 through 46)

IC-2025-0172-09 (lines 7 through 13 and 38 through 41)

IC-2025-0172-10 (lines 16 through 17, and 42)

IC-2025-0172-22 (lines 10 and 17 through 21)

IC-2025-0172-23 (lines 1 through 2)

14. Section 1-210(b)(10), G.S., provides in relevant part, that public agencies are not required to disclose “communications privileged by the attorney-client relationship ... or any other privilege established by the common law or the general statutes”

15. Section 52-146r(b), G.S., provides that “[i]n any civil or criminal case or proceeding or in any legislative or administrative proceeding, all confidential communications shall be privileged and a government attorney shall not disclose any such communications unless an authorized representative of the public agency consents to waive the privilege and allow disclosure.”

16. Section 52-146r(a)(2), G.S., defines “confidential communications” to mean:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice.

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

attorney-client privilege as [the] court previously defined it.” The Court further stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client and relate to legal advice sought by the agency from the attorney.” Id.

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

19. Moreover, in Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice.” PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329 - 30 (2004).

20. The Supreme Court, however, has also recognized that “[n]ot every communication between attorney and client falls within the [attorney-client] privilege.” Harrington v. Freedom of Info. Comm’n, 323 Conn. 1, 14 (2016) (“Harrington”). In Harrington, the court made clear that:

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

Harrington, 323 Conn. at 12.

21. The Court in Harrington further noted that in order for the privilege to apply

the communication must be made by the client to the attorney acting as an attorney. . . . In sum, attorneys do not act as lawyers when not primarily engaged in legal activities. . . . [Moreover], it would seem obvious that business communications cannot be [protected under the privilege] by virtue of the mention of an attorney’s name, or their being directed to an attorney.

...

[I]f the non-legal aspects of the consultation are integral to the legal assistance given and the legal assistance is the *primary purpose* of the consultation, both the client's communication and the lawyer's advice and assistance that reveals the substance of those communications will be afforded the protection of the privilege.

...

When the legal aspects of the communication are incidental or subject to separation, the proponent of the privilege may be entitled to redact those portions of the communications.

(Citations omitted; emphasis in original; internal quotation marks omitted). *Id.*, at 17-18.

22. With respect to IC-2025-0172-22 (lines 10 and 17 through 21) and IC-2025-0172-23 (lines 1 through 2) it is found that such portions of the in camera records are correspondence between the respondents' Director of Legal Affairs ("Legal Director") and an Assistant Attorney General ("AAG"). Specifically, the respondents assert that such correspondence pertained to "statutory interpretation" between the AAG and the Legal Director, as well as the Legal Director's analysis of statutory requirements.

23. It is found that the respondents' characterization of the portions of the in camera records described in paragraph 22, above, is misleading. IC-2025-0172-22 (line 10) clearly indicates that the AAG's correspondence with the Legal Director (encompassing IC-2025-0172-22 (lines 17 through 21) and IC-2025-0172-23 (lines 1 through 2)) pertained to a personal matter and did not relate to the Legal Director's representation of the Department of Correction. While IC-2025-0172-22 (line 19) does mention a "statutory requirement," nothing contained therein constitutes legal advice and appears wholly related to the AAG's personal inquiry.

24. Moreover, the AAG is clearly not an employee or official of the respondent Department of Correction, as they are two separate public agencies. While it is true that the Attorney General's Office *could* represent the respondents in legal matters, the respondents presented no evidence that such was the case for the redacted portions of IC-2025-0172-22 through IC-2025-0172-23, and as noted in paragraph 23, above, it is clear that such correspondence pertained to a personal inquiry of the AAG.

25. Accordingly, it is found that the respondents failed to prove that IC-2025-0172-22 (lines 10 and 17 through 21) and IC-2025-0172-23 (lines 1 through 2) are exempt from disclosure pursuant to the attorney-client privilege.

26. With respect to IC-2025-0172-09 (lines 7 through 13 and 38 through 41) and IC-2025-0172-10 (lines 16 through 17 and 42), it is found that such portions of the in camera records are correspondence between the Legal Director and Chief Operating Officer for Health Services ("COO for Health Services"). It is found that: (i) such portions of the in camera records consist of correspondence between an attorney for the respondents (i.e. the Legal Director) and

an employee or an official for the respondents (i.e., the COO for Health Services); and (ii) the Legal Director does state a legal conclusion therein. Nevertheless, the respondents have failed to prove the *primary purpose* of such correspondence was for legal assistance in connection with the Legal Director's representation of the respondent Department of Correction. Rather, it appears that the correspondence redacted from IC-2025-0172-09 and IC-2025-0172-10 consisted of personal speculation regarding the Correctional Ombudsman position, and not "professional advice to those who can act on it. . . ." See Shew v. Freedom of Info. Comm'n, 245 Conn. 149, at 157.

27. Accordingly, it is found that the respondents failed to prove that IC-2025-0172-09 (lines 10 and 17 through 21) and IC-2025-0172-10 (lines 16 and 17 through 42) are exempt from disclosure pursuant to the attorney-client privilege.

28. With respect to IC-2025-0172-08 (lines 36 through 46), it is found that such portions of the in camera records consist of correspondence between the respondents' Deputy Commissioner, Legal Director, Director of Human Resources, and Legislative Liaison regarding the interviews for the Ombudsman position.² It is found that in such correspondence the Deputy Commissioner posed a general question to the other parties seeking assistance *related to their individual areas of expertise*.

