SUCCESSFULLY NAVIGATING

THE CONNECTICUT

FREEDOM OF INFORMATION

ACT

CABE/CAPSS CONVENTION

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TABLE OF CONTENTS

TAB 1

THE CONNECTICUT FREEDOM OF INFORMATION ACT AS CODIFIED IN CHAPTER 14 OF CONNECTICUT GENERAL STATUTES (INCLUDING 2012 AMENDMENTS)*

Sec. 1-200. (Formerly Sec. 1-18a). Definitions. As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(1) "Public agency" or "agency" means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any "implementing agency", as defined in section 32-222.

(2) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.

***NOTE:** This compilation of the Freedom of Information Act is unofficial and for the convenience of the public only. While every effort was made to attain complete accuracy herein, the reader is advised to consult the Connecticut General Statutes for the official codification of the law.

(3) "Caucus" means (A) a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision, or (B) the members of a multimember public agency, which members constitute a majority of the membership of the agency, or the other members of the agency who constitute a minority of the membership of the agency, who register their intention to be considered a majority caucus or minority caucus, as the case may be, for the purposes of the Freedom of Information Act, provided (i) the registration is made with the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of a political subdivision of the state for any public agency of a political subdivision of the state, or in the office of the clerk of each municipal member of any multitown district or agency, (ii) no member is registered in more than one caucus at any one time, (iii) no such member's registration is rescinded during the member's remaining term of office, and (iv) a member may remain a registered member of the majority caucus or minority caucus regardless of whether the member changes his or her party affiliation under chapter 143.

(4) "Person" means natural person, partnership, corporation, limited liability company, association or society.

(5) "Public 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, printed, photostated, photographed or recorded by any other method.

(6) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

(7) "Personnel search committee" means a body appointed by a public agency, whose sole purpose is to recommend to the appointing agency a candidate or candidates for an executive-level employment position. Members of a "personnel search committee" shall not be considered in determining whether there is a quorum of the appointing or any other public agency.

(8) "Pending claim" means a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.

(9) "Pending litigation" means (A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

(10) "Freedom of Information Act" means this chapter.

(11) "Governmental function" means the administration or management of a program of a public agency, which program has been authorized by law to be administered or managed by a person, where (A) the person receives funding from the public agency for administering or managing the program, (B) the public agency is involved in or regulates to a significant extent such person's administration or management of the program, whether or not such involvement or regulation is direct, pervasive, continuous or day-to-day, and (C) the person participates in the formulation of governmental policies or decisions in connection with the administration or management of the program and such policies or decisions bind the public agency. "Governmental function" shall not include the mere provision of goods or services to a public agency without the delegated responsibility to administer or manage a program of a public agency. (P.A. 75-342, §1; P.A. 77-421; P.A. 77-609, §1; P.A. 83-67, §1; P.A. 83-372; P.A. 84-546, §3; P.A. 87-568, §1; P.A. 90-307, §2; P.A. 91-140, §1; P.A. 93-195, §1; P.A. 95-79, §2; P.A. 97-47, §1; P.A. 00-136, §1; P.A. 01-169, §1; P.A. 02-130, §17; P.A. 11-220, §1.)

Sec. 1-201. (Formerly Sec. 1-19c). Division of Criminal Justice deemed not to be public agency, when. For the purposes of subdivision (1) of section 1-200, the Division of Criminal Justice shall not be deemed to be a public agency except in respect to its administrative functions. (P.A. 84-406, §12; P.A. 00-66, §4.)

Sec. 1-202. (Formerly Sec. 1-20e). Application of freedom of information provisions to agency committee composed entirely of individuals who are not members of the agency. Any public agency may petition the Freedom of Information Commission before establishing a committee of the public agency which is to be composed entirely of individuals who are not members of the agency, to determine whether such committee may be exempted from the application of any provision of the Freedom of Information Act. If the commission, in its judgment, finds by reliable, probative and substantial evidence that the public interest in exempting the committee from the application of any such provision clearly outweighs the public interest in applying the provision to the committee, the commission shall issue an order, on appropriate terms, exempting the committee from the application of the provision. (P.A. 93-195, §2; P.A. 97-47, §7.)

Secs. 1-203 and 1-204. Reserved for future use.

Sec. 1-205. (Formerly Sec. 1-21j). Freedom of Information Commission.

(a) There shall be established, within the Office of Governmental Accountability established under section 58 of Public Act 11-48, a Freedom of Information Commission consisting of nine members. (1) Five of such members shall be appointed by the Governor, with the advice and consent of either house of the General Assembly. Such members shall serve for terms of four years from July first of the year of their appointment, except that of the members appointed prior to and serving on July 1, 1977, one shall serve for a period of six years from July 1, 1975, one shall serve for a period of four years from July 1, 1975, and one shall serve for a period of six years from July 1, 1977. Of the two new members first appointed by the Governor after July 1, 1977, one shall serve from the date of such appointment until June 30, 1980, and one shall serve from the date of such appointment until June 30, 1982. (2) On and after July 1, 2011, four members of the commission shall be appointed as follows: One by the president pro tempore of the Senate, one by the minority leader of the Senate, one by the speaker of the House of Representatives and one by the minority leader of the House of Representatives. Such members shall serve for terms of two years from July first of the year of their appointment. (3) No more than five members of the commission shall be members of the same political party. Any vacancy in the membership of the commission shall be filled by the appointing authority for the unexpired portion of the term.

(b) Each member shall receive two hundred dollars per day for each day such member is present at a commission hearing or meeting, and shall be entitled to reimbursement for actual and necessary expenses incurred in connection therewith, in accordance with the provisions of section 4-1.

(c) The Governor shall select one of its members as a chairman. The commission shall maintain a permanent office at Hartford in such suitable space as the Commissioner of Administrative Services provides. All papers required to be filed with the commission shall be delivered to such office.

(d) The commission shall, subject to the provisions of the Freedom of Information Act promptly review the alleged violation of said Freedom of Information Act and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said Freedom of Information Act and may for the purpose of investigating any violation hold a hearing, administer oaths, examine witnesses, receive oral and documentary evidence, have the power to subpoena witnesses under procedural rules adopted by the commission to compel attendance and to require the production for examination of any books and papers which the commission deems relevant in any matter under investigation or in question. In case of a refusal to comply with any such subpoena or to testify with respect to any matter upon which that person may be lawfully interrogated, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to comply with such subpoena and to testify; failure to obey any such order of the court may be punished by the court as a contempt thereof.

(e) The Freedom of Information Commission, and the Department of Administrative Services with respect to access to and disclosure of computer-stored public records, shall conduct training sessions, at least annually, for members of public agencies for the purpose of educating such members as to the requirements of sections 1-7 to 1-14, inclusive, 1-16 to 1-18, inclusive, 1-200 to 1-202, inclusive, 1-205, 1-206, 1-210 to 1-217, inclusive, 1-225 to 1-232, inclusive, 1-240, 1-241 and 19a-342.

(f) Not later than December 31, 2001, the Freedom of Information Commission shall create, publish and provide to the chief elected official of each municipality a model ordinance concerning the establishment by a municipality of a municipal freedom of information advisory board to facilitate the informed and efficient exchange of information between the commission and such municipality. The commission may amend the model ordinance from time to time.

(g) When the General Assembly is in session, the Governor shall have the authority to fill any vacancy on the commission, with the advice and consent of either house of the General Assembly. When the General Assembly is not in session any vacancy shall be filled pursuant to the provisions of section 4-19. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission and three members of the commission shall constitute a quorum.

(h) The commission shall, subject to the provisions of chapter 67, employ such employees as may be necessary to carry out the provisions of this chapter. The commission may enter into such contractual agreements as may be necessary for the discharge of its duties, within the limits of its appropriated funds and in accordance with established procedures.

(i) The Freedom of Information Commission shall not be construed to be a commission or board within the meaning of section 4-9a. (P.A. 75-342, §15; P.A. 77-609, §7; P.A. 77-614, §73; P.A. 78-280, §8; P.A. 78-315, §3; P.A. 79-560, §1; P.A. 79-575, §1; P.A. 86-390, §§1, 2; P.A. 87-496, §5; P.A. 88-230, §1; P.A. 89-251, §57; P.A. 90-98, §1; P.A. 91-347, §3; P.A. 93-142, §§4, 7; P.A. 95-220, §§4-6; P.A. 97-47, §13; June 18 Sp. Sess. P.A. 97-9, §§27, 50; P.A. 00-136, §§8, 10; P.A. 06-187, §69; P.A. 07-202, §13.; P.A. 11-48, §62; P.A. 11-51, §§44, 76.)

Sec. 1-205a. Recommended appropriations. Allotments. (a) Notwithstanding any provision of the general statutes, the appropriations recommended for the division of the Freedom of Information Commission within the Office of Governmental Accountability established under section 58 of Public Act 11-48, which division shall have a separate line item within the budget for the Office of Governmental Accountability, shall be the estimates of expenditure requirements transmitted to the Secretary of the Office of Policy and Management by the executive administrator of the Office of Governmental Accountability and the recommended adjustments and revisions of such estimates shall be the recommended adjustments and revisions, if any, transmitted by said executive administrator to the Office of Policy and Management.

(b) Notwithstanding any provision of the general statutes, the Governor shall not reduce allotment requisitions or allotments in force concerning the Freedom of Information Commission.

(P.A. 04-204, §11; P.A. 11-48, §75.)

Sec. 1-206. (Formerly Sec. 1-21i). Denial of access to public records or meetings. Appeals. Notice. Orders. Civil penalty. Service of process upon commission. Frivolous appeals. (a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken. Upon receipt of such notice, the commission shall serve upon all parties, by certified or registered mail, a copy of such notice together with any other notice or order of such commission. In the case of the denial of a request to inspect or copy records contained in a public employee's personnel or medical file or similar file under subsection (c) of section 1-214, the commission shall include with its notice or order an order requiring the public agency to notify any employee whose records are the subject of an appeal, and the employee's collective bargaining representative, if any, of the commission's proceedings and, if any such employee or collective bargaining representative has filed an objection under said subsection (c), the agency shall provide the required notice to such employee and collective bargaining representative by certified mail, return receipt requested or by hand delivery with a signed receipt. A public employee whose personnel or medical file or similar file is the subject of an appeal under this subsection may intervene as a party in the proceedings on the matter before the commission. Said commission shall, after due notice to the parties, hear and decide the appeal within one year after the filing of the notice of appeal. The commission shall adopt regulations in accordance with chapter 54, establishing criteria for those appeals which shall be privileged in their assignment for hearing. Any such appeal shall be heard not later than thirty days after receipt of a notice of appeal and decided not later than sixty days after the hearing. If a notice of appeal concerns an announced agency decision to meet in executive session or an ongoing agency practice of meeting in executive sessions, for a stated purpose, the commission or a member or members of the

commission designated by its chairperson shall serve notice upon the parties in accordance with this section and hold a preliminary hearing on the appeal not later than seventy-two hours after receipt of the notice, provided such notice shall be given to the parties at least forty-eight hours prior to such hearing. During such preliminary hearing, the commission shall take evidence and receive testimony from the parties. If after the preliminary hearing the commission finds probable cause to believe that the agency decision or practice is in violation of sections 1-200 and 1-225, the agency shall not meet in executive session for such purpose until the commission decides the appeal. If probable cause is found by the commission, it shall conduct a final hearing on the appeal and render its decision not later than five days after the completion of the preliminary hearing. Such decision shall specify the commission's findings of fact and conclusions of law.

(2) In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. The commission may declare null and void any action taken at any meeting which a person was denied the right to attend and may require the production or copying of any public record. In addition, upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars. If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars. The commission shall notify a person of a penalty levied against him pursuant to this subsection by written notice sent by certified or registered mail. If a person fails to pay the penalty within thirty days of receiving such notice, the superior court for the judicial district of Hartford shall, on application of the commission, issue an order requiring the person to pay the penalty imposed. If the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process. Any party aggrieved by the commission's denial of such leave may apply to the superior court for

the judicial district of Hartford, within fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal.

(3) In making the findings and determination under subdivision (2) of this subsection the commission shall consider the nature of any injustice or abuse of administrative process, including but not limited to: (A) The nature, content, language or subject matter of the request or the appeal; (B) the nature, content, language or subject matter of prior or contemporaneous requests or appeals by the person making the request or taking the appeal; and (C) the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from the person making the request or taking the appeal.

(4) Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom of Information Act, or (B) the agency has committed a technical violation of the Freedom of Information Act that constitutes a harmless error that does not infringe the appellant's rights under said act.

(c) Any person who does not receive proper notice of any meeting of a public agency in accordance with the provisions of the Freedom of Information Act may appeal under the provisions of subsection (b) of this section. A public agency of the state shall be presumed to have given timely and proper notice of any meeting as provided for in said Freedom of Information Act if notice is given in the Connecticut Law Journal or a Legislative Bulletin. A public agency of a political subdivision shall be presumed to have given proper notice of any meeting, if a notice is timely sent under the provisions of said Freedom of Information Act by first-class mail to the address indicated in the request of the person requesting the same. If such commission determines that notice was improper, it may, in its sound discretion, declare any or all actions taken at such meeting null and void.

(d) Any party aggrieved by the decision of said commission may appeal therefrom, in accordance with the provisions of section 4-183. Notwithstanding the provisions of section 4-183, in any such appeal of a decision of the commission, the court may conduct an in camera review of the original or a certified copy of the records which are at issue in the appeal but were not included in the record of the commission's proceedings, admit the records into evidence and order the records to be sealed or inspected on such terms as the court deems fair and appropriate, during the appeal. The commission shall have standing to defend, prosecute or otherwise participate in any appeal of any of its decisions and to take an appeal from any judicial decision overturning or modifying a decision of the commission. If aggrievement is a jurisdictional prerequisite to the commission taking any such appeal, the commission shall be deemed to be aggrieved. Notwithstanding the provisions of section 3-125, legal counsel employed or retained by said commission shall represent said commission in all such appeals and in any other litigation affecting said commission. Notwithstanding the provisions of subsection (c) of section 4-183 and section 52-64, all process shall be

served upon said commission at its office. Any appeal taken pursuant to this section shall be privileged in respect to its assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. Nothing in this section shall deprive any party of any rights he may have had at common law prior to January 1, 1958. If the court finds that any appeal taken pursuant to this section or section 4-183 is frivolous or taken solely for the purpose of delay, it shall order the party responsible therefor to pay to the party injured by such frivolous or dilatory appeal costs or attorney's fees of not more than one thousand dollars. Such order shall be in addition to any other remedy or disciplinary action required or permitted by statute or by rules of court.

(e) Within sixty days after the filing of a notice of appeal alleging violation of any right conferred by the Freedom of Information Act concerning records of the Department of Environmental Protection relating to the state's hazardous waste program under sections 22a-448 to 22a-454, inclusive, the Freedom of Information Commission shall, after notice to the parties, hear and decide the appeal. Failure by the commission to hear and decide the appeal within such sixty-day period shall constitute a final decision denying such appeal for purposes of this section and section 4-183. On appeal, the court may, in addition to any other powers conferred by law, order the disclosure of any such records withheld in violation of the Freedom of Information Act and may assess against the state reasonable attorney's fees and other litigation costs reasonably incurred in an appeal in which the complainant has prevailed against the Department of Environmental Protection. (P.A. 75-342, §14; P.A. 76-435, §25; P.A. 77-403; P.A. 77-603, §2; P.A. 77-609, §6; P.A. 78-331, §57; P.A. 81-431, §2; P.A. 83-129, §1; P.A. 83-587, §69; June Sp. Sess. P.A. 83-31, §1; P.A. 84-112, §2; P.A. 84-136; P.A. 84-311, §1; P.A. 86-408, §1; P.A. 87-285, §2; P.A. 87-526, §4; P.A. 88-230, §1; P.A. 88-317, §39; P.A. 88-353, §2; P.A. 90-98, §1; P.A. 90-307, §1; P.A. 92-207, §2; P.A. 93-142, §§4, 7; P.A. 93-191, §1; P.A. 95-220, §§4-6; P.A. 97-47, §§10-12; P.A. 00-136, §6; P.A. 07-202, §11.)

Secs. 1-207 to 1-209. Reserved for future use.

Sec. 1-210. (Formerly Sec. 1-19). Access to public records. Exempt records. (a) Except 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, (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. 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. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein.

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;

(2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;

(3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) signed statements of witnesses, (C) information to be used in a prospective law enforcement action if prejudicial to such action, (D) investigatory techniques not otherwise known to the general public, (E) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (F) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (G) uncorroborated allegations subject to destruction pursuant to section 1-216;

(4) Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled;

(5) (A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and

(B) Commercial or financial information given in confidence, not required by statute;

(6) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations;

(7) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property

has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision;

(8) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish the applicant's personal qualification for the license, certificate or permit applied for;

(9) Records, reports and statements of strategy or negotiations with respect to collective bargaining;

(10) 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 any other privilege established by the common law or the general statutes, including any 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;

(11) Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age, provided this subdivision shall not be construed as prohibiting the disclosure of the names or addresses of students enrolled in any public school in a regional school district to the board of selectmen or town board of finance, as the case may be, of the town wherein the student resides for the purpose of verifying tuition payments made to such school;

(12) Any information obtained by the use of illegal means;

(13) Records of an investigation or the name of an employee providing information under the provisions of section 4-61dd;

(14) Adoption records and information provided for in sections 45a-746, 45a-750 and 45a-751;

(15) Any page of a primary petition, nominating petition, referendum petition or petition for a town meeting submitted under any provision of the general statutes or of any special act, municipal charter or ordinance, until the required processing and certification of such page has been completed by the official or officials charged with such duty after which time disclosure of such page shall be required;

(16) Records of complaints, including information compiled in the investigation thereof, brought to a municipal health authority pursuant to chapter 368e or a district department of health pursuant to chapter 368f, until such time as the investigation is concluded or thirty days from the date of receipt of the complaint, whichever occurs first;

(17) Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g;

(18) Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction or Whiting Forensic Division facilities. Such records shall include, but are not limited to:

(A) Security manuals, including emergency plans contained or referred to in such security manuals;

(B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;

(C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and

(H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers;

(19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the Chief Court Administrator with respect to records concerning the

Judicial Department; and (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

(i) Security manuals or reports;

(ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;

(iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(v) Internal security audits of government-owned or leased institutions or facilities;

(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel;

(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and

(ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply;

(20) Records of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system;

(21) The residential, work or school address of any participant in the address confidentiality program established pursuant to sections 54-240 to 54-240o, inclusive;

(22) The electronic mail address of any person that is obtained by the Department of Transportation in connection with the implementation or administration of any plan to inform individuals about significant highway or railway incidents;

(23) The name or address of any minor enrolled in any parks and recreation program administered or sponsored by any public agency;

(24) Responses to any request for proposals or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file;

(25) The name, address, telephone number or electronic mail address of any person enrolled in any senior center program or any member of a senior center administered or sponsored by any public agency;

(26) All records obtained during the course of inspection, investigation, examination and audit activities of an institution, as defined in section 19a-490, that are confidential pursuant to a contract between the Department of Public Health and the United States Department of Health and Human Services relating to the Medicare and Medicaid programs.

(c) Whenever a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Division facility, for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Division facility of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility or Whiting Forensic Division facility.

(d) Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act,

the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively, or, in the case of records concerning Judicial Department facilities, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management.

