

TO: Freedom of Information Commission

FROM: Jennifer M. Mayo

RE: Minutes of the Commission's regular meeting of November 16, 2022

A regular meeting of the Freedom of Information Commission was held on November 16, 2022. The Commission meeting of November 16, 2022 was conducted in person. The meeting convened at 2:12 p.m. with the following Commissioners present:

Commissioner Owen P. Eagan, presiding  
Commissioner Jonathan J. Einhorn  
Commissioner Matthew Streeter  
Commissioner Christopher P. Hankins  
Commissioner Stephen Fuzesi, Jr.

Also present were staff members, Colleen M. Murphy, Mary E. Schwind, Kathleen K. Ross, Valicia D. Harmon, Paula S. Pearlman, Thomas A. Hennick, Danielle L. McGee, Jennifer F. Miller, Kate Smith, Kevin W. Munn, Jennifer Mayo, and Lorraine Walker.

The Commissioners unanimously voted to approve the Commission's regular meeting minutes of October 26, 2022.

Those in attendance were informed that the November 16, 2022, regular meeting of the Commission was being recorded.

[Docket #FIC 2020-0528](#) Earl Bradley v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

Earl Bradley appeared on his own behalf. Attorney Tracie C. Brown appeared on behalf of the respondents. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2020-0624](#) Anthony Collymore v. Chief, Police Department, City of Waterbury; Police Department, City of Waterbury; and City of Waterbury

Anthony Collymore appeared on his own behalf. Attorney Richard J. Scappini appeared on behalf of the respondents. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2021-0665](#) Terrance Burton v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.\* The proceedings were digitally recorded.

[Docket #FIC 2020-0531](#) Robert Clarke Castelle v. Town Manager, Town of Newington; and Town of Newington

The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2021-0275](#) Joan Zygmunt v. Attorney General, State of Connecticut, Office of the Attorney General; and State of Connecticut, Office of the Attorney General

The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2021-0682](#) Jeremiah Stafford v. Chairman, Board of Education, Darien Public Schools; and Board of Education, Darien Public Schools

The Commissioners voted 4-1 against amending the Hearing Officer's Report. Commissioner Streeter voted to amend. The Hearing Officer's Report was not amended. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2021-0683](#) Greg Smith and The Day v. Mayor, City of New London; and City of New London

Attorney Brian K. Estep appeared on behalf of the respondents. The Commissioners voted 4-0 to amend the Hearing Officer's Report. The Commissioners voted 4-0 to adopt the Hearing Officer's Report as amended.\* Commissioner Einhorn recused himself from participating in the matter. The proceedings were digitally recorded.

[Docket #FIC 2021-0686](#) Daniel Riles, Michael Merli, and Alexander T. Taubes v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

Daniel Riles appeared on his own behalf. Michael Merli appeared on behalf of the complainants. Attorney Tracie C. Brown appeared on behalf of the respondents. The Commissioners voted 4-0 to expedite the complainant's new complaint, should he file one. The Commissioners voted 4-0 to adopt the Hearing Officer's Report. Commissioner Einhorn recused himself from participating in the matter. The proceedings were digitally recorded.

[Docket #FIC 2021-0689](#) Joseph Sargent v. Members, Parks and Recreation Commission, Town of Fairfield; and Parks and Recreation Commission, Town of Fairfield

The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.\* The proceedings were digitally recorded.

[Docket #FIC 2021-0697](#) Aviva Stahl and Seth Wessler v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

Attorney David A. Shultz appeared on behalf of the complainants. Dorrin Akbari appeared on behalf of the complainants. Attorney Jennifer Lepore appeared on behalf of the respondents. The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.\* The proceedings were digitally recorded.

[Docket #FIC 2021-0704](#) Nouboukpo Gassesse v. President, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut

Nouboukpo Gassesse appeared on his own behalf. Attorney Britt Killian appeared on behalf of the respondents. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2022-0046](#) Kent Johnson v. Chief, Police Department, City of Torrington; Police Department, City of Torrington; and City of Torrington

The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.\* The proceedings were digitally recorded.