29. It is found that the respondents failed to prove that the *primary purpose* of the Deputy Commissioner's question that is the subject of IC-2025-0172-08 (lines 36 through 46) was to obtain legal advice. In fact, as noted in paragraph 28, above, the question at issue was posed to three different individuals with three different areas of expertise, two of which were not connected to legal advice.³ Accordingly, it is found that the respondents failed to prove that IC-2025-0172-08 (lines 36 through 46) are exempt from disclosure pursuant to the attorney-client privilege.

30. With respect to IC-2025-0172-07 (lines 17 through 43), such portions of the in camera records consist of the Director of Human Resources response to the Deputy Commissioner's question described in paragraphs 28 and 29, above. The respondents assert that such response consisted of "draft questions for review by [the Legal Director] and others." Nothing in the Director of Human Resources' response indicates that she was seeking legal advice from the Legal Director. Rather, it is found that the Director of Human Resources was responding to the Deputy Commissioner's inquiry based on *her* area of expertise (presumably Human Resources), independent of any response from the Legal Director.

31. Accordingly, it is found that the respondents failed to prove that IC-2025-0172-07 (lines 17 through 43) are exempt from disclosure pursuant to the attorney-client privilege.

² The Deputy Commissioner is identified as such elsewhere in the in camera records. The Commission takes administrative notice of the fact that Catherine Riberio is the respondents' Director of Human Resources and David McCluskey is the respondents' Legislative Liaison.

³ The respondents did not provide any evidence that either the Director of Human Resources or the Legislative Liaison are attorneys. Moreover, the Commission take administrative notice of the fact that there are no registered attorneys in the state of Connecticut with the last name Riberio or McCluskey.

32. It is concluded, therefore, that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by withholding IC-2025-0172-07 (lines 17 through 43), IC-2025-0172-08 (lines 36 through 46), IC-2025-0172-09 (lines 7 through 13 and 38 through 41), IC-2025-0172-10 (lines 16 through 17 and 42), IC-2025-0172-22 (lines 10 and 17 through 21), and IC-2025-0172-23 (lines 1 through 2).

33. With respect to IC-2025-0172-06 (lines 33 through 43)⁴, IC-2025-0172-02 (lines 13 through 19), and IC-2025-0172-01 (lines 7 and 32), it is found that such portions of the in camera records are communications “between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney,” which “relate to legal advice” sought by the public agency client from the attorney, which were “transmitted in confidence,” or “records prepared by the government attorney in furtherance of the rendition of such legal advice,” within the meaning of §52-146r, G.S.

34. Accordingly, it is found that IC-2025-0172-06 (lines 33 through 43), IC-2025-0172-02 (lines 13 through 19), and IC-2025-0172-1 (lines 7 and 32) constitute communications or records protected by the attorney-client privilege, within the meaning of §§1-210(b)(10) and 52-146r, G.S. It is also found that the attorney-client privilege has not been waived with respect to such records.

35. It is therefore concluded that the records referenced in paragraphs 33 and 34, above, are exempt from disclosure pursuant to §§1-210(b)(10) and 52-146r, G.S., and that the respondents did not violate the disclosure provisions on §§1-210(a) or 1-212(a), G.S., by withholding such portions of the in camera records.

36. Notwithstanding the foregoing findings and conclusions, the Commission declines to consider the imposition of a civil penalty against the respondents in this matter. However, the Commission reminds the respondents that, like all exemptions to disclosure, the attorney-client privilege “is both narrowly applied and strictly construed.” Harrington, 323 Conn. at 12. The respondents are cautioned that claiming exemptions where such exemptions clearly do not apply may warrant consideration of the imposition of a civil penalty in future cases before the Commission.

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

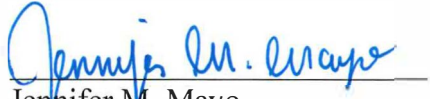
1. Within fourteen (14) days of the Notice of Final Decision in this matter, the respondents shall provide to the complainant unredacted copies of IC-2025-0172-07 (lines 17 through 43), IC-2025-0172-08 (lines 36 through 46), IC-2025-0172-09 (lines 7 through 13 and 38 through 41), IC-2025-0172-10 (lines 16 through 17 and 42), IC-2025-0172-22 (lines 10 and

⁴ It is found that IC-2025-0172-06 (lines 33 through 43) consists of the Legal Director’s response to the Deputy Commissioner’s inquiry described in paragraph 28, above.

17 through 21), and IC-2025-0172-23 (lines 1 through 2). Such records shall be provided to the complainant free of charge.

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

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

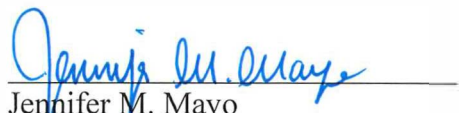

Jennifer M. Mayo
Acting Clerk of the Commission

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:

KENNETH J. KRAYESKE, BBB Attorneys, LLC, 3651 Main Street, Suite 200, Stratford, CT 06614

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION;
AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, 24 Wolcott Hill Road, Wethersfield CT 06109



Jennifer M. Mayo
Acting Clerk of the Commission