(e) Notwithstanding the provisions of subdivisions (1) and (16) 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;

(2) All records of investigation conducted with respect to any tenement house, lodging house or boarding house as defined in section 19a-355, or any nursing home, residential care home or rest home, as defined in section 19a-490, by any municipal building department or housing code inspection department, any local or district health department, or any other department charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, ventilation or occupancy of such buildings; and

(3) The names of firms obtaining bid documents from any state agency. (P.A. 57-428, §1; P.A. 63-260; P.A. 67-723, §1; P.A. 69-193; P.A. 71-193; P.A. 75-342, §2; P.A. 76-294; P.A. 77-609, §2; P.A. 79-119; P.A. 79-324; P.A. 79-575, §2; P.A. 79-599, §3; P.A. 80-483, §1; P.A. 81-40, §2; P.A. 81-431, §1; P.A. 81-448, §2; P.A. 83-436; P.A. 84-112, §1; P.A. 84-311, §2; P.A. 85-577, §22; P.A. 90-335, §1; P.A. 91-140, §2; P.A. 94-246, §14; P.A. 95-233; P.A. 96-130, §37; P.A. 97-47, §4; P.A. 97-112, §2; P.A. 97-293, §14; P.A. 99-156, §1; P.A. 00-66, §5; P.A. 00-69, §3; P.A. 00-134, §1; P.A. 00-136, §2; June Sp. Sess. P.A. 00-1, §20; P.A. 01-26, §1; P.A. 02-133, §§1, 2; P.A. 02-137, §2; P.A. 03-200, §17; June 30, Sp. Sess., P.A. 03-6, §104; P.A. 05-287, §26; P.A. 07-202,

§12; P.A. 07-213, §22; P.A. 07-236, §5; P.A. 08-18, §1; P.A. 10-17; P.A. 11-51, §§44, 134; P.A. 11-242, §§37, 38).

Sec. 1-211. (Formerly Sec. 1-19a). Disclosure of computer-stored public records. Contracts. Acquisition of system, equipment, software to store or retrieve nonexempt public records. (a) Any 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, as amended by Public Act 11-150.

(b) Except as otherwise provided by state statute, no public agency shall enter into a contract with, or otherwise obligate itself to, any person if such contract or obligation impairs the right of the public under the Freedom of Information Act to inspect or copy the agency's nonexempt public records existing on-line in, or stored on a device or medium used in connection with, a computer system owned, leased or otherwise used by the agency in the course of its governmental functions.

(c) 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 Freedom of Information Act at the least cost possible to the agency and to persons entitled to access to nonexempt public records under the Freedom of Information Act. In meeting its obligations under this subsection, each state public agency shall consult with the Department of Administrative Services as part of the agency's design analysis prior to acquiring any such computer system, equipment or software. The Department of Administrative Services shall adopt written guidelines to assist municipal agencies in carrying out the purposes of this subsection. Nothing in this subsection shall require an agency to consult with said department prior to acquiring a system, equipment or software or modifying software, if such acquisition or modification is consistent with a design analysis for which such agency has previously consulted with said department. The Department of Administrative Services shall consult with the Freedom of Information Commission on matters relating to access to and disclosure of public records for the purposes of this subsection. The provisions of this subsection shall not apply to software modifications which would not affect the rights of the public under the Freedom of Information Act. (P.A. 75-342, §4; P.A. 90-307, §3; P.A. 91-347, §1; P.A. 97-47, §5; June 18 Sp. Sess., P.A. 97-9, §26; P.A. 11-51, §76; P.A. 11-150, §21).

Sec. 1-212. (Formerly Sec. 1-15). Copies and scanning of public records. Fees. (a) Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a

computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy. The fee for any copy provided in accordance with the Freedom of Information Act:

(A) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page; and

(B) By all other public agencies, as defined in section 1-200, shall not exceed fifty cents per page. If any copy provided in accordance with said Freedom of Information 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.

(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;

(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 devices 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. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost thereof to the public agency, as determined pursuant to this subsection, whichever is less. The Department of Administrative Services shall provide guidelines to agencies regarding the calculation of the fees charged for copies of computer-stored public records to ensure that such fees are reasonable and consistent among agencies.

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.

The sales tax provided in chapter 219 shall not be imposed upon any transaction for which a fee is required or permissible under this section or section 1-227.

(d) The public agency shall waive any fee provided for in this section when:

(1) The person requesting the records is an indigent individual;

(2) The records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-210;

(3) In its judgment, compliance with the applicant's request benefits the general welfare; or

(4) The person requesting the record is an elected official of a political subdivision of the state and the official (A) obtains the record from an agency of the political subdivision in which the official serves, and (B) certifies that the record pertains to the official's duties; or

(5) The person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a special assistant public defender under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties.

(e) Except as otherwise provided by law, the fee for any person who has the custody of any public records or files for certifying any copy of such records or files, or certifying to any fact appearing therefrom, shall be for the first page of such certificate, or copy and certificate, one dollar; and for each additional page, fifty cents. For the purpose of computing such fee, such copy and certificate shall be deemed to be one continuous instrument.

(f) The Secretary of the State, after consulting with the chairperson of the Freedom of Information Commission, the Commissioner of Correction and a representative of the Judicial Department, shall propose a fee structure for copies of public records provided to an inmate, as defined in section 18-84, in accordance with subsection (a) of this section. The Secretary of the State shall submit such proposed fee structure to the joint standing committee of the General Assembly having cognizance of matters relating to government administration, not later than January 15, 2000.

(g) Any individual may copy a public record through the use of a hand-held scanner. A public agency may establish a fee structure not to exceed twenty dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner. As used in this section, "hand-held scanner" means a battery operated electronic scanning device the use of which (1) leaves no mark or impression on the public record, and (2) does not unreasonably interfere with the operation of the public agency. (1949 Rev., §3625; P.A. 59-352, §1; P.A. 75-342, §5; P.A. 77-609, §3; P.A. 89-251, §56; P.A. 90-307, §4; P.A. 91-347, §2; P.A. 93-188, §1; P.A. 94-112, §1; P.A. 95-144, §1; P.A. 97-47, §§2, 3; June 18 Sp. Sess., P.A. 97-9, §25; P.A. 99-71, §2; P.A. 99-

156, §2; P.A. 00-66, §6; P.A. 02-137, §3; P.A. 09-03, §140; P.A. 11-51, §76; P.A. 11-150, §22; P.A. 11-220, §3; P.A. 12-205, §1).

Sec. 1-213. (Formerly Sec. 1-19b). Agency administration. Disclosure of personnel, birth and tax records. Disclosure of voice mails by public agencies. Judicial records and proceedings. (a) The Freedom of Information Act shall be:

(1) Construed as requiring each public agency to open its records concerning the administration of such agency to public inspection; and

(2) Construed as requiring each public agency to disclose information in its personnel files, birth records or confidential tax records to the individual who is the subject of such information.

(b) Nothing in the Freedom of Information Act shall be deemed in any manner to:

(1) Affect the status of judicial records as they existed prior to October 1, 1975, nor to limit the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state;

(2) Require disclosure of any record of a personnel search committee which, because of name or other identifying information, would reveal the identity of an executive level employment candidate without the consent of such candidate; or

(3) Require any public agency to transcribe the content of any voice mail message and retain such record for any period of time. As used in this subdivision, "voice mail" means all information transmitted by voice for the sole purpose of its electronic receipt, storage and playback by a public agency. (P.A. 75-342, §3; P.A. 79-118; P.A. 87-568, §3; P.A. 94-246, §15; P.A. 97-47, §6; P.A. 04-171, §1.)

Sec. 1-214. (Formerly Sec. 1-20a). Public employment contracts as public record. Objection to disclosure of personnel or medical files. (a) Any contract of employment to which the state or a political subdivision of the state is a party shall be deemed to be a public record for the purposes of section 1-210.

(b) Whenever a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy.

(c) A public agency which has provided notice under subsection (b) of this section shall disclose the records requested unless it receives a written objection from the employee concerned or the employee's collective bargaining representative, if any, within seven business days from the receipt by the employee or such collective bargaining representative of the notice or, if there is no evidence of receipt of written notice, not later than nine business days from the date the notice is actually mailed, sent, posted or otherwise given. Each objection filed under this subsection shall be on a form prescribed by the public agency, which shall consist of a statement to be signed by the employee or the employee's collective bargaining representative, under the penalties of false statement, that to the best of his knowledge, information and belief there is good ground to support it and that the objection is not interposed for delay. Upon the filing of an objection as provided in this subsection, the agency shall not disclose the requested records unless ordered to do so by the Freedom of Information Commission pursuant to section 1-206. Failure to comply with a request to inspect or copy records under this section shall constitute a denial for the purposes of section 1-206. Notwithstanding any provision of this subsection or subsection (b) of section 1-206 to the contrary, if an employee's collective bargaining representative files a written objection under this subsection, the employee may subsequently approve the disclosure of the records requested by submitting a written notice to the public agency. (P.A. 73-271; P.A. 78-331, §1; P.A. 87-285, §1; P.A. 88-353, §1; P.A. 92-207, §1.)

Sec. 1-214a. Disclosure of public agency termination, suspension or separation agreement containing confidentiality provision. Any agreement entered into by any public agency, as defined in section 1-200, with an employee or personal services contractor providing for the termination, suspension or separation from employment of such employee or the termination or suspension of the provision of personal services by such contractor, as the case may be, that contains a confidentiality provision that prohibits or restricts such public agency from disclosing the existence of the agreement or the cause or causes for such termination, suspension or separation including, but not limited to, alleged or substantiated sexual abuse, sexual harassment, sexual exploitation or sexual assault by such employee or contractor, shall be subject to public disclosure under this chapter. (P.A. 06-132, §1.)

Sec. 1-215. (Formerly Sec. 1-20b). Record of an arrest as public record. Exception. (a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1-210. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(b) For the purposes of this section, "record of the arrest" means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the

law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person. (P.A. 83-272, §1; P.A. 94-117, §4; P.A. 94-246, §13.)

Sec. 1-216. (Formerly Sec. 1-20c). Review and destruction of records consisting of uncorroborated allegations of criminal activity. Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records. (P.A. 88-227, §2.)

Sec. 1-217. (Formerly Sec. 1-20f). Nondisclosure of residential addresses of certain individuals. (a) No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency:

(1) A federal court judge, federal court magistrate, judge of the Superior Court, Appellate Court or Supreme Court of the state, or family support magistrate;

(2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Environmental Protection;

(3) An employee of the Department of Correction;

(4) An attorney-at-law who represents or has represented the state in a criminal prosecution;

(5) An attorney-at-law who is or has been employed by the Public Defender Services Division or a social worker who is employed by the Public Defender Services Division;

(6) An inspector employed by the Division of Criminal Justice;

(7) A firefighter;

(8) An employee of the Department of Children and Families;

(9) A member or employee of the Board of Pardons and Paroles;

(10) An employee of the judicial branch;

(11) An employee of the Department of Mental Health and Addiction Services who provides direct care to patients; or

(12) A member or employee of the Commission on Human Rights and Opportunities.

(b) The business address of any person described in this section shall be subject to disclosure under section 1-210 of the 2008 supplement to the general statutes. The provisions of this section shall not apply to Department of Motor Vehicles records described in section 14-10 of the 2008 supplement to the general statutes.

(c) (1) Except as provided in subsections (a) and (d) of this section, no public agency may disclose the residential address of any person listed in subsection (a) of this section from any record described in subdivision (2) of this subsection that is requested in accordance with the provisions of said subdivision, regardless of whether such person is an employee of the public agency, provided such person has (A) submitted a written request for the nondisclosure of the person's residential address to the public agency, and (B) furnished his or her business address to the public agency.

(2) Any public agency that receives a request for a record subject to disclosure under this chapter where such request (A) specifically names a person who has requested that his or her address be kept confidential under subdivision (1) of this subsection, shall make a copy of the record requested to be disclosed and shall redact the copy to remove such person's residential address prior to disclosing such record, (B) is for an existing list that is derived from a readily accessible electronic database, shall make a reasonable effort to redact the residential address of any person who has requested that his or her address be kept confidential under subdivision (1) of this subsection prior to the release of such list, or (C) is for any list that the public agency voluntarily creates in response to a request for disclosure, shall make a reasonable effort to redact the residential address of any person who has requested that his or her address be kept confidential under subdivision (1) of this subsection prior to the release of such list.

(3) Except as provided in subsection (a) of this section, an agency shall not be prohibited from disclosing the residential address of any person listed in subsection (a) of this section from any record other than the records described in subparagraphs (A) to (C), inclusive, of subdivision (2) of this subsection.

(d) The provisions of this section shall not be construed to prohibit the disclosure without redaction of any document, as defined in section 7-35bb, any list prepared under title 9, or any list published under section 12-55.

(e) No public agency or public official or employee of a public agency shall be penalized for violating a provision of this section, unless such violation is wilful and knowing. Any complaint of such a violation shall be made to the Freedom of Information Commission. Upon receipt of such a complaint, the commission shall serve upon the public agency, official or employee, as the case may be, by certified or registered mail, a copy of the complaint. The commission shall provide the public agency, official or employee with an opportunity to be heard at a hearing conducted in accordance with the provisions of chapter 54, unless the commission, upon motion of the public agency, official or employee or upon motion of the commission, dismisses the complaint without a hearing if it finds, after examining the complaint and construing all allegations most

favorably to the complainant, that the public agency, official or employee has not wilfully and knowingly violated a provision of this section. If the commission finds that the public agency, official or employee wilfully and knowingly violated a provision of this section, the commission may impose against such public agency, official or employee a civil penalty of not less than twenty dollars nor more than one thousand dollars. Nothing in this section shall be construed to allow a private right of action against a public agency, public official or employee of a public agency. (P.A. 95-163; P.A. 96-83, §1; P.A. 97-219, §2; P.A. 99-26, §27; P.A. 99-77, §1; P.A. 99-156, §3; P.A. 01-186, §17; P.A. 02-53, §1; P.A. 04-234, §2; P.A. 04-257, §114; P.A. 05-108, §2; P.A. 08-120, §1; P.A. 08-186, §1; P.A. 11-51, §134; P.A. 12-3, §§1, 2.)

Sec. 1-218. Certain contracts for performance of governmental functions. Records and files subject to Freedom of Information Act. Each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (1) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206. (P.A. 01-169, §2.)

Sec. 1-219. Veterans' military records. (a) As used in this section: (1) "Armed forces" means the Army, Navy, Marine Corps, Coast Guard or Air Force of the United States; (2) "veteran" means any person honorably discharged from, or released under honorable conditions from active service or reserve status in the armed forces; (3) "military discharge document" means a United States Department of Defense form, including, but not limited to, a DD 214 form, or any valid paper that evidences the service, discharge or retirement of a veteran from the armed forces that contains personal information such as a service number or Social Security number; (4) "person" means any individual or entity, including, but not limited to, a relative of a veteran, a licensed funeral director or embalmer, an attorney-at-law, an attorney-in-fact, an insurance company or a veterans' advocate; and (5) "public agency" or "agency" means a public agency, as defined in section 1-200.

(b) A veteran or designee may file a military discharge document with the town clerk of the town in which the veteran resides or with any other public agency if the military discharge document is related to the business of the town or other agency, and the town or agency shall maintain and record the military discharge document in accordance with this section.

(c) Notwithstanding any provision of chapter 55, or any provision of section 11-8 or 11-8a, any military discharge document filed by or on behalf of a veteran with a public agency before, on or after October 1, 2002, except a military discharge document recorded before October 1, 2002, on the land records of a town, shall be retained by the agency separate and apart from the other records of the agency. The contents of such

document shall be confidential for at least seventy-five years from the date the document is filed with the public agency, except that:

(1) The information contained in the document shall be available to the veteran, or a conservator of the person of the veteran or a conservator of the estate of the veteran, at all times;

(2) Any information contained in such military discharge document which is necessary to establish, or that aids in establishing, eligibility for any local, state or federal benefit or program applied for by, or on behalf of, the veteran, including, but not limited to, the name of the veteran, the veteran's residential address, dates of qualifying active or reserve military service, or military discharge status, shall be available to the public at all times; and

(3) In addition to the information available under subdivision (2) of this subsection, any other information contained in the document shall be available to (A) any person who may provide a benefit to, or acquire a benefit for, the veteran or the estate of the veteran, provided the person needs the information to provide the benefit and submits satisfactory evidence of such need to the agency, (B) the State Librarian as required for the performance of his or her duties, and (C) a genealogical society incorporated or authorized by the Secretary of the State to do business or conduct affairs in this state or a member of such genealogical society.

(d) The provisions of this section concerning the maintenance and recording of Department of Defense documents shall not apply to the State Library Board or the State Librarian. (P.A. 02-137, §1.)

Secs. 1-220 to 1-224. Reserved for future use.

Sec. 1-225. (Formerly Sec. 1-21). Meetings of government agencies to be public. Recording of votes. Schedule and agenda of meetings to be filed and posted on web sites. Notice of special meetings. Executive sessions. (a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

(b) Each such public agency of the state shall file not later than January thirty-first of each year in the office of the Secretary of the State the schedule of the regular meetings of such public agency for the ensuing year and shall post such schedule on such public agency's Internet web site, if available, except that such requirements shall not apply to the General Assembly, either house thereof or to any committee thereof. Any

other provision of the Freedom of Information Act notwithstanding, the General Assembly at the commencement of each regular session in the odd-numbered years, shall adopt, as part of its joint rules, rules to provide notice to the public of its regular, special, emergency or interim committee meetings. The chairperson or secretary of any such public agency of any political subdivision of the state shall file, not later than January thirty-first of each year, with the clerk of such subdivision the schedule of regular meetings of such public agency for the ensuing year, and no such meeting of any such public agency shall be held sooner than thirty days after such schedule has been filed. The chief executive officer of any multitown district or agency shall file, not later than January thirty-first of each year, with the clerk of each municipal member of such district or agency, the schedule of regular meetings of such public agency for the ensuing year, and no such meeting of any such public agency shall be held sooner than thirty days after such schedule has been filed.

(c) The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency. For any such public agency of the state, such agenda shall be posted on the public agency's and the Secretary of the State's web sites. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

(d) Notice of each special meeting of every public agency, except for the General Assembly, either house thereof or any committee thereof, shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state and in the office of the clerk of each municipal member for any multitown district or agency. The secretary or clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency, except for the General Assembly, either house thereof or any committee thereof, any such special meeting may be held without complying with the foregoing requirement for the filing of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the Secretary of the State, the clerk of such political subdivision, or the clerk of each municipal member of such multitown district or agency, as the case may be, not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency. In addition, such written notice shall be delivered to the usual place of abode of each member of the public agency so that the same is received prior to such special meeting. The requirement of

delivery of such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the public agency a written waiver of delivery of such notice. Such waiver may be given by telegram. The requirement of delivery of such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Nothing in this section shall be construed to prohibit any agency from adopting more stringent notice requirements.

(e) No member of the public shall be required, as a condition to attendance at a meeting of any such body, to register the member's name, or furnish other information, or complete a questionnaire or otherwise fulfill any condition precedent to the member's attendance.

(f) A public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

(g) In determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under this section, Saturdays, Sundays, legal holidays and any day on which the office of the agency, the Secretary of the State or the clerk of the applicable political subdivision or the clerk of each municipal member of any multitown district or agency, as the case may be, is closed, shall be excluded. (P.A. 57-468, §1; P.A. 67-723, §2; P.A. 71-499; P.A. 75-342, §6; P.A. 76-435, §63; P.A. 77-609, §4; P.A. 83-67, §2; P.A. 83-148; P.A. 84-546, §4; P.A. 85-613, §3; P.A. 97-47, §8; P.A. 99-71, §1; P.A. 00-66, §7; P.A. 07-213, §23; P.A. 08-18, §2; June 11 Sp. Sess., P.A. 08-3, §11; P.A. 10-171, §4.)