[Docket #FIC 2022-0165](#) Robert Hagar v. Chief, Police Department, City of Groton; Police Department, City of Groton; Mayor, City of Groton; and City of Groton

The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were digitally recorded.

[Docket #FIC 2022-0174](#) Polly Nugent v. Chief, Police Department, Town of Guilford;  
Police Department, Town of Guilford; and Town of Guilford

Attorney Mark Sommaruga appeared on behalf of the complainant. Attorney Karen Baldwin Kravetz appeared on behalf of the respondents. The Commissioners voted unanimously to table this matter.

PRVR #4 City of Stamford v. Matthew J. Olson

This matter was removed from the agenda.

The Commissioners unanimously voted to approve the Request to Summarily Deny Leave to Schedule a Hearing Pursuant to Connecticut General Statutes §1-206(b)(2) in *Julio Burgos Torres v. Chief, Police Department, City of Waterbury; Police Department, City of Waterbury; and City of Waterbury*, Docket # FIC 2021-0705.

The Commissioners unanimously voted to deny the Petition for Reconsideration of Final Decision dated November 2, 2022 and received by the Commission on November 3, 2022, filed by Complainant in *Paul Michalski v. Chairman, Board of Education, Town of Darien; Board of Education, Town of Darien; Superintendent of Schools, Darien Public Schools; and Darien Public Schools*, Docket #FIC 2022-0120.

The Commissioners unanimously voted to appeal the Superior Court decision dated October 28, 2022, in *Chief, Police Department, Town of Greenwich, et al. vs. Freedom of Information Commission, et al.* Docket No. HHB-CV-22-6071773-S.

The meeting was adjourned at 5:15 p.m.

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Jennifer M. Mayo

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\*See attached for amendments

## AMENDMENTS

Docket #FIC 2021-0665 Terrance Burton v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

Page 1 of the Hearing Officer's Report is amended as follows:

Following Paragraph 1, Insert:

**ON NOVEMBER 4, 2022, THE COMMISSION TRANSMITTED A PROPOSED FINAL DECISION IN THIS MATTER, DATED NOVEMBER 2, 2022. HOWEVER, BY LETTER DATED NOVEMBER 15, 2022, AND RECEIVED AND FILED BY THE COMMISSION ON NOVEMBER 16, 2022, THE COMPLAINANT INFORMED THE COMMISSION THAT HE WISHED TO WITHDRAW THE COMPLAINT. THE COMMISSION TAKES ADMINISTRATIVE NOTICE OF SUCH WITHDRAWAL.**

Page 1 -8 of the Hearing Officer's Report is amended as follows:

Delete all text following the first paragraph on page 1, including paragraphs 1-45 of the Hearing Officer's Report.

The Orders of the Hearing Officer's Report are amended as follows:

1. Delete Order 1 and 2;
2. Insert the following order:

**BASED UPON THE WITHDRAWAL, THE COMPLAINT IS DISMISSED.**

Docket #FIC 2021-0683 Greg Smith and The Day v. Mayor, City of New London; and City of New London

Paragraphs 14, 16, and 17 of the order in the Hearing Officer's Report are amended as follows:

14. It is clear that §§1-214(b)(1), (2) and (3), G.S., together, require that, upon receipt of a request to inspect or copy a personnel, medical or similar file, a public agency must [first] review such file in order to determine whether it is reasonable to believe that disclosure of any of the records contained therein would legally constitute an invasion of the subject's privacy. **SUCH REVIEW AND DETERMINATION MUST BE MADE PRIOR TO NOTIFYING THE SUBJECT OF THE FILE OF THE REQUEST AND OFFERING THE SUBJECT AN OPPORTUNITY TO OBJECT TO DISCLOSURE.** It is also clear

that, if, after review of the file, the agency does not reasonably believe that disclosure of the file or any portion thereof would legally constitute an invasion of privacy, the agency is required to disclose such records to the requester.

16. It is found, however, that the respondents failed to prove that they **REVIEWED THE COMPLAINT AND EXECUTIVE SUMMARY AND REASONABLY** determined [whether it is reasonable to believe] that disclosure of **SUCH RECORDS** [the complaint and executive summary] or any portion thereof would legally constitute an invasion of [his] privacy, **PRIOR TO** notifying Chief Wright of the request and offering him the opportunity to object.