Sec. 1-226. (Formerly Sec. 1-21a). Recording, broadcasting or photographing meetings. (a) At any meeting of a public agency which is open to the public, pursuant to the provisions of section 1-225, proceedings of such public agency may be recorded, photographed, broadcast or recorded for broadcast, subject to such rules as such public agency may have prescribed prior to such meeting, by any person or by any newspaper, radio broadcasting company or television broadcasting company. Any recording, radio, television or photographic equipment may be so located within the meeting room as to permit the recording, broadcasting either by radio, or by television, or by both, or the photographing of the proceedings of such public agency. The photographer or broadcaster and its personnel, or the person recording the proceedings, shall be required to handle the photographing, broadcast or recording as inconspicuously as possible and in such manner as not to disturb the proceedings of the public agency. As used herein the term television shall include the transmission of visual and audible signals by cable.

(b) Any such public agency may adopt rules governing such recording, photography or the use of such broadcasting equipment for radio and television stations but, in the absence of the adoption of such rules and regulations by such public agency prior to the meeting, such recording, photography or the use of such radio and television equipment shall be permitted as provided in subsection (a) of this section.

(c) Whenever there is a violation or the probability of a violation of subsections (a) and (b) of this section the superior court, or a judge thereof, for the judicial district in which such meeting is taking place shall, upon application made by affidavit that such violation is taking place or that there is reasonable probability that such violation will take place, issue a temporary injunction against any such violation without notice to the adverse party to show cause why such injunction should not be granted and without the plaintiff's giving bond. Any person or public agency so enjoined may immediately appear and be heard by the court or judge granting such injunction with regard to dissolving or modifying the same and, after hearing the parties and upon a determination that such meeting should not be open to the public, said court or judge may dissolve or modify the injunction. Any action taken by a judge upon any such application shall be immediately certified to the court to which such proceedings are returnable. (P.A. 67-851, §1; P.A. 69-706; P.A. 74-183, §161; P.A. 75-342, §12; P.A. 76-435, §24; P.A. 76-436, §562; P.A. 77-609, §5; P.A. 78-280, §1; P.A. 05-288, §3.)

Sec. 1-227. (Formerly Sec. 1-21c). Mailing of notice of meetings to persons filing written request. Fees. The public agency shall, where practicable, give notice by mail of each regular meeting, and of any special meeting which is called, at least one week prior to the date set for the meeting, to any person who has filed a written request for such notice with such body, except that such body may give such notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting. Such notice requirement shall not apply to the General Assembly, either house thereof or to any committee thereof. Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within thirty days after January first of each year. Such public agency may establish a reasonable charge for sending such notice based on the estimated cost of providing such service. (P.A. 75-342, §7.)

Sec. 1-228. (Formerly Sec. 1-21d). Adjournment of meetings. Notice. The public agency may adjourn any regular or special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular meeting the clerk or the secretary of such body may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided in section 1-225, for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular or special meeting was held, within twenty-four hours after the time of the adjournment. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings, by ordinance, resolution, by law or other rule. (P.A. 75-342, §8.)

Sec. 1-229. (Formerly Sec. 1-21e). Continued hearings. Notice. Any hearing being held, or noticed or ordered to be held, by the public agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of such agency in the same manner and to the same extent set forth in section 1-228, for the adjournment of meeting, provided, that if the hearing is continued to a time less than

twenty-four hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted on or near the door of the place where the hearing was held immediately following the meeting at which the order or declaration of continuance was adopted or made. (P.A. 75-342, §9.)

Sec. 1-230. (Formerly Sec. 1-21f). Regular meetings to be held pursuant to regulation, ordinance or resolution. The public agency shall provide by regulation, in the case of a state agency, or by ordinance or resolution in the case of an agency of a political subdivision, the place for holding its regular meetings. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If it shall be unsafe to meet in the place designated, the meetings may be held at such place as is designated by the presiding officer of the public agency; provided a copy of the minutes of any such meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the Secretary of the State or the clerk of the political subdivision, as the case may be, not later than seventy-two hours following the holding of such meeting. (P.A. 75-342, §10.)

Sec. 1-231. (Formerly Sec. 1-21g). Executive sessions. (a) At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

(b) An executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless the executive session is for a purpose explicitly permitted pursuant to subdivision (6) of section 1-200. (P.A. 75-342, §11; P.A. 81-431, §5; P.A. 86-226; P.A. 97-47, §9.)

Sec. 1-232. (Formerly Sec. 1-21h). Conduct of meetings. In the event that any meeting of a public agency is interrupted by any person or group of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are wilfully interrupting the meetings, the members of the agency conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit such public agency from establishing a procedure for readmitting an individual or individuals not responsible for wilfully disturbing the meeting. (P.A. 75-342, §13.)

Secs. 1-233 to 1-239. Reserved for future use.

Sec. 1-240. (Formerly Sec. 1-21k). Penalties. (a) Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to

chapter 47 or 871, or who alters any public record, shall be guilty of a class A misdemeanor and each such occurrence shall constitute a separate offense.

(b) Any member of any public agency who fails to comply with an order of the Freedom of Information Commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense. (P.A. 75-342, §16; P.A. 79-631, §24; P.A. 82-188, §2.)

Sec. 1-241. (Formerly Sec. 1-211). Injunctive relief from frivolous, unreasonable or harassing freedom of information appeals. A public agency, as defined in subdivision (1) of section 1-200, may bring an action to the Superior Court against any person who was denied leave by the Freedom of Information Commission to have his appeal heard by the commission under subsection (b) of section 1-206 because the commission determined and found that such appeal or the underlying request would perpetrate an injustice or would constitute an abuse of the commission's administrative process. The action authorized under this section shall be limited to an injunction prohibiting such person from bringing any further appeal to the commission which would perpetrate an injustice or would constitute an abuse of the commission's administrative process. If, after such an injunction is ordered, the person subject to the injunction brings a further appeal to the Freedom of Information Commission and the commission determines that such appeal would perpetrate an injustice or would constitute an abuse of the commission's administrative process, such person shall be conclusively deemed to have violated the injunction and such agency may seek further injunctive and equitable relief, damages, attorney's fees and costs, as the court may order. (P.A. 93-191, §2; P.A. 97-47, §14.)

Sec. 1-242. Actions involving provisions of the Freedom of Information Act. Notice of litigation to the Freedom of Information Commission. Intervention by commission. (a) In any action involving the assertion that a provision of the Freedom of Information Act has been violated or constitutes a defense, the court to which such action is brought shall make an order requiring the party asserting such violation or defense, as applicable, to provide the Freedom of Information Commission with notice of the action and a copy of the complaint and all pleadings in the action by first-class mail or personal service to the address of the commission's office.

(b) Upon the filing of a verified pleading by the commission, the court to which an action described in subsection (a) of this section is brought may grant the commission's motion to intervene in the action for purposes of participating in any issue involving a provision of the Freedom of Information Act. (P.A. 04-206, §1.)

Secs. 1-243 to 1-259. Reserved for future use.

TAB 2

Freedom of Information Act
Changes in 2012

PUBLIC ACT 12-3: AN ACT CONCERNING THE EXEMPTION FROM DISCLOSURE OF CERTAIN ADDRESSES UNDER THE FREEDOM OF INFORMATION ACT

This Act, the relevant portions of which became effective June 1, 2012, amends certain Freedom of Information Act ("FOIA") provisions relating to the confidentiality of certain public employees' home addresses. Prior to enactment of this law, there were a limited number of public employees whose home addresses could not be disclosed by a public agency under any circumstances. This prohibition applied to the individual's employing agency, and also applied to other public agencies that may have had incidental access to the person's home address (e.g. town, clerks, registrars of voters, etc.). A public agency that improperly disclosed a confidential home address was subject to penalties under the FOIA regardless of whether or not the agency was actually aware that the person's address was protected under this confidentiality requirement.

The Act attempts to ease the potential administrative burden placed on public agencies under this requirement. It requires covered individuals to submit written home address confidentiality requests to both their employing agency and any outside agency that may have a record of their address on file. If a FOIA request made to a non-employing public agency specifically names a covered individual and requests a record containing the individual's home address, the public agency is required to disclose a redacted copy of the record. Alternatively, if a FOIA request does not specifically request records pertaining to a covered individual, but the request seeks records that incidentally include the covered individual's address, the public agency is required to make reasonable efforts to redact the address. The Freedom of Information Commission is only permitted to impose civil penalties against a public agency for violations of this provision if it finds that the agency committed a knowing and willful violation.

Additionally, the Act exempts specified records from the home address confidentiality provision. Certain municipal land records, voter registration lists and municipal grand lists are not subject to residential address redaction even upon request. The Act, subject to available appropriations, also authorizes the Connecticut Department of Labor to create a guide on home address redaction for eligible individuals. Finally, the Act requires the General Assembly's Government Administration and Elections Committee to establish an advisory committee to further study this issue.

The following classes of public employees are covered by the home address confidentiality provision of the FOIA as described above:

1. A federal court judge, federal court magistrate, judge of the Superior Court, Appellate Court or Supreme Court of the state, or family support magistrate;

2. A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public

Protection or a sworn law enforcement officer within the Department of Environmental Protection;

3. An employee of the Department of Correction;

4. An attorney-at-law who represents or has represented the state in a criminal prosecution;

5. An attorney-at-law who is or has been employed by the Public Defender Services Division or a social worker who is employed by the Public Defender Services Division;

6. An inspector employed by the Division of Criminal Justice;

7. A firefighter;

8. An employee of the Department of Children and Families;

9. A member or employee of the Board of Pardons and Paroles;

10. An employee of the judicial branch;

11. An employee of the Department of Mental Health and Addiction Services who provides direct care to patients; or

12. A member or employee of the Commission on Human Rights and Opportunities.

TAB 3

Freedom of Information Commission

Citizen's Guide

I. IN GENERAL.

The Freedom of Information Commission was created by the General Assembly in l975 with the passage of the Freedom of Information Act. The Act provides the public with rights of access to records and meetings of public agencies. You may obtain a copy of the Act without charge by contacting the Commission at the address printed on the last page of this guide.

If you feel that you have been denied a right guaranteed by the Freedom of Information Act you may file an appeal with the Freedom of Information Commission.

II. REQUIREMENTS FOR FILING AN APPEAL.

Generally, an appeal must be filed with the Commission within 30 days of the violation alleged, except when the appeal concerns an unnoticed or secret meeting. In that case, the appeal must be filed within 30 days after the person filing the appeal receives notice in fact that such meeting was held. There is no specific form to complete. A letter containing a statement of all relevant facts is sufficient to institute an appeal. In addition, if you want to request the imposition of a civil penalty (fine) permitted under Section 1-206(b) of the Act, you should say so explicitly in your letter. Your letter should contain the names, titles and addresses, if known, of the persons or agencies you feel have violated the Act, as well as a telephone number at which you can be reached during business hours. If an appeal concerns a request for records contained in a public employee's personnel, medical file or similar file, the Commission may require the respondent public agency to notify the subject employee(s) of the appeal and any such employee(s) may intervene as a party to the appeal.

NOTE: BE SURE TO READ THE ACT CAREFULLY TO DETERMINE WHETHER YOUR CLAIM OF A VIOLATION IS SUPPORTED BY THE LAW. The staff of the Freedom of Information Commission is available to assist you with any procedural questions concerning an appeal. While the staff may be able to refer you to specific sections of the law and cases interpreting them, only the Commission, not its staff, has the power to interpret and apply the law.

III. PRE-HEARING CONSIDERATIONS.

A person bringing an appeal to the Commission is called the "complainant" and the public agency or official defending is called the "respondent." When an appeal is filed, the Commission issues a "Notice of Hearing and Order to Show Cause." This is the official notice that the matter will be heard, and sets forth the date, time and place of the hearing. All parties named must appear at the hearing, either in person or by counsel or other authorized representative. A complainant's failure to appear will lead to dismissal of the complaint. A respondent's failure to appear deprives it of the opportunity to defend itself against the complainant's allegations.

The Freedom of Information Commission has an "ombudsman" program which involves the assigning of a staff member to each appeal to act as liaison between the parties. An ombudsman will attempt to effect a settlement of each appeal. But if a settlement is not possible, the matter will proceed to a hearing.

Due to the large number of cases filed and the requirements for speedy action, the Freedom of Information Commission will NOT ordinarily postpone scheduled hearings at the request of the parties UNLESS the parties are negotiating a settlement and, in writing, request a postponement based upon the likelihood of agreement. For the same reason, hearings are scheduled to be heard within 90 MINUTE time periods. Be prompt to ensure that you will be able to take advantage of the full 90 minutes allotted.

The hearings are conducted in one of the hearing rooms on the FIRST FLOOR at 18-20 Trinity Street, Hartford. There is no off-street parking available, so be prepared to arrive early enough to find a parking

space, either on the surrounding streets where parking is metered, or in commercial lots in the vicinity. If you are attending an afternoon hearing, be aware of tow zones--they are enforced PROMPTLY at 4:00 p.m.

IV. PREPARING FOR A HEARING.

Here are a few suggestions on how to prepare for a Freedom of Information Commission hearing.

l. Know your facts. Don't rely on what others have told you or what you have read in the newspaper. Check the facts yourself if possible.

2. Determine what evidence you need to prove your case. That is, consider what you would want proved if you were a member of the Freedom of Information

Commission. Remember, however, you may present evidence only on those issues fairly raised in your appeal. Decide what documents and witnesses you will need. For example, if you have alleged that an agency's agenda was faulty, bring a copy of the agenda with you.

3. Make arrangements in advance to have NECESSARY witnesses and documents available for the hearing. You may wish to contact the opposing party or its counsel, either directly or through the ombudsman assigned to your appeal, to see if you can agree upon essential facts. You may avoid the necessity of presenting evidence by "stipulating" or agreeing to these facts at the hearing. See Section V. of this Guide concerning the procedure for entering agreements of fact on the record.

4. If a NECESSARY witness will not testify voluntarily, contact the Commission staff immediately. If you are able to show why the person's testimony is necessary and why you believe he or she will not appear voluntarily, the Commission may issue a subpoena which would require the person to appear. You must make arrangements for and pay the cost of serving such a subpoena.

V. CONDUCT OF A HEARING.

One of the five members of the Freedom of Information Commission or a staff member is designated to preside over the hearing and is called the "Hearing Officer." The Hearing Officer is usually assisted by a staff attorney, one of whose functions is to answer procedural questions. The hearing is an official proceeding conducted as a contested case under Chapter 54 of the Connecticut General Statutes and the Regulations of the Commission. The Commission, however, strives to maintain an atmosphere comfortable to those parties not represented by an attorney. Procedures are explained and questions answered so that lay people can understand what will happen and what is expected of them. A copy of the Commission's Regulations may be obtained upon request at the address printed on the last page or can be found starting with Section l-2lj-l of the Regulations of Connecticut State Agencies.

Each hearing consists of a presentation of evidence, first by the complainant, then by the respondent. The hearing will provide the ONLY opportunity to present evidence, and all evidence becomes part of the record of the hearing. Each party may testify, examine and cross-examine witnesses and offer documents as evidence. The presentation of evidence is followed by a brief argument on the law.

Hearings will ordinarily follow this format: The Hearing Officer convenes the hearing and outlines the hearing procedures, explaining how the Commission will arrive at its decision in the case. The parties are asked if they are willing to go "off the record" (that is, the tape recorder is turned off) to discuss whether any facts can be agreed upon without the need to present evidence. These are called "stipulations." Although the conference concerning stipulations is off the record, the hearing is still open to the public. If the parties wish to discuss any matter privately, they may request a recess and leave the hearing room for their discussion. After the informal conference is completed, the hearing proceeds on the record (that is, the tape recorder is turned back on). The facts agreed upon are read into the tape recorder and become part of the record of the hearing. If there is need for further evidence, all witnesses are then sworn in.

a. Presenting evidence.

The complainant should fairly raise the allegations made in the complaint. (See Section IV. of the Guide concerning preparation for a hearing). This may be accomplished by the testimony of witnesses (including the complainant) or by the submission of written evidence. If a party is not represented by a lawyer or other authorized representative, that party may testify in narrative form--that is, by reciting facts without being asked a question. All other witnesses should testify in a question-and-answer format but narrative maybe allowed.

Evidence should relate specifically to the case in question, and should reflect what the witness KNOWS, as opposed to what the witness was told or guesses or suspects. When a document is offered into evidence, a witness may be necessary to testify as to its authenticity and how it was obtained. Don't waste time on a long recitation of prior events not related directly to the claimed violation of the Freedom of Information Act.

Each witness is subject to cross-examination based upon the testimony given. The party introducing the witness then may re-examine the witness in order to clarify or explain testimony brought forth on cross-examination. This is called "re-direct," and is occasionally followed by "re-cross examination." This process allows the parties to satisfy themselves that each witness has presented fairly all material facts.

After the complainant has completed the presentation of evidence, the respondent is then given the same opportunity to present additional evidence in defense. The respondent, unless it has evidence that it is not a public agency, must prove that the actions at issue were proper under the Freedom of Information Act. If the complaint specifically seeks the imposition of the civil penalty permitted under Section 1-206(b) of the Act, the respondent also should be prepared to show that the alleged denial of any rights under the Freedom of Information Act was based upon reasonable grounds. If necessary, the complainant is given the opportunity to present further evidence in rebuttal.

Remember: Do not present several witnesses to testify to the same facts (cumulative testimony)--it is not necessary nor is it desirable. Also keep in mind that a party's motivation in pursuing rights under the Freedom of Information Act is not relevant and will not have any impact on the Commission's decision.

b. Argument on the Law.

Once all the evidence has been submitted, the parties are allowed to make a brief argument on the law. This argument should state why you believe that the Freedom of Information Act was or was not violated. Don't repeat all of the evidence presented or quote extensively from the Act itself. Written arguments and briefs may be filed at the hearing or within the time specified by the Hearing Officer, but are not required. A copy of any written argument or brief must be given or mailed to all parties of record and the written argument or brief must contain a statement to this effect.

VI. HEARING OFFICER'S REPORT.

After the hearing is concluded, the Hearing Officer prepares a report for the full Commission's consideration. This report consists of a series of findings of fact, conclusions of law, and a recommended order. The report is based SOLELY upon the record of the hearing and the Hearing Officer's application of the law.

Even if the complaint does not specifically seek the imposition of the civil penalty permitted under Section 1-206(b) of the Act, the Hearing Officer may find that specific violations of the Act appear to have been committed without reasonable grounds. In that case, the report may recommend that a subsequent hearing be held in order to afford the respondent an opportunity to show that any such violation was based upon reasonable grounds.

The report is not a final decision, and must be adopted by the Freedom of Information Commission to become one. All parties will receive a copy of the report, as well as notice of the date, time and place of the meeting at which the Commission will consider and vote on it. If you wish to submit a brief or written argument to the full Commission, an original and the number of copies indicated on the transmittal letter should be in the Commission's office no later than the date stated on the transmittal letter. A copy of any written argument or brief must be mailed to all parties of record and the written statement or brief must

contain a statement to this effect. Typically, Commission decisions are scheduled for action at its regular meetings, held on the second and fourth Wednesdays of each month.

VII. COMMISSION ACTION ON HEARING OFFICER'S REPORT.

Before the Hearing Officer's Report becomes the final decision of the Freedom of Information Commission, it must be approved by the Commission itself. The Commission may approve the report, amend the report, and approve it as amended, or it may reject the report completely.

The parties may attend the meeting at which the report is considered and may offer brief oral arguments (maximum of 10 MINUTES per side) opposing or in favor of the report. NO NEW OR ADDITIONAL EVIDENCE WILL BE ENTERTAINED AT THE MEETING.

Each party is advised to attend the Commission's meeting at which the Hearing Officer's Report will be considered and voted upon, even if the report is in its favor. Remember, all opposing parties may attend the meeting, and the Commission may be persuaded to amend or reject the Hearing Officer's Report. If a party is not present, it risks that unrebutted or unchallenged arguments may convince the Commission to take an unfavorable action in adopting its Final Decision.

After arguments are concluded, the Commission deliberates and votes in public session as to whether to approve, amend or reject the Hearing Officer's Report. All parties are sent a copy of the Commission's final decision.

VIII. APPEALS FROM COMMISSION DECISIONS.

The law provides that an aggrieved party may appeal a final decision of the Freedom of Information Commission to the Superior Court.

If you are successful at the Commission level and an appeal to the courts is brought by an aggrieved (unsuccessful) party, you will be served with a copy of that appeal. Counsel for the Commission will participate in the appeal on behalf of the Commission, but will NOT act as your personal representative. Because your interests may not always be identical to that of the Commission, you may choose to consult your own attorney to fully protect your rights.

IX. MISCELLANEOUS.

If you should resolve your dispute before the Commission hearing is held, please notify the Commission IMMEDIATELY so that everyone concerned can be informed. The appeal to the Commission will be withdrawn officially upon receipt of a written communication, signed by the complainant, stating that the matter has been resolved. If written communication is not received withdrawing the appeal and the complainant does not appear at the hearing, the case will be dismissed.

If an appeal concerns an announced agency decision to meet in executive session, or an ongoing agency practice of meeting in executive sessions, for a stated purpose, if practicable the Commission will hold a preliminary hearing within 72 hours of the filing of the appeal. The purpose of the preliminary hearing is to determine whether there is probable cause to believe that the agency decision or practice violates the Freedom of Information Act. If the Hearing Officer finds such probable cause, the agency will be prohibited from meeting in executive session for that purpose until the Commission finally decides the appeal. The Commission's final decision is due within five days of the preliminary decision finding probable cause.

A Hearing Officer's Report is a public record, available to the public (including the press) as soon as it is submitted by the Hearing Officer. Therefore, you may read about a proposed decision before receiving your own copy.

If you wish to contact the Commission, you may do so at the following address and telephone number:

Freedom of Information Commission

18-20 Trinity Street

Hartford, Connecticut 06106

Telephone: 1 866 374-3617 or (860) 566-5682;

Fax: (860) 566-6474

EMAIL: foi@ct.gov

WWW HOME PAGE: http://www.state.ct.us/foi

research/citizen's guide/3/20/2008

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TAB 4

Freedom of Information Commission

Frequently Asked Questions

1. Q: Is there a form that a person requesting access to public records must use to make requests?

A: No. There are no required forms. However, an agency may ask a person requesting copies of public records to complete a form prepared by the agency.

2. Q: What fees can an agency charge to provide copies of public records?

A: Municipal agencies may charge a maximum of fifty cents per page and state agencies may charge a maximum of twenty-five cents per page. Other fees may be charged for certified copies of public records or for transcriptions, printouts or records on electronic media.

3. Q: How quickly must an agency provide access to, or copies of, public records?

A: An agency is required to provide "prompt" access to public records. Promptness is a standard determined by consideration of a number of factors such as: how busy the agency is at the time of the request, how time-consuming it will be to comply with the request and the urgency of need for the information contained in the records.

4. Q: How long does an agency have to prepare minutes after a meeting has occurred?

A: Regular and special meeting minutes are required to be available to the public within seven days (excluding weekends and holidays for special meetings) of the meeting to which they refer. Minutes of emergency special meetings must be available within seventy-two hours (excluding weekends and holidays) of the meeting to which they refer. The record of votes must be available within forty-eight hours of the meeting to which they refer.

5. Q: Do members of the public have a right under the Freedom of Information Act to speak at public meetings?

A: No. The Freedom of Information Act gives the public the right to attend the meetings of public agencies and to view meetings while they are taking place. Any additional rights concerning participation by members of the public at public meetings are not part of the Freedom of Information Act.

6. Q: Can an agency vote to consider business that was not listed on its meeting agenda?

A: At a regular meeting, a public agency can vote to consider a matter not listed on its agenda if the agency obtains a favorable 2/3 vote of those members of the agency who are present and voting at the meeting. At a special meeting, an agency may not consider a matter not listed on its notice of special meeting.

7. Q: If a person believes that a violation of the Freedom of Information Act has occurred, how long does he or she have to file a complaint with the Commission?

A: Generally, a complaint must be filed within thirty days of an alleged violation of the Freedom of Information Act. In the case of an alleged secret or unnoticed meeting, however, a complaint must be filed within thirty days from the time the person knew or could have known that such a meeting occurred.

8. Q: Is there a form that a person wishing to file a complaint with the Freedom of Information Commission must complete?

A: No. There are no required forms. A person must write a letter to the Commission alleging that a violation of the Freedom of Information Act has occurred and include all of the information needed to docket the matter as a complaint, including: the name, address and telephone number of both the person filing the complaint and the agency involved and the date the alleged violation occurred.

9. Q: Do persons who file complaints with the Commission need to be represented by an attorney?

A: No. Staff counsel from the Freedom of Information Commission will help parties with procedural questions, but will not represent you. The decision whether to be represented by counsel is entirely up to the party appearing before the Commission.

10. Q: I'm unable to find the information I need, will the Commission be able to tell me where to find it, or get the information for me?

A: No. The Commission is not a repository for information. The Commission is a quasi-judicial agency where you may file a complaint if a public agency has denied you access to public records or public meetings. (See also "About Us" on Homepage.)

11. Q: Does the Commission act on tips?

A: No. In order for the Commission to act, a written complaint must be filed with the Commission against a public agency alleging a denial of access to public records or public meetings. (See also Questions 7 and 8, above.)

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TAB 5

Freedom of Information Commission

Highlights

PUBLIC AGENCIES

YOU HAVE THE RIGHT TO OBTAIN RECORDS AND ATTEND MEETINGS OF ALL PUBLIC AGENCIES - WITH CERTAIN LIMITED EXCEPTIONS.

This applies to

-State and local government agencies, departments, institutions, boards, commissions and authorities and their committees.

-Executive, administrative or legislative offices, and the judicial branch and the Division of Criminal Justice with respect to their administrative functions.

-Certain other entities based on the following criteria: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government.

PUBLIC MEETINGS

I. MEETINGS, INCLUDING HEARINGS AND OTHER PROCEEDINGS, MUST BE OPEN TO THE PUBLIC - EXCEPT IN LIMITED SITUATIONS.

A public meeting is any hearing or other proceeding of a public agency, or gathering of, or communication by or to a quorum of a multi-member agency, to discuss or act on any matter over which it has authority.

The following are not public meetings: meetings of certain personnel search committees; collective bargaining strategy and negotiating sessions; caucuses; chance or social gatherings not intended to relate to official business; administrative or staff meetings of a single-member agency (e.g., mayor); and communications limited to notice of agency meetings or their agendas.

No registration or other requirements may be imposed on a member of the public seeking attendance at a public meeting.

The public, as well as the news media, may photograph, record or broadcast meetings, subject to prior reasonable rules regarding non-interference with the conduct of the meeting.

II. ONLY THREE KINDS OF MEETINGS ARE RECOGNIZED UNDER THE FREEDOM OF INFORMATION ACT: REGULAR, SPECIAL AND EMERGENCY.

A state agency must file each year a schedule of its regular meetings with the Secretary of the State. A town or city agency must file each year a schedule of its regular meetings with the clerk of the town or city. A multi-town district or agency must file each year a schedule of its regular meetings with the clerk of each municipal member of the district or agency. A special meeting may be called up to 24 hours (excluding weekends, holidays, and days on which the office of the Secretary of the State or municipal clerk, as the case may be, is closed) before the time set for the meeting. A special meeting is called by filing a notice stating the time, place and business to be transacted.

A state agency files this notice with the Secretary of the State; a local agency files this notice with the municipal clerk; a multi-town district or agency files this notice with the clerk of each municipal member of the district or agency.

An emergency meeting may be held without com- plying with the preceding notice requirements. How- ever, the agency must file its minutes, including the reason for the emergency, within 72 hours (excluding

weekends and holidays) of the meeting with the Secretary of the State if a state agency; or with the municipal clerk if a local agency; or with the clerk of each municipal member if a multi-town district or agency.

III. YOU ARE ENTITLED TO RECEIVE A COPY OF THE NOTICE AND AGENDA OF A MEETING.

An agency is required to send a notice of its meetings, where practicable at least 1 week prior to the meeting date, to any person who has made a written request. The agency may establish a reasonable charge for this service.

Each agency must make available its agenda for each regular meeting at least 24 hours before the meeting to which it refers. New business not on the agenda may be considered and acted on only on a 2/3 vote of the members of the agency.

IV. AGENCY MINUTES AND RECORD OF VOTES MUST BE AVAILABLE TO THE PUBLIC.

The minutes of each agency meeting must be made available to the public within 7 days of the session to which they refer in the agency's office if it has one; or, if none, in the office of the Secretary of the State for state agencies or in the municipal clerk's office for local agencies. In the case of special meetings, the 7 day period excludes weekends and holidays. The minutes must contain the record of each member's vote on any issue before the agency.

The votes of each member on any issue must be put in writing and made available to the public within 48 hours, excluding weekends and holidays, of the meeting at which the votes were taken.

The minutes of a meeting at which an executive session occurs must indicate all persons who were in attendance at the closed session, except for job applicants who were interviewed.

EXECUTIVE SESSIONS

I. AN AGENCY MAY CLOSE CERTAIN PORTIONS OF ITS MEETINGS BY A VOTE OF 2/3 OF THE MEMBERS PRESENT AND VOTING. THIS VOTE MUST BE CONDUCTED AT A PUBLIC SESSION.

Meetings to discuss the following matters may be closed: specific employees (unless the employee concerned requests that the discussions be open to the public); strategy and negotiations regarding pending claims and litigation; security matters; real estate acquisition (if openness might increase price); or any matter that would result in the disclosure of a public record exempted from the disclosure requirements for public records.

Any business or discussion in a closed session must be limited to the above areas.

The agency may invite persons to present testimony or opinion in the executive session, but their attendance must be limited to only the time necessary for that testimony or opinion.

PUBLIC RECORDS

I. MOST RECORDS OR FILES OF STATE AND LOCAL AGENCIES, INCLUDING MINUTES OF ALL THEIR MEETINGS, ARE AVAILABLE TO THE PUBLIC FOR INSPECTION OR COPYING.

This includes

-Information or data which is typed, handwritten, tape recorded, printed, photographed or computer-stored.

-Most inter-agency and intra-agency memoranda or letters.

II. RECORDS SPECIFICALLY EXEMPTED FROM DISCLOSURE BY FEDERAL LAW OR STATE STATUTE ARE NOT AVAILABLE TO THE PUBLIC.

In addition, the following records may not be available to the public: some preliminary drafts or notes; personnel or medical files; certain law enforcement records, including arrest records of juveniles and some witness and victim identification information; records relating to pending claims and litigation; trade secrets and certain commercial or financial information; test questions used to administer licensing, employment or academic examinations; real estate appraisals and construction contracts until all of the property has been acquired; personal financial data required by a licensing agency; records relating to collective bargaining; tax returns and communications privileged by the attorney-client relationship; names and addresses of public school students; information obtained by illegal means; certain investigation records of reported misconduct in state government or names of state employees who report such misconduct to the state Attorney General or Auditors; certain adoption records; election, primary, referenda and town meeting petition pages, until certified; certain health authority complaints and records; certain educational records; certain records, when there are reasonable grounds to believe disclosure may result in a safety risk; and certain records, if disclosure would compromise the security or integrity of an information technology system. Also, records of personnel search committees need not be disclosed if they would identify executive level employment candidates without their consent.

III. YOU MAY INSPECT PUBLIC RECORDS DURING REGULAR OFFICE HOURS, BUT COPIES, PRINT- OUTS OR TRANSCRIPTS SHOULD BE REQUESTED IN WRITING.

The fee for a copy of a public record from a state agency must not exceed 25¢ per page. The fee for a copy of a public record from a non-state agency must not exceed 50¢ per page. The fee for a computer disk, tape, printout or for a transcript, or a copy thereof, must not exceed the actual cost to the agency involved. The agency may also require the prepayment of these fees if their estimated cost is $10.00 or more. No sales tax may be imposed for copies of the public records requested under this Act.

The agency is required to waive any fee for copies if the person requesting the copies is poor and cannot afford it; or if the agency determines that the request benefits the public welfare.

There is an additional charge for a certified copy of a public record.

You are entitled to prompt access to inspect or copy public records. If an agency fails to respond to a request within four business days, such failure can be treated as a denial of the request.

THE FREEDOM OF INFORMATION COMMISSION

I. YOU MAY APPEAL THE DENIAL OF ANY RIGHT CONFERRED BY THIS ACT TO THE FREEDOM OF INFORMATION COMMISSION.

You do not have to hire a lawyer to appeal to the Commission.

You must, however, appeal to the Commission within 30 days of the denial of any right conferred by this Act.

II. IF YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHTS UNDER THE FREEDOM OF INFORMATION ACT, INCLUDING HOW TO APPEAL, CONTACT:

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT
18-20 TRINITY STREET
HARTFORD, CONNECTICUT 06106
TELEPHONE: (860) 566-5682
TOLL-FREE (CT ONLY): (866) 374-3617
FAX: (860) 566-6474
EMAIL: FOI@PO.STATE.CT.US
HTTP://WWW.STATE.CT.US/FOI/

TAB 6

I. THE FREEDOM OF INFORMATION ACT (FOIA) AND PUBLIC MEETINGS PROVISIONS

A. REGULAR MEETINGS

1. A meeting is "any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power." Conn. Gen. Stat. §1-200(2)

   - A gathering of four of an eleven-member board of selectmen to discuss procedural strategy for an upcoming board meeting is not a "public meeting" subject to the FOIA because four members do not constitute a quorum. Windham v. Freedom of Information Commission (FOIC), 48 Conn. App. 529, 711 A.2d 741 (1998), *appeal dismissed*, 249 Conn. 291, 732 A.2d 752 (1999). However, the Connecticut Appellate Court previously held that a meeting may occur even in the absence of a quorum, for purposes of determining the applicability of the notice provisions of FOIA. Emergency Medical Services Commission of Town of East Hartford v. FOIC, 17 Conn. App. 352, 561 A2d 981 (1989). In light of this apparent inconsistency, a Superior Court judge once ruled that a recess in a school board meeting to review Roberts Rules of Order was a "proceeding" of the school board from which the public was unlawfully excluded even though less than a quorum of the board was involved in the review and the reviewing board members reported in public session to the full board after the recess. Meriden Board of Education v. FOIC, 2000 WL 804597 (Conn. Super. 2000).

2. A meeting does *not* include:

   a. Any meeting of a personnel search committee for executive level employment candidates;

   b. Any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business;

   c. Any meeting discussing strategy or negotiations with respect to collective bargaining;

      - In several cases Connecticut courts have determined that deliberations after an evidentiary grievance hearing with respect to the appropriate remedy, if any, and other issues with regard to how the grievance should be decided or settled clearly fall within the "strategy or negotiations" with respect to collective bargaining exception. . Waterbury Teachers Association v. FOIC, 240 Conn. 835, 694 A.2d 1241 (1997); *see also* Board Of Labor Relations v. FOIC, 244 Conn. 487, 709 A.2d 1129 (1998). However, in a recent decision the Freedom of Information Commission muddied the waters in this area by holding that the deliberative phase of a grievance hearing must be held in public session unless the agency specifically establishes that deliberations are part of the "back and forth" of negotiations or the specific planning of collective bargaining strategy. O'Reilly v. Chairman, Regional School District 1, FIC # 2010-766 (holding that deliberative phase of board of education level grievance hearing constituted public meeting).

      - Notwithstanding the above, the evidentiary portions of grievance hearings clearly constitute meetings under the FOIA that must be open to the public. Waterbury Teachers Association v. FOIC, *supra*. The court reasoned that the grievance sessions discussed matters other than "strategy or negotiation with respect to collective bargaining" in receiving testimony and evidence from witnesses. Id. at 842; see also Connecticut Dept. of Educ. v. Freedom of Info. Comm'n, CV116009562S, 2011 WL 7095183 (Conn. Super. Ct. Dec. 29, 2011)*appeal pending* CV-6009584 (affirming FOIC decision holding that the evidentiary portions of *interest* arbitration hearings are public meetings as well).

      - Only strategy and negotiation sessions that relate to *collective bargaining* are excluded from the "meeting" provisions. Glastonbury Education Association v. FOIC, 234 Conn. 704, 663 A.2d 349 (1995).

   d. A caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency;

   e. An administrative or staff meeting of a single-member public agency;

   f. Communication limited to notice of meetings of any public agency or the agenda thereof; and

   g. A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event. Conn. Gen. Stat. §1-200(2).

B. NOTICE

1. On or before January 31st of each year the agency must file with the clerk of the pertinent political subdivision a schedule of regular meetings for the ensuing year. No meeting may be held within 30 days of filing this notice. Conn. Gen. Stat. §1-225. If it is found that the time of any regular meeting scheduled for the ensuing year falls on a holiday, that regular meeting must be held on the next business day. Id. In determining the time for notice, Saturdays, Sundays and legal holidays may be excluded.

2. The place for holding the regular meetings of the agency must be designated by bylaw.

3. Notice of the meeting must be mailed out at least a week before the regular meeting to anyone who has made a written request. Conn. Gen. Stat. §1-227. The written request for notice by mail of each regular and of any special meeting called during the year must be filed with the agency. This request must be renewed each year. The agency may charge a reasonable fee for this service. Conn. Gen. Stat. §1-227.

4. All agencies must post their special meeting notices not less than twenty-four hours before such meeting on the agency's website, if available. *Id.*

C. AGENDA

1. The agenda of each regular meeting must be posted at least 24 hours prior to that meeting. This agenda must be posted in the agency's own office or place of business and in the office of the pertinent political subdivision's clerk (or, in the case of multi-town districts, clerks). Conn. Gen. Stat. §1-225.

2. Any subsequent business not placed on this agenda may be considered and acted upon at such meetings upon the affirmative vote of two-thirds of the members of a public agency present and voting. Conn. Gen. Stat. §1-225(c). An affirmative two-thirds vote on the substantive issue itself may be sufficient to comply with the statute. Zoning Board of Appeals of Plainfield v. FOIC, 2000 WL 765186 (Conn. Super. 2000).

D. MINUTES

1. Minutes must be available to the public within seven business days. The minutes shall be made available at the agency's office or the pertinent political subdivision's clerk's office. Conn. Gen. Stat. §1-225(a).

E. VOTES

1. Votes must be recorded in the minutes, showing those who voted and how they voted. Conn. Gen. Stat. §1-225(a). A record of the votes must be available within 48 hours, excluding Saturdays, Sundays or legal holidays. Id.

F. ACCESS OF PUBLIC AND MEDIA

1. Public

a. Except for executive sessions, the agency must conduct as open to the public every part of every meeting of a quorum that is convened to discuss or act upon any matter over which the agency has supervision, control, and jurisdiction. Conn. Gen. Stat. §1-225(a).

b. The agency must permit any member of the public to attend meetings without being required to register by name, furnish information of any kind, complete a questionnaire, or fulfill any other condition before entering the meeting place. Id.

c. The public is expected to follow agency rules governing the conduct of meetings. Conn. Gen. Stat. §1-232.