17. Based upon the foregoing it is concluded that the respondents violated [§]1-214(b)[(1), (2) and (3)], G.S.

Docket #FIC 2021-0689     Joseph Sargent v. Members, Parks and Recreation Commission, Town of Fairfield; and Parks and Recreation Commission, Town of Fairfield

The second order of the Hearing Officer's Report is amended as follows:

**WITH REGARD TO PARAGRAPH 13 OF THE FINDINGS, ABOVE, THE RESPONDENTS SHALL CONTACT THE COMPLAINANT TO ASCERTAIN WHICH EMAIL ATTACHMENTS THE COMPLAINANT WAS UNABLE TO OPEN. UPON RECEIPT OF SAID INFORMATION FROM THE COMPLAINANT, INCLUDING THE IDENTITY OF THE SENDER AND THE RECIPIENT OF THE EMAIL, AND THE DATE AND TIME WHEN THE EMAIL WAS SENT AND/OR RECEIVED, THE RESPONDENTS SHALL FORTHWITH LOCATE AND PROVIDE COPIES OF SUCH ATTACHMENTS TO THE COMPLAINANT, FREE OF CHARGE.**

Docket #FIC 2021-0697     Aviva Stahl and Seth Wessler v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

Paragraph 37 of the Hearing Officer's Report is amended as follows:

37. The respondents also claimed that the requested health records described in paragraph 10(b) and 10(c), above, are exempt from disclosure pursuant to federal regulations set forth in 42 C.F.R. Part 2 ("Part 2 Regulations") governing the disclosure of records relating to the treatment of substance use disorders.<sup>1</sup> **HOWEVER, IN LIGHT OF THE FINDINGS AND CONCLUSIONS SET FORTH IN PARAGRAPHS 38 THROUGH 60, BELOW, THE COMMISSION NEED NOT ADDRESS WHETHER THE**

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**REQUESTED HEALTH RECORDS ARE EXEMPT FROM DISCLOSURE  
PURSUANT TO THE PART 2 REGULATIONS.**

Additional text to new footnote 1 in amended paragraph 37:

**<sup>1</sup>FOLLOWING ISSUANCE OF THE PROPOSED FINAL DECISION, THE RESPONDENTS FILED A “MOTION TO RECONSIDER” DATED NOVEMBER 8, 2022, IN WHICH THEY SOUGHT TO REOPEN THE CONTESTED CASE HEARING TO ADMIT ADDITIONAL EVIDENCE IN SUPPORT OF THIS CLAIMED EXEMPTION. THAT MOTION WAS DENIED BY THE HEARING OFFICER, AND THE PROPOSED EXHIBIT HAS NOT BEEN CONSIDERED HEREIN.**

Delete paragraphs 38 through 42 and renumber the remaining paragraphs accordingly.

In original paragraph 60, renumber footnote 1 to footnote 2.

In original paragraph 62, renumber footnote 2 to footnote 3.

Amend original paragraphs 58, 59, and 61 of the proposed findings and conclusions, and paragraphs 2 and 3 of the proposed order, by changing all references to “paragraphs 56 and 57” to read “paragraphs 51 and 52”.

Amend original paragraph 61 by changing “paragraphs 59 and 60” to read “paragraphs 54 and 55”.

Amend original paragraph 64 by changing “paragraphs 45 and 46” to read “paragraphs 40 and 41”.

Docket #FIC 2022-0046    Kent Johnson v. Chief, Police Department, City of Torrington;  
Police Department, City of Torrington; and City of Torrington

Paragraph 16 of the Hearing Officer’s Report is amended as follows:

1. With regard to the request, described in paragraph 2(c), above, it is found that the respondents maintain a rules and regulations manual (“manual”), consisting of hundreds of pages of policies and procedures that govern the respondent department. It is further found that the entire manual, **EXCEPT THE RECORDS IDENTIFIED IN PARAGRAPH 18**, is responsive to the complainant’s request.