2. Media

a. Any open meeting of a public agency may be recorded, photographed, broadcast or recorded for broadcast. All persons engaging in such activities are subject to the rules of decorum and behavior that the agency establishes to permit the orderly conduct of its meetings. Conn. Gen. Stat. §1-226. Specific agency procedures that govern photographing, broadcasting or recording of meeting should be furnished in written form to the media *prior* to the commencement of the meeting. Id. If no such procedures exist, it is suggested that the agency adopt rules permitting or controlling the media.

b. The media (and the public) may be required to act in an inconspicuous manner so that their conduct does not disturb agency proceedings. Conn. Gen. Stat. §1-232.

G. ADJOURNMENT

1. The agency may adjourn any meeting to the time and place it specifies in the order of adjournment. In so doing, it may act by less than a quorum when a quorum is not present. Conn. Gen. Stat. §1-228.

2. If all members are absent from a regular meeting, the agency clerk or secretary is authorized to declare the meeting adjourned to a stated time and place. Id.

3. Within 24 hours of the adjournment of any regular or special meeting because of the lack of a quorum, a copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the meeting was held. Id.

4. The written notice should state that the meeting was adjourned to the stated time and place, giving as the reason for adjournment the fact that a quorum was not present. Such notice with respect to agency members may be waived in the same manner as members may waive notice of special meetings. Id.

5. The agency may continue or "recontinue" any hearing to be held at a meeting. This is carried out in the same way as an adjournment for lack of a quorum through either a notice or an order. Conn. Gen. Stat. §1-229. Notices of continuances must immediately be posted after all regular and special meetings which are to be continued to a time less than 24 hours after the time specified in the hearing notice. Id.

H. SPECIAL MEETINGS

1. Notice of "special meetings" must be posted at least 24 hours in advance in the agency's office and the pertinent political subdivision's clerk's office. Conn. Gen. Stat. §1-225(d). The notice must specify the time and place of the special meeting and the business to be transacted. Unlike a regular meeting, which permits the addition of items not specified in the agenda, no business may be transacted at a special meeting other than what is specified in the notice. Id. The agency should give notice as the agency deems practicable under the circumstances to those persons of record who have made a written request for notice of such meetings. Notice shall also be given the agency members prior to the special meeting. Id.

2. EMERGENCY MEETINGS. "Emergency" meetings may be held only when there is not enough time for a special meeting notice to be posted in accordance with the 24 hour notice requirements. The circumstances which permit an emergency meeting occur rarely and only when there is no time for a special meeting notice to be posted twenty-four hours in advance. Board of Selectmen of Town of Ridgefield v. FOIC, 294 Conn. 438 (2010). The minutes of every emergency meeting must adequately set forth the nature of the emergency and the proceedings occurring at such meeting. Conn. Gen. Stat §1-225(d). The minutes of emergency meetings must be filed within 72 hours of such meeting with the agency's office and the pertinent political subdivision's clerk's office. Id.

II. EXECUTIVE SESSION

A. PROCEDURE

1. An executive session is a meeting, or a part of a meeting, from which the public is excluded. Conn. Gen. Stat. §1-200(6).

2. Before the public can be excluded, there must first be a public statement of the purpose of the executive session. Only matters that fall within the stated purpose of the executive session may be discussed in the executive session. Conn. Gen. Stat. §1-225(f).

- For example, a Superior Court judge held a special meeting agenda item of "possible litigation" was insufficient. Durham Middlefield Interlocal Agreement Advisory Board v. FOIC, 1997 WL 491574 (Conn. Super. 1997). The judge's ruling would appear to indicate that at least the general nature of the litigation must be identified. Id., n.1

- Even though the agenda indicated that a "personnel" matter was to be considered, and the minutes of the meeting indicated that the agency convened in executive session "for the purpose of discussing personnel matters", the FOIC held that "such agenda and minutes failed to adequately or meaningfully provide the public with notice and a record of the nature of the 'personnel' business conducted." Carver v. Commission on Community & Neighborhood Development, City of New Britain, FIC 1996-088 (September 11, 1996).

3. Agency members may convene an executive session upon approval of two-thirds of the agency members who are present and voting. Conn. Gen. Stat. §1-225(f).

B. VOTES

1. Executive sessions are limited to discussion only. All votes must be taken in public session.

C. PURPOSES

1. Strategy and negotiations with respect to pending claims and litigation where the public agency is a party, including:

- Discussions concerning whether an agency should initiate a legal action. Ridgefield Board of Education v. FOIC, 217 Conn. 153, 585 A.2d 82 (1991).

- Discussions with respect to an arbitration award concerning a teacher contract. Presnick v. FOIC, 53 Conn. App. 162, 729 A.2d 236 (1998).

- Mere possibility of further appeal by a party does not satisfy the requirements of "pending litigation." Ansonia Library Board of Directors v. FOIC, 42 Conn. Supp. 84, 600 A.2d 1058 (1991).

- Hearing portion of administrative proceedings not appropriate for executive session under this provision. New Haven Board of Police Commissioners v. FOIC, 192 Conn. 183, 190, 470 A.2d 1209 (1984).

2. Matters concerning security strategy or the deployment of security.

3. Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that the discussion be held at an open meeting. The agency must put the individual on notice that his/her performance will be discussed during an executive session so the individual can exercise the right to have the discussion in open session.

   - Predisciplinary hearing for a public employee was *not* a public meeting because the conference at issue here related to the management and administration of internal police affairs. Dortenzio v. FOIC, 49 Conn. App. 424, 710 A.2d 801 (1998).

   - Local boards of education are required to appoint a board member to serve until the next election when there is a vacancy, and discussion concerning such appointment may be held in executive session. Board of Education of City of Danbury v. FOIC, 41 Conn. Supp. 267, 566 A.2d 1380 (1988), *aff'd.* 213 Conn. 216, 566 A.2d 1362 (1989).

4. Discussion of the selection of a site or the lease, sale, or purchase of real estate by a political subdivision of the state when publicity regarding such construction would cause a likelihood of a price increase, until such time as all of the property has been acquired, or all proceedings or transactions concerning the property have been terminated or abandoned.

5. Discussion of any matter that would result in the disclosure of confidential records or information excluded from the Act's disclosure requirements. Conn. Gen. Stat. §1-210(b). *See* Section III.B, *infra.* The following records qualify as exempt:

   a. Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;

   b. Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;

   c. Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest;

   d. Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled;

   e. Trade secrets which are defined as "information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, or customer lists that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy....";

   f. Commercial or financial information given in confidence, not required by statute;

   g. Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations;

   h. The contents of real estate appraisals, engineering or feasibility estimates made for or by an agency relative to the acquisition of property until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned;

   i. Statements of personal worth or personal financial data required by a licensing agency;

   j. Records, reports and statements of strategy or negotiations with respect to collective bargaining;

   k. Records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client privilege;

   l. Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age;

   m. Any information obtained by the use of illegal means;

   n. Records of an investigation or the name of an employee providing information under the provisions of Conn. Gen. Stat. §4-61dd;

o. Certain adoption records and information provided in accordance with state statute;

p. Any page of a primary petition, nominating petition, referendum petition or petition for a town meeting submitted under any provision of the general statutes or of any special act, municipal charter or ordinance, until the required processing and certification of such page has been completed by the official or officials charged with such duty after which time disclosure of such page shall be required;

q. Records of complaints, including information compiled in the investigation thereof, brought to a municipal health authority pursuant to state statute;

r. Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g;

s. Certain Department of Correction records relating to security measures at state correctional facilities;

t. Teacher evaluations. *See* Conn. Gen. Stat. §10-151c.;

u. Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency;

v. Records of standards, procedures, processes, software and codes, not otherwise available to the public, the disclosure of which would compromise the security or integrity of an information technology system;

w. The residential, work or school address of any participant in the address confidentiality program established pursuant to sections 1 to 16, inclusive, of P.A. 03-200;

x. The electronic mail address of any person that is obtained by the Department of Transportation in connection with the implementation or administration of any plan to inform individuals about significant highway or railway incidents;

y. The name or address of any minor enrolled in any parks and recreation program administered or sponsored by any public agency;

z. Responses to any request for proposals or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file; and

aa. The name, address, telephone number or electronic mail address of any person enrolled in any senior center program or any member of a senior center administered or sponsored by any public agency.

- NOTE: Previewing documents before they are released to the general public is not a valid a purpose for meeting in executive session. Hartford Board of Education v. FOIC, 1996 WL 176354 (Conn. Super. 1996). Informational packets prepared for Board members prior to meetings that generally contained information and agendas for discussion did not qualify as exempt, and the court held that such information must be promptly disclosed. Board of Education of the Town of Stafford v. FOIC, CV-86-283646 (Conn. Super. 1987).

6. ATTORNEY-CLIENT PRIVILEGE: Discussion of written communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity. Conn. Gen. Stat. §1-231(b). NOTE: an executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless it concerns a matter listed in Section II.C. ##1-5, *supra*. *See* Conn. Gen. Stat. §1-231(b).

- A document merely drafted by legal counsel does not suffice; conditions sufficient to invoke the attorney-client privilege must also be present. Hartford Board of Education v. FOIC, 1996 WL 176354 (Conn. Super. 1996). The Connecticut Supreme Court has held that the attorney-client privilege is limited to communications between attorney and client and only as to communications that constitute "disclosures necessary to obtain informed legal advice." Ullmann v. State, 230 Conn. 698, 712-13, 647 A.2d 324 (1994).

D. ATTENDANCE

1. As a general rule only members of the public agency may be present during an executive session. Conn. Gen. Stat. §1-231(a).

2. The agency may ask individuals to be present during executive session for the limited purpose of testifying or opining.

- Agency executive session exempt from disclosure under the FOIA may be attended by non-agency members only for the amount of time necessary to provide testimony or opinion concerning the matter being considered. East Lyme Water and Sewer Commission v. FOIC, 1997 WL 41241 (Conn. Super. 1997).

E. MINUTES

1. The minutes of the executive session must name everyone who was present during the executive session, except job applicants who attend for the purpose of being interviewed. Conn. Gen. Stat. §1-231(a).

2. The minutes must also reflect the reason for having an executive session. Conn. Gen. Stat. §1-225(f).

III. ACCESS TO PUBLIC RECORDS

1. The FOIA requires access to and disclosure of most public records. Conn. Gen. Stat. §1-210(a). However, there are important exceptions under FOIA regarding both student and employee records. *See* Section II.C.5, *supra*.

2. Connecticut General Statutes §1-210(b)(11). Need not disclose "names or addresses of students enrolled in any public school ... without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age."

3. Connecticut General Statutes §1-210(b)(17). Need not disclose "educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act." *See* 20 U.S.C. §1232g. Schools need not be confronted with choice as to whether to comply with FOIA or receive federal funding.

4. Connecticut General Statutes §1-210(b)(6). Need not disclose "test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations."

5. Connecticut General Statutes §1-210(b)(2). Need not disclose "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy." **What does this mean?** Invasion of personal privacy exception of the FOIA precludes disclosure of personnel or medical files and similar files of public employees only when the information sought "does not pertain to legitimate matters of public concern *and* is highly offensive to a reasonable person." Perkins v. Freedom of Information Commission (FOIC), 228 Conn. 158, 635 A.2d 783 (1993). In Perkins, disclosure of numerical data concerning a public school psychologist's attendance records, including the number of days of sick leave, was required because it did not constitute such an "invasion of personal privacy" within meaning of exception. **NOTE**: In Perkins, there was no request for the reasons for the use of sick leave. In Cracco v. FOIC, 1995 WL 514468 (Conn. Super. 1995), disclosure was similarly required of records of complaints filed against a public school teacher, the resulting investigations and any actions taken, with redaction of the names of the students and parents and other personally identifiable information. *See also* Carpenter v. FOIC, 59 Conn. App. 20, 755 A.2d 364 (2000). In light of strict judicial interpretation, this exemption may only serve to countenance the redaction of "really private" matters, i.e., social security, disability, and birth date information.

6. Teacher evaluations are exempt. *See* Conn. Gen. Stat. §10-151c. NOTE, not all documents relating to teacher performance are exempt from disclosure. This exemption is narrowly construed and does not apply to complaints of teacher misconduct and responses thereto. Carpenter v. FOIC, *supra*, Cracco v. FOIC, *supra*. In addition, this exception expressly does not apply to the superintendent of schools. Conn. Gen. Stat. §10-151c. The FOIC and the courts have repeatedly held that superintendent evaluations pertain to legitimate matters of public concern and thus have ordered their disclosure. *See, e.g.*, East Lyme Board of Education v. FOIC, 1991 WL 28098 (Conn. Super. 1991); Bard v. Chairman, Board of Education, Eastford Public Schools, #FIC 2000-093; Miller v. Superintendent, Branford Public Schools, #FIC 1998-288; Conrad v. Chairman, Hamden Board of Education, #FIC 1994-154. The FOIC has also rejected claims that the individual evaluation forms of each board member somehow can be shielded from disclosure. *See* Miller v. Superintendent, Branford Public Schools, *supra*. NOTE: It is permissible for a board of education to meet in executive session in order to discuss orally the performance and evaluation of a superintendent. *See* Conn. Gen. Stat. §1-200(6)(A); Neri v. Board of Education, Windsor Locks Public Schools, #FIC 1998-257.

7. Connecticut General Statutes §1-210(b)(1). Need not disclose "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure." In Shew v. FOIC, 245 Conn. 149, 714 A.2d 664 (1998), the Supreme Court provided guidance vis-a-vis the application of the preliminary draft/notes exemption. To assist in his investigation of the police chief, the Rocky Hill town manager hired outside counsel. One of the attorneys (Stuhlman) concentrated on interviewing town employees and other persons to determine whether there may have been evidence that the police chief had abused his authority. Stuhlman then prepared draft summaries of the interviews and prepared affidavits and a preliminary draft report based on the interviews. Stuhlman forwarded summaries of the interviews together with affidavits to the other attorney that Rocky Hill retained, who then forwarded a report to the town manager. The Court concluded that the Stuhlman documents were "preliminary drafts or notes" within the meaning of §1-210(b)(1). The Court concluded that "Stuhlman's report .. with its 'conclusion' section left completely blank, can be nothing but a 'preliminary draft or note' under any definition of those terms. Moreover, the interview summaries and affidavits, although final in form, also are preliminary because they were created solely to serve as supporting documentation for Stuhlman's unfinished report." The Court noted that documents that qualify for the §1-

210(b)(1) exemption nonetheless may be disclosable under Connecticut General Statutes §1-210(c)(1) if they constitute "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...." The disclosure provisions of §1-210(c)(1) are qualified, however, in that "disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency...." The Court concluded that §1-210(c)(1) did not mandate disclosure of the documents in this case. Notably attempts to shield individual board member evaluations of superintendents from disclosure under the preliminary draft/notes exception provided under Conn. Gen. Stat. §1-210(b)(1) have been unsuccessful. LaPointe v. Chairperson, Board of Education, Windsor Locks Public Schools, #FIC 2000-457.

In a recent Superior Court case, the preliminary drafts or notes exception was further refined and found to apply to a document only where four criteria are met. Univ. of Connecticut Health Ctr. v. FOIC, CV116008847, 2012 WL 1003757 (Conn. Super. Ct. Feb. 27, 2012). According to the Court, a document qualifies as a *preliminary* draft or note where it is: "(1) preparatory, (2) not a complete resolution of a matter in itself, (3) not germane to the eventual end product of the record, and (4) takes the form of deliberation over a matter."

8. Connecticut General Statutes §1-210(b)(10). Need not disclose "records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship." *See* Shew v. FOIC, 245 Conn. 149, 714 A.2d 664 (1998) (attorney-client privilege protects communications where client is municipal entity). In Shew, the attorney hired by the town manger conducted interviews of town employees. The Connecticut Supreme Court held that communications to an attorney for a public agency are protected from disclosure by the attorney-client privilege if the following conditions are met: 1) the attorney must be acting in a professional capacity for the public 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. Id. at 157. *See also* Boyer v. Board of County Commissioners, 162 F.R.D. 687 (D.C. Kan. 1995) (county attorney's conversation with retaliatory discharge plaintiff's immediate supervisor in preparation for that supervisor's deposition was protected by attorney client privilege).

9. Connecticut General Statutes §1-210(b)(4). Need not disclose "records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled."

10. Connecticut General Statutes §1-210(b)(9). Need not disclose "records, reports and statements of strategy or negotiations with respect to collective bargaining."

11. Connecticut General Statutes §1-210(b)(7). Need not disclose "the contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision." Would appear to allow refusal of disclosure of bids/responses to requests for proposals at least until opening of said bids/responses.

12. Connecticut General Statutes §1-210(b)(5). Need not disclose "trade secrets," which are defined as "information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, or customer lists that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy" and "commercial or financial information given in confidence, not required by statute." In a recent decision, the Connecticut Supreme Court found that this exception to disclosure applies to public agencies even if the agency is not specifically or customarily engaged in commercial "trade". Univ. of Connecticut v. FOIC, 303 Conn. 724, 727, 36 A.3d 663, 664 (2012).

IV. DESTRUCTION OF RECORDS; RECORDS RETENTION ACT

1. Connecticut General Statutes §7-109 provides in pertinent part:

Any official, board or commissioner of a municipality may, with the approval of the chief administrative officer of such municipality and of the Public Records Administrator, destroy any document in his or its custody relating to any matter which has been disposed of and of which no record is required by law to be kept, after such document has been held for the period of time specified in a retention schedule adopted by the Public Records Administrator.

2. Records retention schedule, as revised from time to time, is available through State Law Library and on web. Otherwise, records are *not* subject to destruction. No public record may be "removed, destroyed, mutilated, transferred or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules and regulations adopted by the state library board." Conn. Gen. Stat. §11-8(b). *See also* Conn. Gen. Stat. §1-18 (records may be disposed of in such manner as may meet the approval of the head of the political subdivision in charge thereof, with the approval of the public records administrator).

V. CIVIL PENALTIES

A. ORDERS AND FINES

1. The FOIC may declare null and void action taken at any meeting to which a person was denied the right to attend. Conn. Gen. Stat. §1-206(b)(2). The FOIC may require the production or copying by the public agency of any public record that was improperly withheld. Id.

2. If a denial of any right created by the FOIA has been found to be without reasonable grounds, a fine of not less than twenty dollars nor more than one thousand dollars may be imposed against the custodian or other official. Conn. Gen. Stat. §1-206(b)(2). The penalty must be paid within 30 days of receiving notice of such fine. Id.

VI. CRIMINAL PENALTIES

1. Connecticut General Statutes §53-153 provides:

Any person who, willfully and corruptly, takes away, alters, mutilates or destroys any book, record, document, archive or other property in the possession or custody or under the control of any institution, board, commission, department or officer of the state or any county or municipality or court, or who counterfeits the seal of this state or the seal of any court or public office entitled to have and use a seal, and makes use of the same, or, with evil intent, affixes any of the said true seals to any document, or who has in his possession any such counterfeited seal, and willfully conceals the same, knowing it to be falsely made and counterfeited, shall be imprisoned not more than ten years.

See State v. Kari, 26 Conn.App. 286, 600 A.2d 1374 (1991), *appeal dismissed*, 222 Conn. 539, 608 A.2d 92 (1992)(defendant business manager acted corruptly when he lied to the town council about signing a contract that he subsequently destroyed for the dishonest purpose of covering up his unauthorized conduct; court defined "corrupt" as having acted with "a dishonest purpose").

2. Connecticut General Statutes §1-240 provides:

Any person who willfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to chapter 47 or 871, or who alters any public record, shall be guilty of a class A misdemeanor and each such occurrence shall constitute a separate offense.

It is also a class B misdemeanor to fail to comply with an order of the FOIC; each occurrence of failure to comply with such an order constitutes a separate offense. Id.

TAB 7

OBJECTION OF EMPLOYEE

I,_____, hereby object to the inspection or copying of the
(name of employee)
following requested records contained in my personnel file: _____

_____

I make this objection under the penalties of false statement. To the best of my knowledge, information and belief, there is good ground to support this objection which is not interposed for delay. I object because I believe disclosure would legally constitute an invasion of my personal privacy.

_____ _____
date (signature of employee)

OBJECTION OF COLLECTIVE BARGAINING REPRESENTATIVE

_____, hereby represents that it is the collective
(name of collective bargaining representative)
bargaining representative for_____, and as such hereby objects to
(name of employee(s))
the inspection or copying of the following requested records contained in his/her personnel file:_____

_____

This objection is made under the penalties of false statement. The undersigned hereby represents that to the best of my knowledge, information and belief there is good ground to support this objection which is not interposed for delay. The undersigned objects because it believes that disclosure would legally constitute an invasion of this employee's personal privacy.

_____ _____
date (signature of collective bargaining representative)

§ 10–151c. Nondisclosure of records of teacher performance and evaluation. Exceptions

Any records maintained or kept on file by any local or regional board of education which are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1–210, provided that any teacher may consent in writing to the release of such teacher's records by a board of education. Such consent shall be required for each request for a release of such records. Notwithstanding any provision of the general statutes, records maintained or kept on file by any local or regional board of education which are records of the personal misconduct of a teacher shall be deemed to be public records and shall be subject to disclosure pursuant to the provisions of subsection (a) of section 1–210. Disclosure of such records of a teacher's personal misconduct shall not require the consent of the teacher. For the purposes of this section, "teacher" includes each certified professional employee below the rank of superintendent employed by a board of education in a position requiring a certificate issued by the State Board of Education.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Loretta Waldman and
The Hartford Courant,

Complainants

against Docket #FIC 2004-339

Board of Education,
New Britain Public Schools,

Respondent April 27, 2005

The above-captioned matter was scheduled to be heard as a contested case on November 5, 2004, at which time the complainants and the respondent appeared. At such time John Cochran, the subject of the records at issue, requested and was granted party status. Mr. Cochran also requested a continuance of the hearing, which request was granted, without objection of the parties. This matter was heard as a contested case on December 16, 2004, at which time the complainants, the respondent, and the intervening party, 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 respondent is a public agency within the meaning of §1-200(1), G.S.

2. It is found that by letter dated July 14, 2004, the complainants requested that the respondent provide them with access to all documentation pertaining to allegations against New Britain High School football coach John Cochran, as well as access to Mr. Cochran's personnel file.

3. It is found that, by letter dated July 19, 2004, the respondent informed Mr. Cochran and his collective bargaining representative of the request described in paragraph 2, above.

4. It is found that, by letter dated July 27, 2004, Mr. Cochran informed the respondent that he objected to disclosure of the records described in paragraph 2, above.

5. By letter dated and filed with the Commission on July 29, 2004, the complainants alleged that the respondent violated the Freedom of Information Act by denying them access to the records described in paragraph 2, above.

6. At the hearing in this matter, the complainants informed the Commission that the respondent had granted them access to the personnel file of Mr. Cochran, but that the respondent continued to deny the complainants access to records pertaining to allegations against Mr. Cochran [hereinafter "the requested records"]. The requested records are the only records at issue herein.

7. 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...inspect such records promptly during regular office or business hours...."

8. It is found that the respondent maintains the requested records and that such records are public records within the meaning of §1-210(a), G.S.

9. The respondent submitted copies of the requested records to the Commission for an in-camera inspection, which copies have been marked as IC 2004-339-A through IC 2004-339-E, IC 2004-339-F (line 2 only), IC 2004-339-G and IC 2004-339-H.

10. It is found that such in-camera documents consist of letters, an e-mail, interview ratings, and an evaluation.

11. The respondent contends that the requested records are exempt from mandatory disclosure by virtue of §1-210(b)(2),

G.S., and §10-151c, G.S.

12. With respect to the requested records claimed as exempt pursuant to §10-151c, G.S., such provision provides:

> "Any records maintained or kept on file by any local or regional board of education which are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210, provided that any teacher may consent in writing to the release of his records by a board of education. Such consent shall be required for each request for a release of such records. For the purposes of this section the term "teacher" shall include each certified professional employee below the rank of superintendent employed by a board of education in a position requiring a certificate issued by the State Board of Education."

13. After review of the in-camera documents, it is found that IC #2004-319-E is a record of teacher performance and evaluation, within the meaning of §10-151c, G.S. Accordingly, it is concluded that such record is exempt from mandatory disclosure by virtue of such provision.

14. It is further concluded that the respondent did not violate §1-210(a), G.S., by denying the complainants access to such record.

15. It is found that IC #2004-339-A, B, C, D, F (line 2 only), G, and H are not records of teacher performance and evaluation, within the meaning of §10-151c, G.S., and therefore such records are not exempt from disclosure pursuant to such provision.

16. Section §1-210(b)(2), G.S., permits the nondisclosure of "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy".

17. The Supreme Court set forth the test for the §1-210(b)(2), G.S., exemption in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993), which test has been the standard for disclosure of records pursuant to that exemption since 1993. The Commission takes administrative notice of the multitude of court rulings, Commission final decisions (see Endnote 1), and instances of advice given by Commission staff members (see Endnote 2), which have relied upon the Perkins test, since its release in 1993.

18. Specifically, under the Perkins test, the claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that disclosure of such information is highly offensive to a reasonable person.

19. Upon careful review of the in-camera documents IC 2004-339-A, B, C, D, F (line 2 only), G, and H, it is found that they constitute personnel, medical or similar files, within the meaning of §1-210(b)(2), G.S.

20. It is found that IC 2004-339- F (line 2 only), does not pertain to a legitimate matter of public concern, and that disclosure of such record would be highly offensive to a reasonable person.

21. Therefore, it is concluded that disclosure of IC 2004-339- F (line 2 only), would constitute an invasion of privacy, within the meaning of §1-210(b)(2), G.S., and that such document is exempt from mandatory disclosure by virtue of such provision.
It is further concluded that the respondent did not violate §1-210(a), G.S., when it declined to provide the complainants with access to such line in such document.

22. Upon careful review of the in-camera documents IC 2004-339-A, B, C, D, G, and H, it is found that they pertain to legitimate matters of public concern, the conduct of a public employee, and that disclosure of such records would be not be highly offensive to a reasonable person.

23. Therefore, it is concluded that disclosure of in-camera documents IC 2004-339-A, B, C, D, G, and H, would not constitute an invasion of privacy within the meaning of §1-210(b)(2), G.S., and that such documents are not exempt from mandatory disclosure by virtue of such provision. It is further concluded that the respondent violated §1-210(a), G.S., when it declined to provide the complainants with access to such documents.

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

1. Forthwith, the respondent shall provide the complainants with access to the following in-camera documents: IC 2004-339-A, B, C, D, F (excepting line 2), G, and H.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 27, 2005.

_____

Petrea A. Jones
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:

Loretta Waldman and
The Hartford Courant
40 South Street
New Britain, CT 06051

Board of Education,
New Britain Public Schools
c/o William R. Connon, Esq.
Sullivan, Schoen, Campane & Connon, LLC
646 Prospect Avenue
Hartford, CT 06105

John Cochran
c/o Marc P. Mercier, Esq.
Beck & Eldergill, PC
447 Center Street
Manchester, CT 06040

_____

Petrea A. Jones
Acting Clerk of the Commission

FIC/2004-339FD/paj/4/28/2005

TAB 8

STATE OF CONNECTICUT

CONNECTICUT STATE LIBRARY

231 Capitol Avenue • Hartford, Connecticut 06106-1537

GENERAL LETTER 2009-2
[Formerly General Letter 98-1 (revised 06/1998)]

DATE: **June 30, 2009**

TO: **Administrative Heads of State Agencies and Municipalities; Public Officials; and State and Municipal Employees**

FROM: **Eunice G. DiBella, CRM**
Public Records Administrator

SUBJECT: **Management and Retention of E-mail and other Electronic Messages**

The Office of the Public Records Administrator issues this statement under authority granted it by Connecticut General Statutes §11-8, §11-8a and §7-109. This letter provides guidance for managing and retaining electronic messages, including e-mail, fax, instant messaging, text messaging, and voice mail. General Letter 2009-2 replaces General Letter 98-1 (revised 06/1998).

A. ELECTRONIC MESSAGES

Electronic messages include e-mail, fax, instant messaging (IM), text messaging (SMS), voice mail, and Web-based messaging services.

Electronic messages may be transmitted by a variety of mediums, including computers and mobile computing devices (e.g., laptops, netbooks, notebooks, palmtops, tablets, PDAs, and cellular phones with Internet browsing capabilities, such as BlackBerrys® and iPhones®).

In addition to the body of the message, messaging systems also contain metadata, such as transactional information (e.g., date and time sent, sender/receiver) and may contain attached files (e.g., PDF or JPEG).

B. ELECTRONIC MESSAGES ARE PUBLIC RECORDS

Pursuant to CGS §1-200, "'**public 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, printed, photostated, photographed or recorded by any other method."

The Connecticut Uniform Electronic Transactions Act (CUETA) defines an **electronic record** as "a record created, generated, sent, communicated, received or stored by electronic means, including, but not limited to, facsimiles, electronic mail, telexes and Internet messaging" (CGS §1-267).

Based on the above-mentioned statutes, electronic messages sent or received in the conduct of public business are public records. Therefore, public officials should not use private e-mail accounts to conduct public business. These messages are subject to disclosure under FOIA, a court action, or an audit and should be treated in the same manner as any other recorded information.

C. RETENTION OF ELECTRONIC MESSAGES

Electronic messages do not comprise a unique records series. Retention is based on the **content** of the message, not the media type. Most electronic messages have limited value and can be deleted immediately upon receipt. However, electronic messages that document agency functions and provide evidence of agency business must be retained according to the equivalent records series. Electronic messages are similar to traditional postal mail – the message must be evaluated for action and subsequent retention.

State and local government officials/supervisors and Records Management Liaison Officers (RMLOs) are responsible for instructing their employees in using retention schedules and in securing approval for final disposition. Depending upon the function of electronic messages, agencies and municipalities may take steps to institute procedures for routinely printing electronic messages, including the metadata, and filing hard copy printouts in the normal course of business.

Steps to determine the retention period of electronic messages:

Step 1: Determine whether the message is a public record or a non-record.

Step 2: If the message is a non-record, destroy at will (e.g., spam and unsolicited advertisements).

Step 3: If the message is a record, determine which records series the message belongs to, for example:

- If the message is Transitory Correspondence (S1-060), delete at will.
- If the message is Routine Correspondence (S1-070), retain for 2 years.
- If the message is All Other Correspondence (S1-080), retain for the equivalent records series. For example, if an e-mail is related to a fiscal transaction like Accounts Receivable and Payable (S3-010), retain 3 years, or until audited, whichever is later.

Step 4: Maintain the messages for the required retention period under the equivalent records series. Once the retention period has been satisfied, submit a *Records Disposal Authorization* (Form RC-075 for municipalities / Form RC-108 for state agencies).

D. MANAGEMENT OF ELECTRONIC MESSAGES

The following items provide detailed information about characteristics unique to electronic messages and guidelines on how to manage electronic messages:

- **Record Copy:** The record copy is the original or official copy of a record.
- **Record Custodian:** The record custodian is responsible for retaining the record copy. In most cases, the sender is the person responsible for retaining the messages sent within an organization. If the sender is from outside an organization (e.g., the public), the recipient is the record custodian.

- **Copies/Duplicates:** Many electronic messages are disseminated to groups of personnel, which results in the proliferation of multiple copies of the same communication (a key indicator is the use of 'CC' or 'BC' in e-mail). Because the sender of the message is usually responsible for the record copy, the recipient(s) may destroy their copy at will.
- **Threads:** Similar to conversations, a thread is a string of electronic messages. After a thread is completed, the record custodian may retain only the last message (as long as it includes the prior messages) as the official record copy.
- **Metadata:** Metadata (data about data) is used to ensure authenticity, reliability, and integrity of electronic records. An example of metadata is the transmission information describing an e-mail (date and time the message was sent, sender/recipient). Please note, if electronic messages are printed to hard copy for permanent retention, the associated metadata should be included with the hard copy.
- **Attachments:** If the electronic message is a record and contains attachments, the attachments should be retained as part of the record. In these cases, the retention period should be the retention requirements of the message, or the retention requirements of the attachment, whichever is longer.
- **Deletion vs. Destruction:** In most computer operating systems, the deletion of a record does not physically erase the record. Likewise, simply emptying the trash or recycle folder does not permanently remove the record. In addition, other copies of the message may reside on backup storage tapes after the record should have been destroyed (the media upon which the record resides should be destroyed or overwritten).
- **Backups:** Backup systems or tapes are not acceptable for the retention of electronic messages. Backups should only be used to protect vital records in the event of a disaster or to retrieve a record due to loss of data.

E. LEGAL CONSIDERATIONS OF ELECTRONIC MESSAGES

Disclosure of electronic messages: Public officials and employees should keep in mind that electronic messages sent as part of their workdays are not "private" but are discoverable communications and may be subject to Freedom of Information Act (FOIA) requests and are admissible as evidence. Since messages may be retained at different locations or levels of the system, users must remember that their message can be retrieved during formal discovery processes. Therefore, discretion is an important consideration when using electronic messages to send, record and/or retain communications.

Confidentiality of electronic messages: Agencies and municipalities are advised of the risk involved in using electronic messages to deal with confidential issues and should be aware of all applicable statutory or regulatory requirements that would prohibit the disclosure of certain information in any format. Of special concern is the confidentiality of protected health information pursuant to the Health Insurance Portability and Accountability Act (HIPAA, 45 CFR §1).

Legal signatures and electronic messages: Some records may require original signatures. Agencies and municipalities must be aware of any state or federal laws that would affect the way a document is signed. Pursuant to CUETA, parties may conduct transactions with electronic signatures under certain circumstances. However, there are still documents that require original signatures (see CGS §1-268).

Legal Holds and electronic communications: A record may *not* be destroyed if any litigation, claim, audit, FOIA request, administrative review, or other action involving the record is initiated *before* the record has been disposed of (even if its retention period has expired and approval has been granted). The record must be retained until the completion of the action and the resolution of all issues that arise from the action.

F. NOTE ABOUT VOICE MAIL

Pursuant to CGS §1-213, Voice mail is "all information transmitted by voice for the sole purpose of its electronic receipt, storage and playback by a public agency." Voice mail may consist of information recorded to voice mail systems, answering machines, or other Web based systems (e.g., Google Voice™). Although voice mail messages are recorded in audible formats, they can be recorded and delivered as e-mail attachments or transcribed into text formats.

However, pursuant to CGS §1-213(b), "nothing in the Freedom of Information Act shall be deemed in any manner to: (3) require any public agency to transcribe the content of any voice mail message and retain such record for any period of time." As such, voice mail is transitory in nature, and may be deleted at will.

There are times, however, where voice mail may require a longer retention period. This would occur in cases where messages may be potentially used as evidence in trials (e.g., a bomb threat or other illegal activity) and pursuant to certain business functions. Voice mail is also subject to the discovery process in litigation.

G. RELATED POLICIES

State of Connecticut Acceptable Use of State Systems Policy (DOIT), 11/2006
http://www.ct.gov/doit/cwp/view.asp?a=1245&Q=314686

State of Connecticut Electronic Monitoring Notice (DAS), 10/1998
http://www.das.state.ct.us/HR/Regs/State_Electronic_Monitoring_Notice_11.00.pdf

State of Connecticut Policy on Security for Mobile Computing and Storage Devices (DOIT), 09/2007
http://www.ct.gov/doit/cwp/view.asp?a=1245&q=394672

State of Connecticut Telecommunications Equipment Policy (DOIT), 04/2008
http://www.ct.gov/doit/cwp/view.asp?a=1245&q=294100

H. SOURCES

ARMA International. *Glossary of Records and Information Management Terms*, 3rd ed. Lenexa, KS: ARMA International, 2007.

ARMA International. *Guideline for Managing E-Mail*. Lenexa, KS: ARMA International, 2000.

ARMA International. ANSI/ARMA TR-02-2007, *Procedures and Issues for Managing Electronic Messages as Records*. Lenexa, KS: ARMA International, 2007.

ARMA International. ANSI/ARMA 9-2004, *Requirements for Managing Electronic Messages as Records.* Lenexa, KS: ARMA International, 2004.

General Statutes of Connecticut Revised to January 1, 2009.

International Organization for Standardization. ISO 15489-1:2001, *Information and documentation–Records management processes–Metadata for records–Part 1: Principles.* Geneva, Switzerland: ISO, 2006.

Federal Rules of Civil Procedures. Washington, DC: U.S. Government Printing Office, 2006.

Flynn, Nancy and Randolph Kahn. *E-Mail Rules: A Business Guide to Managing Policies, Security, and Legal issues for E-mail and Digital Communication.* New York, NY: AMACOM, 2003.

Pearce-Moses, Richard. *A Glossary of Archival and Records Terminology.* Chicago, IL: The Society of American Archivists, 2005. Available at http://www.archivists.org/glossary/.

STATE AGENCIES' RECORDS RETENTION/DISPOSITION SCHEDULE
S1: ADMINISTRATIVE RECORDS
(Revised: **01/2010**)

STATE OF CONNECTICUT
Connecticut State Library
Office of the Public Records Administrator
231 Capitol Avenue, Hartford, CT 06106
www.cslib.org/publicrecords

1. **AUTHORITY:** The Office of the Public Records Administrator issues this retention and disposition schedule under the authority granted it by CGS §11-8 and §11-8a.
2. **SUPERSEDENCE:** This schedule supersedes all previously approved *State Agencies' Records Retention/Disposition Schedules: S1: Administrative Records*.
3. **FORMAT:** Retention periods listed on this schedule apply to the record, regardless of physical format. Records may be either hard copy or electronic. If the record is electronic, the custodian of the record must be able to interpret and retrieve the data for the minimum retention period listed for the records series.
4. **DISPOSITION AUTHORIZATION:** This schedule is used concurrently with the *Records Disposition Authorization* (Form RC-108). The RC-108 must be signed by the agency Records Management Liaison Officer (RMLO), the State Archivist, and the Public Records Administrator *prior* to the destruction of public records.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-010	**Accident Records**	Consists of reports and related documents regarding personal injury on state property, at state sponsored events, or in state owned vehicles.	10 years from date of report	Destroy after receipt of signed Form RC-108	See S3-710 and S3-720 for accidents that involve only property damage.
S1-015	**Accreditation Records**	Consists of records that document the accreditation process from accrediting and regulatory bodies. Including but not limited to: data, correspondence, other supporting documentation, reports received from study committees of accrediting associations and suggestions and recommendations concerning organizational structure and administration.	5 years from date accreditation granted, or until next accreditation, whichever is later	Destroy after receipt of signed Form RC-108	Applies to accreditation at the program, department, and institutional levels.
S1-020	**Alarm System Activity Records**	Consists of records that document alarm system activity. Including but not limited to: alarm test check sheets, zone check sheets, gate alarm check sheets, and alarm activity logs.	2 years from date of activity	Destroy after receipt of signed Form RC-108	
S1-030	**Annual Reports**	Consists of annual reports created for submission to Governor or General Assembly.	Permanent	Permanent / Archival	See S1-440 for administrative, special, and interim reports. See S1-380 for publications. See General Letter #2009-1 to transfer records to the State Archives.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-040	**Calendars – Administrative Head**	Consists of calendars for the administrative head of agency (e.g., executive director, commissioner, or agency head). Includes hard copy and electronic formats.	Term of office plus 2 years [term of office is the entire length of time a person is in office]	Destroy after receipt of signed Form RC-108	It is recommended that entries for personal appointments should not be intermingled with official appointments. May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-050	**Calendars – Staff**	Consists of staff calendars of daily activities. Includes hard copy and electronic formats.	Current year plus 1 year	Destroy after receipt of signed Form RC-108	It is recommended that entries for personal appointments should not be intermingled with official appointments.
S1-060	**Correspondence – Transitory**	Consists of transitory records that have short term administrative value (e.g., transmittal faxes/memos and out of office replies). Includes hard copy and electronic formats.	No requirement	Destroy	See General Letter #2009-2 for management and retention of e-mail and other electronic messages.
S1-070	**Correspondence – Routine**	Consists of routine incoming correspondence, and copies of outgoing correspondence for internal and external audiences; general requests; and Freedom of Information Act (FOIA) requests and complaints. Includes hard copy and electronic formats.	2 years from date of correspondence	Destroy after receipt of signed Form RC-108	See General Letter #2009-2 for management and retention of e-mail and other electronic messages.
S1-080	**Correspondence – All Other**	Consists of correspondence other than transitory or routine (e.g., for correspondence related to a fiscal transaction, refer to S3). Includes hard copy and electronic formats.	Follow retention of equivalent records series	Follow disposition of equivalent records series	See General Letter #2009-2 for management and retention of e-mail and other electronic messages. May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-090	**Correspondence Logs**	Consists of logs that document incoming and/or outgoing correspondence. Information collected may include date received, name of sender, and receiving person or office.	Current year plus 2 years	Destroy after receipt of signed Form RC-108	
	E-mail and Electronic Messages	Includes electronic mail (e-mail), instant messaging (IM), and text messaging (SMS).	Follow retention for correspondence: S1-060, S1-070, or S1-080	Follow disposition for correspondence: S1-060, S1-070, or S1-080	See General Letter #2009-2 for management and retention of e-mail and other electronic messages.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-100	**Emergency Preparedness Plans – Business Continuity**	Consists of agency or facility disaster response and business recovery plans in the event of a natural or man-made disaster (e.g., Y2K, hurricane, or pandemic flu).	5 years from date superseded or until obsolete	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-110	**Emergency Preparedness Plans – Disaster Plans**	Consists of agency or facility disaster plans for the recovery of operational and vital records in the event of a natural or man-made disaster.	Until superseded	Destroy after receipt of signed Form RC-108	Disaster plans may be incorporated into an agency Emergency Preparedness Plan (see S1-100).
S1-120	**Emergency Preparedness Drill Records**	Consists of the results of disaster preparedness exercises and supporting documents including scenarios, locations of safety related drills, timetables, response times, probable outcomes, areas of difficulty, descriptions of how difficulties were resolved, and areas for improvement.	2 years from date of exercise, or reviewed, whichever is later	Destroy after receipt of signed Form RC-108	
S1-130	**Emergency Preparedness Disaster Recovery Records**	Consists of records that document disaster recovery activities.	3 years from date of activity	Destroy after receipt of signed Form RC-108	See S3-310 for emergency relief fiscal records. Disaster recovery records may be retained for longer if significant records were involved in disaster.
S1-135	**Fire Extinguisher Inspection Records**	Consists of records that document the inspection and annual maintenance checks of portable fire extinguishers pursuant to OSHA standards.	1 year after the last entry, or the life of the shell, whichever is less [29 CFR 1910.157]	Destroy after receipt of signed Form RC-108	
S1-137	**Global Positioning System (GPS) Tracking Records**	Consists of records that document the maintenance and use of Global Positioning System (GPS) devices for vehicle/employee tracking purposes. Includes tracking logs and system information.	1 year from date of activity	Destroy after receipt of signed Form RC-108	
S1-140	**Grant Program Files – Approved**	Consists of program files for the administration of grants for state-funded or state-administered federally-funded grant programs. Including but not limited to: applications, project proposals, narratives, supporting documentation, grant contracts, related correspondence, evaluations, award letters, and reports.	3 years after renewal, termination, or final report, or until audited, whichever is later	Destroy after receipt of signed Form RC-108	See S3-060 for grant fiscal records. In many instances grant files from federal programs may have a longer retention period, which should be indicated on an agency retention schedule. May have historical value – contact State Archivist prior to submission of Form RC-108.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-150	**Grant Program Files – Denied / Withdrawn**	Consists of denied, returned, revoked or withdrawn applications for the administration of grants for state-funded or state-administered federally-funded grant programs. Including but not limited to: project proposals, narratives, supporting documentation, related correspondence, and evaluations.	3 years from date denied or withdrawn	Destroy after receipt of signed Form RC-108	See S3-060 for grant fiscal records. In many instances grant files from federal programs may have a longer retention period, which should be indicated on an agency retention schedule. May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-155	**Incident Reports**	Consists of reports that document the circumstances surrounding incidents. Including but not limited to: incident reports and related documents used to monitor the number and type of incidents.	10 years from date of report	Destroy after receipt of signed Form RC-108	See S10 for public safety incident reports.
S1-160	**Legislative Records**	Consists of records that lead up to the creation of legislation at the agency level (passed or not passed). Including but not limited to: copies of bills and previous drafts, testimony, copies of hearing transcripts, reports, and related correspondence.	2 years from date legislative session ends	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-170	**Liability Proof of Coverage Records**	Consists of proof of coverage for state sponsored programs at private facilities, use of state facilities by private organizations, and insurance certificates required for loans of museum artifacts and archival documents.	3 years from date of expiration, or until audited, whichever is later	Destroy after receipt of signed Form RC-108	
S1-180	**Liability Waivers and Assumptions of Risk**	Consists of waivers and assumptions of risk for individuals or private organizations participating in State programs or utilizing State property (e.g., ride-a-longs, job shadows, or refusals of medical treatment).	3 years from date of waiver	Destroy after receipt of signed Form RC-108	
S1-190	**Meetings, Minutes of Agency Staff**	Consists of minutes of meetings for staff and committees at the agency level.	5 years from date of meeting	Destroy after receipt of signed Form RC-108	
S1-200	**Meetings, Minutes and By-laws of Boards and Commissions**	Consists of minutes of meetings and by-laws for boards, commissions, and task forces.	Permanent	Permanent / Archival	See General Letter #2009-1 to transfer records to the State Archives.
S1-210	**Meetings, Records of**	Consists of records of meetings and meeting packets. Including but not limited to: agendas, handouts, notices of schedule, schedules of meetings, and presentations.	1 year from date of meeting	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-220	**Meetings, Recordings of**	Consists of audio/video recordings of meetings, regardless of format (e.g., cassette, VHS, DVD, DVR, SD, or USB).	6 months from date minutes approved	Destroy after receipt of signed Form RC-108	
S1-230	**Memorandums of Understanding**	Consists of formal agreements reached between state, local, and/or federal agencies. Includes Memorandums of Agreement (MOA) and Memorandums of Understanding (MOU).	5 years from date agreement no longer in force	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-240	**Occupational Safety and Health Plans**	Consists of plans required by OSHA (Occupational Safety and Health Administration) or CONN-OSHA (Connecticut Department of Labor, Division of Occupational Safety and Health). Including but not limited to: facilities-based plans, emergency procedures, and other related plans.	Until superseded	Destroy after receipt of signed Form RC-108	
S1-250	**Occupational Safety and Health Records**	Consists of occupational safety and health records. Including but not limited to: annual summaries, OSHA 300 logs, OSHA 301 incident report forms, chemical storage, hazardous chemical inventory forms, and safety records.	5 years after end of year to which record relates [29 CFR §1904.33]	Destroy after receipt of signed Form RC-108	Facilities covered by Emergency Planning and Community Right-to-Know Act (EPCRA) must annually submit inventory forms to the Local Emergency Planning Committee (LERC), State Emergency Response Commission (SERC), and the local fire department.
S1-260	**Occupational Safety and Health Reports**	Consists of reports and citations to OSHA and CONN-OSHA, as well as responses to violations. Including but not limited to: facility injury log and summary and supplemental record for each calendar year.	5 years after end of year to which report relates [29 CFR §1904.44]	Destroy after receipt of signed Form RC-108	Citations must remain posted until the violation has been abated, or for 3 working days (excluding holidays and weekends), whichever is later.
S1-270	**Parking Permits**	Consists of records related to the permitting process to park at state parking facilities. Including but not limited to: applications and related documentation.	1 year from date superseded, cancelled, or revoked.	Destroy after receipt of signed Form RC-108	
S1-280	**Parking Permits, Temporary**	Consists of records related to the permitting process to temporarily park at state parking facilities. Including but not limited to: applications and related documentation.	Until expiration of permit	Destroy after receipt of signed Form RC-108	
S1-290	**Personal Data Removal Logs**	Consists of logs that document removal of personal data from public records.	Current year plus 1 year	Destroy after receipt of signed Form RC-108	See CGS §4-190 et. seq. regarding the Personal Data Act.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-300	**Personal Data, Requests for Removal of**	Consists of *Requests for Removal of Personal Data* (Form RC-077) submitted to the Office of the Public Records Administrator.	1 year from date of approval / denial	Destroy after receipt of signed Form RC-108	See CGS §4-190 et. seq. regarding the Personal Data Act.
S1-310	**Phone Records – Logs**	Consists of logs that document usage of agency land lines or cell phones. Information collected may include person calling, date and time of call, number dialed, and length of call.	Current year plus 1 year	Destroy after receipt of signed Form RC-108	
S1-320	**Phone Records – Message Books**	Including but not limited to: message books and related documentation of phone messages.	Current year plus 1 year	Destroy after receipt of signed Form RC-108	
S1-330	**Planning Studies**	Consists of studies that document the review and evaluation of agency or program functions. Including but not limited to: needs assessments, consultant reports, surveys, questionnaires, and related correspondence.	5 years, or until superseded, whichever is later	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-340	**Policies and Procedures**	Consists of official record copy of policies and procedures issued by governing boards, commissioners, agency heads, or other authorized entities. Including but not limited to: policies, directives, general letters, memos, and guidelines.	5 years from date superseded or voided	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-350	**Presentation Records**	Consists of records of presentations, training sessions, conferences, and workshops conducted by agencies. Including but not limited to: handouts and presentations.	1 year from date of presentation	Destroy after receipt of signed Form RC-108	
S1-360	**Program Development Files**	Consists of records that document history of agency programs, units, or divisions.	5 years from date of last activity	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.
S1-370	**Public Relations Records**	Consists of communications and public relations of agency. Including but not limited to: news clippings, press releases, remarks, speeches, and related correspondence.	2 years from date issued	Destroy after receipt of signed Form RC-108	May have historical value – contact State Archivist prior to submission of Form RC-108.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-380	**Publications, Agency**	Consists of publications that are produced under authority of a state agency. Includes hard copy and electronic formats.	No requirement at agency level	Forward to State Library [CGS §11-9d]	Pursuant to CGS §11-9d, submit 17 copies to the State Library or send a hyperlink of the electronic publication to CDA@cslib.org.
S1-390	**Records Disposition Authorizations**	Consists of *Records Disposition Authorizations* (Form RC-108) used to document disposition of public records.	25 years from date of disposition	Destroy after receipt of signed Form RC-108	Agency maintains record copy. State Library maintains duplicate copy permanently.
S1-400	**Records Storage Lists**	Consists of *State Records Center Storage Lists* (Form RC-100) used to document destruction of public records at the State Records Center.	25 years from date of disposition	Destroy after receipt of signed Form RC-108	State Records Center maintains record copy permanently.
S1-410	**Regulation Making Records – Regulations Not Passed**	Consists of records related to the formulation and approval process in writing regulations. Including but not limited to: hearing transcripts, minutes of formal hearings, public comments, correspondence, and subject files.	2 years from date regulation not passed	Destroy after receipt of signed Form RC-108	See CGS §4-168b for the regulation making record under the Uniform Administrative Procedures Act.
S1-420	**Regulation Making Records – Repealed or Time-Limited Regulations**	Consists of records related to the formulation and approval process in writing regulations that by their own terms or by statute are limited in duration. Including but not limited to: hearing transcripts, minutes of formal hearings, public comments, correspondence, and subject files.	2 years from date regulation expires [CGS §4-168b(a)(b)]	Destroy after receipt of signed Form RC-108	Retaining these records for two years allows for their possible use in litigation.
S1-430	**Regulation Making Records – Permanent Regulations**	Consists of records related to the formulation and approval process in writing regulations that are permanent. Including but not limited to: hearing transcripts, minutes of formal hearings, public comments, correspondence, and subject files.	Permanent [CGS §4-168b(a)(b)]	Permanent / Archival	See General Letter #2009-1 to transfer records to the State Archives.
S1-440	**Reports**	Consists of administrative, special, and interim reports. May include reports created for submission to state or federal agencies or legislative committees.	2 years from date of report	Destroy after receipt of signed Form RC-108	See S1-030 for annual reports. See S1-380 for publications. For grant funded projects, use the retention period required by the grant. May contain historical value – contact State Archivist prior to disposition.

Series #	Records Series Title	Description	Minimum Retention	Disposition	Notes and Citations
S1-450	**Schedules, Staff Assignment**	Consists of records that document location or duty assignments for agency staff. Including, but not limited to: desk schedules, duty rosters, staffing assignments (including logs), staffing worksheets, and work assignment change forms.	2 years	Destroy after receipt of signed Form RC-108	
S1-460	**Security Logs**	Consists of logs that document building and parking security. Including but not limited to: logs of facility visitors and employee ID/key assignments.	Current year plus 1 year	Destroy after receipt of signed Form RC-108	
S1-470	**Security Surveillance Recordings**	Consists of audio / video security surveillance recordings, regardless of format (e.g., cassette, VHS, DVD, DVR, SD, or USB).	30 days from date of recording [unless notice of pending action has been filed]	Destroy	If recordings become evidence in any kind of disciplinary proceeding, litigation, or if notice of pending action has been filed with the agency, recordings must be retained until all actions have been resolved.
S1-480	**Subpoenas**	Consists of writs issued by a court authority to compel the attendance of a witness at a judicial proceeding.	1 year from date subpoena issued	Destroy after receipt of signed Form RC-108	
S1-490	**Voice Mail**	Consists of information recorded to voice mail systems, answering machines, or other Web based systems. Voice mail is an electronic record, however, is transitory in nature and may be destroyed at will.	No requirement [special circumstances may apply requiring some limited retention, see General Letter #2009-2]	Destroy	See CGS §1-213 regarding disclosure of voice mail by public agencies.
S1-500	**Website Content**	Consists of Website content records. Including but not limited to: content pages, records generated from user interaction, and lists of URLs. Includes Blogs, Web pages, and Wikis.	Until superseded, or until no longer needed for the conduct of agency business, whichever is later	Destroy	See note on S1-380 regarding submitting electronic publications to the Connecticut State Library.
S1-510	**Website Management and Operations Records**	Consists of Web management and operation records. Including but not limited to: site design, use of copyrighted materials, software applications, and site maps.	1 year from date superseded	Destroy after receipt of signed Form RC-108	

Revised 2/2005

Municipal Records Retention Schedule M1

GENERAL ADMINISTRATION

Item Number	Record Series Title	Minimum Retention Required	Disposition
	Accident Records		
(M7-295)	a. Fatal	permanent	maintain in municipality
(M7-300)	b. Non-fatal	10 years (*CGS* Sec. 7-282)	destroy[1]
M1-010	**Alarm System Activity Reports**	current plus 1 year	destroy[1]
	Bonds:		
M1-020	a. Fidelity	6 years after expiration	destroy[1]
M1-025	b. Performance, includes excavation	6 years after completion of project	destroy[1]
M1-030	c. Surety	6 years after completion of project	destroy[1]
(M3-105)	**Budget, adopted**	permanent	maintain in municipality
	Calendars		
M1-040	a. Official Appointment: in electronic or paper format	2 years	destroy[1]
M1-045	b. Desk calendars	1 year	destroy[1]
M1-047	c. Elected officials	Term of office, plus 2 years	destroy[1]
M1-050	**Communications/Public Relations** (includes speeches, press releases, remarks)	2 years	destroy[1]
M1-055	**Complaints**	2 years after resolution	destroy[1]

Item Number	Record Series Title	Minimum Retention Required	Disposition
	Contracts:		
M1-065	a. Construction	6 years after completion of project	destroy[1]
M1-070	b. Services and supplies	3 years after expiration	destroy[1]
	Correspondence (in electronic or paper format):		
M1-080	a. Routine[2], including FOI requests	2 years	destroy[1]
M1-085	b. Policy	permanent	maintain in municipality
(M5-325)	**Deeds or easements to town properties**	permanent	maintain in municipality
	Disaster Recovery Records		
M1-095	a. Disaster Plan[3]	a. Until superseded	destroy[1]
M1-100	b. Records that would document any disaster recovery activity	b. Permanent	maintain in municipality
	Disposal Requests:		
M1-110	a. RC-075 (Records Disposal Authorization)	permanent	maintain in municipality
M1-115	b. RC-076 (Request for Removal of Personal Data)	1 year after approval	destroy[1]
M1-120	c. Destruction certificates i.e. bonds and notes	Permanent	Maintain in municipality
	Electronic mail messages[4]		
M1-125	a. Transitory messages-(i.e. non-record material such as junk mail, publications, notices, reviews, announcements, employee activities, routine business activities, casual and routine communications similar to telephone conversations)	no requirement	delete at will[5]

Item Number	Record Series Title	Minimum Retention Required	Disposition
	Electronic mail messages[4] cont.		
M1-130	b. Less than permanent	Erase after retention period required for equivalent hard copy[6]	destroy[1]
M1-135	c. Permanent or Permanent/Archival (i.e. documenting state policy or policy process, protection of vital public information)	Delete when transferred to paper or microfilm[7]	maintain in municipality
M1-140	**Eviction Notices and Notes** (refer to M1-200 for evictions related to litigation and M9-050 for Eviction logs)	5 years after resolution	destroy[1]
M1-145	**Grant Program Records:** including application, proposal, narrative, evaluation and final report (see M3 for grant fiscal records)	6 years after renewal, termination, or final report or audited, whichever is later[8]	destroy[1]
M1-155	**Insurance policies, expired**	3 years after audit	destroy[1]
M1-165	**Intergovernmental Agreements**	5 years after expiration	destroy[1]
M1-175	**Leases**	5 years after expiration	destroy[1]
M1-185	**Legal Opinion files**	Permanent	maintain in municipality
	Litigation files and related correspondence (Corporation counsels office):		
M1-195	a. Cases that have importance or set legal precedent	25 years after resolution[9]	destroy[1]

Item Number	Record Series Title	Minimum Retention Required	Disposition
	Litigation files and related correspondence cont.		
M1-200	b. Routine case files, including evictions. (refer to M1-140)	5 years after resolution	destroy[1]
M1-205	c. Claims against the municipality for bodily injury or damage to personal property	5 years or until resolution, whichever comes later	destroy[1]
M1-210	d. Writs, Summons, Complaints (includes Memorandum of Decision)	5 years or until resolution, whichever comes later	destroy[1]
	Meeting Records		
M1-215	a. Agendas	1 year	destroy[1]
M1-216	b. Minutes---all government agencies and bodies including Boards and Commission meetings	Permanent	maintain in municipality
M1-217	c. Municipal staff meetings	5 years at municipal level	destroy[1]
M1-218	d. Schedule of	1 year	destroy[1]
(M9-120)	**Motor Vehicle Service Records**	Life of vehicle	destroy[1]
M1-220	**OSHA Reports** —Copies of CONN-OSHA reports and citations	2 years after violation has been abated[10]	destroy[1]
	Policies and Procedures		
M1-225	a. Official record copy	Permanent	maintain in municipality
M1-230	b. Duplicate copies	until superseded	destroy[1]

Item Number	Record Series Title	Minimum Retention Required	Disposition
	Reports, Departmental		
M1-240	a. Annual (record copy)	Permanent[11]	maintain in municipality
M1-245	b. Special/administrative and/or Interim, including copies of reports created for submission to state or federal agencies	2 years	destroy[1]
M1-250	**Rental of Town Owned Housing, Applications for**		
	a. Accepted	current year, plus 5 years	destroy[1]
	b. Rejected	2 years	destroy[1]
	Tapes: audio or video		
M1-255	a. Zoning	1 year after minutes are approved unless pending appeal, then maintain 1 year after appeal decision	destroy[1]
M1-260	b. All other general meetings	6 months after minutes are approved	destroy[1]
M1-265	c. Security surveillance	2 weeks	recycle[12]
M1-275	**Telephone message books**	1 year	destroy[1]
	Transcripts		
M1-285	a. Zoning matters	4 years after minutes are approved	destroy[1]
M1-290	b. All other general meetings	6 months after minutes are approved	destroy[1]
M1-295	**Vehicle Use Reports and Logs**	3 years or until audited, whichever comes later	destroy[1]
M1-300	**Voice Mail**	delete at will[13]	

Item Number	Record Series Title	Minimum Retention Required	Disposition
(M1-210)	**Writs, Summons, and Complaints** (includes Memorandum of Decisions)	5 years or until resolution of case, whichever comes later	destroy[1]

[1] Municipalities may destroy records only after receiving the signed approval form (RC-075, rev. 2/2005) from the Public Records Administrator. Retention periods established on this schedule are *minimum retention requirements*. Records may be retained for longer periods of time.
[2] This means truly routine correspondence. Not included are letters, memos, or forms concerned with financial matters—such as vendors (1) requesting proposals or bids, (2) regarding disputed payments/services/etc. The latter should be retained for the specified retention period. If any dispute over services, payments, etc. occurs, the municipality should start the count at the date of final settlement. This would help ensure that vital records are accessible for a realistic period for review by auditors and other parties.
[3] A disaster plan should include the maintenance of a back-up master tape for important records in an approved off-site storage facility.
[4] See GL #98-1 Electronic and Voice Mail: A Management and Retention Guide for State and Municipal Government Agencies.
[5] May be deleted immediately without obtaining the approval of the Office of the Public Records Administrator.
[6] Retain for equivalent hard copy records as specified in an approved retention schedule. Must be able to interpret and retrieve the data for minimum legal retention requirement.
[7] Microfilm must meet the standards issued in General Letter 96-2: Required Minimum Microfilming Standards for Public Records; Disposition of Original Records: Policy Statement.
[8] Some grant records may have historical value and you may choose to keep them for a longer period of time.
[9] These records should be evaluated for historical/archival value on a case by case basis.
[10] The citation must remain posted until the violation has been abated, or for 3 working days (excluding weekends and state holidays), whichever is later.
[11] If printed in full town report, the annual report does not have to be retained permanently.
[12] If the tapes become evidence in any kind of disciplinary proceeding, litigation, if notice of pending action has been filed with the town clerk *CGS* §7-101a(d), or otherwise take on a status that would require a longer retention period according to the schedule, the tape would be retained for the amount of time specified by the retention schedule, and until all actions have been resolved.
[13] Special circumstances may apply requiring some limited retention such as potential evidence in legal proceedings (bomb threats, reports of illegal activities); customer complaints about agency policy or service; oral authority by a supervisor to take certain action, with no written back-up, which may be important to retain. Voice mail may also be subject to the discovery process in litigation. In most cases, certified transcription to a readable format would allow deletion of the voice message.

135 Conn.App. 807
Appellate Court of Connecticut.

Lamberto LUCARELLI
v.
FREEDOM OF INFORMATION COMMISSION et al.

No. 33336. | Argued Feb. 2, 2012. | Decided May 29, 2012.

Synopsis

Background: Citizen appealed from judgment of the Superior Court, Judicial District of New Britain, Cohn, J., dismissing his administrative appeal from decision of the Freedom of Information Commission ordering police department to produce certain records.

[Holding:] The Appellate Court, Beach, J., held that department was not required under Freedom of Information Act to transcribe or to retain any type of voice mail message.

Affirmed.

Attorneys and Law Firms

**238 Lamberto Lucarelli, pro se, the appellant (plaintiff).

Tracie C. Brown, principal attorney, for the appellee (named defendant).

LAVINE, BEACH and DUPONT, Js.

Opinion

BEACH, J.

***808** The self-represented plaintiff, Lamberto Lucarelli, appeals from the judgment of the trial court dismissing his administrative appeal from the decision of the defendant freedom of information commission (commission) ordering the defendant Old Saybrook ***809** police department (department)[1] to produce certain records. The plaintiff claims that the court erred in concluding that (1) the commission properly determined that the department was not required to transcribe or to tape voice mail messages pursuant to General Statutes § 1–213(b)(3), (2) the commission's failure to rule on his request for subpoenas was not reversible error and (3) the commission properly declined to enforce the penalty provision of General Statutes § 1–240(a). We affirm the judgment of the trial court.

The following facts, as found by the commission, and procedural history are relevant. In a letter dated June 29, 2009, the plaintiff requested from the department copies of four police reports, as well as "any and all other information regarding me or my affairs which may be in the possession of the [department] and which has not already been provided." On July 9, 2009, Michael A. Spera, the chief of police, met with the plaintiff and provided copies of the four incident reports requested by the plaintiff. In an effort to understand the plaintiff's request, Spera showed the plaintiff how the department's computer system worked and printed a list from the computer showing each instance since 1997 in which the plaintiff's name appeared in the department's records. Spera then gave the plaintiff a copy of the printout free of charge.

Following the July 9, 2009 meeting, the plaintiff reviewed the four incident reports and believed that the department still retained additional records responsive to his **239 request that had not been provided to him. By letter dated July 14, 2009, the plaintiff described the records he believed the department to have withheld *810 from him. The letter consisted of forty-six numbered paragraphs in which the plaintiff asked questions regarding the existence of certain records. In a telephone conversation, Spera explained to the plaintiff that the department did not maintain the records that he was seeking.

By a letter of complaint filed July 31, 2009, the plaintiff appealed to the commission, alleging that the department had violated the Freedom of Information Act (act), General Statutes § 1–200 et seq., by failing to respond to his June 29, 2009 request. At an evidentiary hearing on November 10, 2009, the plaintiff testified that, by way of his June 29, 2009 letter, he sought not just the incident reports, but also all records related to the incident reports that might be kept in the case files associated with such incident reports. Spera testified at the hearing that he interpreted the June 29, 2009 request as a request for the police incident reports only and that he did not search for the related case files for additional records. The hearing officer found that there was a genuine misunderstanding as to the scope of the plaintiff's request. The hearing officer ordered the department to conduct an additional search for records in light of the plaintiff's testimony and further ordered that if such search revealed additional records responsive to the plaintiff's June 29 or July 14, 2009 requests, the department was to provide a copy of such records to the plaintiff and to the commission,

along with an affidavit detailing the nature of the search, on or before December 4, 2009.

By letter dated December 4, 2009, the department provided the plaintiff and the commission with (1) an affidavit from Spera attesting that an additional search for records had been conducted and that all responsive records had been provided to the plaintiff, (2) a written response to each of the forty-six numbered requests made by the plaintiff in his July 14, 2009 letter and ***811** 3) copies of additional records found in the search, specifically, the contents of case files corresponding to the four incident reports.

By letter dated December 23, 2009, the plaintiff objected to the department's December 4, 2009 letter. In the letter, the plaintiff observed that the records search was conducted by Spera, not by the individual police officers who created the reports at issue, and that the individual officers did not attest to the information contained in the reports. He argued further that the department had acted in bad faith because it failed to acknowledge a written statement by David Perrotti, a police officer with the department, in an incident report dated April 22, 2009, that Perrotti had "taped [the plaintiff's] voice mail message he had left for [him] on April 20, 2009," and failed to disclose such tape recording.

In its final decision dated April 14, 2010, the commission found that the department's additional search for records was a diligent, good faith effort to comply fully with the plaintiff's June 29 and July 9, 2009 letters. The commission further found that the department had provided the plaintiff with all the requested records, except for the copy of the tape recording of the plaintiff's voice mail message that had been created by Perrotti. The commission concluded that the department's failure to disclose to the plaintiff that voice mail message recording violated General Statutes §§ 1–210(a) and 1–212(a). The commission found, however, that the department's failure to disclose the record was not intentional. The commission further concluded that the department did ****240** not violate the act in failing to transcribe, to tape or to record voice mail messages that may have existed on the department's voice mail system. The commission ordered the department to provide the plaintiff with a copy of the tape recording created by Perrotti, free of charge, if such tape still existed and, in the alternative, if the department no ***812** longer maintained that tape recording, to inform the plaintiff of such by letter. Additionally, the commission ordered the department to make a diligent search for tape recordings of any additional voice mail messages, to provide an affidavit to the plaintiff indicating the results of such search and to provide the plaintiff with a copy of any additional tape recordings it may find. The plaintiff filed a motion for reconsideration of the commission's decision, which was denied.

The plaintiff appealed to the Superior Court, alleging that the commission erred in (1) stating that the department did not have a statutory obligation to preserve voice mail communications, (2) not granting the plaintiff's request for subpoenas and (3) not assessing a penalty against the department in its order. The court rejected the plaintiff's arguments and dismissed the appeal. This appeal followed.

[1] **[2]** **[3]** We first set forth our standard of review. "Our review of an agency's factual determination is constrained by General Statutes § 4–183(j), which mandates that a court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are ... clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.... This limited standard of review dictates that, [w]ith regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency.... An agency's factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole.... With respect to questions of law, [w]e have said that [c]onclusions of law reached by the administrative agency must ***813** stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts." (Citation omitted; internal quotation marks omitted.) *Board of Education v. Commission on Human Rights & Opportunities,* 266 Conn. 492, 503–504, 832 A.2d 660 (2003).

I

[4] The plaintiff first claims that the court erred in concluding that the commission properly determined that an exception to the general rule requiring record retention, § 1–213(b)(3), applied to the department's voice mail messages.[2] We disagree.

The commission concluded that the department did not violate the act in failing to transcribe, to tape or otherwise to record voice mail messages that may have existed on

the department's voice mail system. The commission found, however, that the department violated §§ 1–210(a) and 1–212(a) by failing, albeit unintentionally, to disclose to the plaintiff the voice mail message recording created by Perrotti **241 [3] and ordered the department to provide a copy of the tape if it still existed and to search for any additional tape recordings of voice mail messages.

The court rejected the plaintiff's argument that the department was required to transcribe voice mail messages and instead concluded that the commission did not err in its determination that the department did not violate the act in failing to transcribe, to tape or to *814 record voice mail messages that may have existed on the department's voice mail system. In making this determination, the court relied on the exemption in § 1–213(b)(3) that provides that nothing in the act shall be deemed to require a public agency to transcribe the content of any voice mail message or to retain such record.

The plaintiff argues that the original voice mail messages that were temporarily recorded on the department's answering machine system were public records that should have been retained and destroyed only pursuant to an approved retention schedule. He further seems to argue that, at minimum, voice mail messages that may potentially be used as evidence in trials should be considered to be excepted from § 1–213(b)(3). We do not agree.

Section 1–213(b) provides in relevant part that "[n]othing in the Freedom of Information Act shall be deemed in any manner to ... (3) [r]equire any public agency to transcribe the content of any voice mail message and retain such record for any period of time. As used in this subdivision, 'voice mail' means all information transmitted by voice for the sole purpose of its electronic receipt, storage and playback by a public agency." Spera testified at the November 10, 2009 hearing that voice mail messages left on the department's answering system were not subsequently recorded, retained or transcribed. According to the plain language of the statute, these messages left on the department's answering machine system constitute "voice mail message[s]," and the department was not required to transcribe or to retain any type of voice mail message. The statute clearly and unequivocally authorizes the defendant's position.

To the extent that the department recorded and retained the voice mail messages left on its answering *815 machine system, the commission ordered the department to give the plaintiff copies of such messages because the subsequent recordings became public records subject to disclosure. It specifically determined that the plaintiff was entitled to a voice mail message that had been tape recorded by Perrotti and ordered the department to provide the plaintiff with a copy of that message and to make a diligent search for tape recordings of any additional voice mail messages. See General Statutes § 1–210(a) ("[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").

II

The plaintiff next claims that the court improperly rejected his challenge to the commission's failure to rule on his request for subpoenas. [4] We disagree.

**242 [5] The following additional undisputed facts are relevant to this claim. A show cause hearing regarding the plaintiff's first letter of complaint was scheduled for November 10, 2009. Prior to the hearing, the plaintiff requested that the commission subpoena anyone in the department who may have been involved in responding to his request under the act, specifically, Spera, Officers Christopher DeMarco and Perrotti, Detective Kevin Roche, Ms. Klingerman and Adam Laverty. He also requested that the commission issue a subpoena duces tecum for the department to bring to the hearing "all information whatsoever regarding" him, including "all *816 possible audio recordings that may pertain to this ... matter." The commission took no action regarding this request. [5]

The court rejected the plaintiff's claim regarding the commission's failure to rule on subpoenas. The court determined that the plaintiff had stated that his purpose in seeking subpoenas was to probe each individual regarding his or her retention of audio recordings. Although the court mentioned that in order to prevail, the plaintiff must show that the commission abused its discretion in denying the request and that the denial prejudiced the plaintiff, the court expressly stated only that the failure of the hearing officer to honor the plaintiff's request for subpoenas was not prejudicial.

Our statutes and agency regulations confer discretionary authority to the commission to issue subpoenas. General Statutes § 4–177b provides in relevant part that "[i]n a contested case, the presiding officer *may* ... subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in

the case...." (Emphasis added.) Section 1–21j–36 (b) of the Regulations of Connecticut State Agencies similarly provides in relevant part that "[a]t any hearing, the commission or the presiding officer *may* subpoena witnesses and require the production of records, documents and other evidence pertinent to such inquiry. Any party may request that such process be issued...." (Emphasis added.); see also 2 Am.Jur.2d, Administrative Law § 337 (2004) ("Reasonable limitations may be placed on the number and scope of witnesses that may be compelled to testify at an administrative hearing. Procedural due process does not require that parties to a hearing must be provided with ***817** an absolute or independent right to subpoena witnesses.").

Our rules of practice confer on courts discretionary authority to issue subpoenas on behalf of self-represented parties. Practice Book § 7–19 provides: "Self-represented litigants seeking to compel the attendance of necessary witnesses in connection with the hearing of any civil matter, including matters scheduled on short calendar or special proceeding lists or for trial, shall file an application to have the clerk of the court issue subpoenas for that purpose. The clerk, after verifying the scheduling of the short calendar hearing, special proceeding or trial, shall present the application to the judge before whom the matter is scheduled for hearing, or the administrative judge or any judge designated by the administrative judge if the ****243** matter has not been scheduled before a specific judge, which judge shall conduct an ex parte review of the application and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate."

[6] **[7]** We similarly recognize the discretion accorded administrative agencies. "[A]dministrative tribunals are not strictly bound by the rules of evidence.... Thus, on appeal, [t]he plaintiff bears the burden of demonstrating that a hearing officer's evidentiary ruling is arbitrary, illegal or an abuse of discretion." (Citation omitted; internal quotation marks omitted.) *United Technologies Corp. v. Commission on Human Rights & Opportunities,* 72 Conn.App. 212, 228–29, 804 A.2d 1033, cert. denied, 262 Conn. 920, 812 A.2d 863 (2002); see also General Statutes § 4–183(j) (agency's decision shall be affirmed unless appellant's substantial rights are prejudiced by agency's abuse of discretion). "[N]ot all procedural irregularities require a reviewing court ***818** to set aside an administrative decision; material prejudice to the complaining party must be shown." (Internal quotation marks omitted.) *Goldstar Medical Services, Inc. v. Dept. of Social Services,* 288 Conn. 790, 828, 955 A.2d 15 (2008).

The plaintiff has not demonstrated that the commission abused its discretion in failing to rule on his request for subpoenas or that the failure so to rule caused him material prejudice. Section 1–21j–36 (b) of the Regulations of Connecticut State Agencies gives the commission broad discretion in deciding whether to grant subpoenas. The plaintiff requested that the commission issue subpoenas for department personnel who "may have" carried out the searches and also requested that the commission subpoena from the department "all information whatsoever" regarding him. The plaintiff's stated purpose in seeking subpoenas was to probe each individual regarding his or her retention of audio recordings. At the November 10, 2009 hearing, Spera testified as to the efforts made by the department to ensure compliance with the plaintiff's request. Under § 1–21j–35 (c) of the Regulations of Connecticut State Agencies, the presiding officer may limit the number of witnesses to avoid unnecessary cumulative evidence.

The plaintiff has not shown material prejudice. The plaintiff prevailed at the November 10, 2009 hearing, and the hearing officer ordered the department to conduct an additional search for records. The commission later determined that the additional search conducted by the department was diligent but ordered the department to provide the plaintiff with a copy of the voice mail recording created by Perrotti if it still existed and to make a diligent search for additional tape recordings of any voice mail messages. Accordingly, we do not conclude that the hearing officer's failure to rule on the subpoenas either constituted an abuse of discretion or substantially prejudiced the plaintiff.

***819 III**

The plaintiff last claims that the court erred in concluding that the commission had not erroneously failed to enforce the penalty provision of § 1–240(a)[6] in its order. ****244** He essentially argues that the commission should have found the department guilty of violating § 1–240(a) for deleting his voice mail messages.[7] The conduct found by the commission is far removed from that proscribed by § 1–240(a), and, in any event, the commission does not exercise criminal jurisdiction.

The judgment is affirmed.

In this opinion the other judges concurred.

Parallel Citations

43 A.3d 237

Footnotes

1 The police department of the town of Old Saybrook was named as a defendant at trial. On September 23, 2011, this court granted the police department's motion to be excused from participation in this appeal. We therefore refer in this opinion to the commission as the defendant.

2 We have considered the plaintiff's argument that his constitutional rights under the ninth and fourteenth amendments to the United States constitution and article first, §§ 10 and 20, of the Connecticut constitution were violated by not requiring preservation of the voice mail messages, and we conclude that it has no merit.

3 Apparently, Perrotti had listened to a voice mail message from the plaintiff, had used a tape recorder to create a tape recording of the message and had kept the tape recording in a file.

4 We have considered the plaintiff's arguments that it is a "fundamental right" to have administrative agencies grant subpoenas and that the failure of the commission to grant his requests for subpoenas violated his constitutional rights to due process or equal protection. We conclude that the arguments are without merit. We further conclude that, contrary to the plaintiff's argument, *Fromer v. Freedom of Information Commission,* 90 Conn.App. 101, 110, 875 A.2d 590 (2005), is not applicable to the present case.

5 We treat the lack of a ruling, for purposes of this discussion, as a denial of the request for subpoenas. We by no means encourage rulings through inaction.

6 General Statutes § 1–240(a) provides: "Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1–18 or unless pursuant to chapter 47 or 871, or who alters any public record, shall be guilty of a class A misdemeanor and each such occurrence shall constitute a separate offense."

7 We have considered the plaintiff's argument that, by failing to apply § 1–240(a), the commission violated the plaintiff's constitutional rights under the ninth and fourteenth amendments to the United States constitution and article first, §§ 10 and 20, of the constitution of Connecticut, and we conclude that it is without merit.

End of Document

TAB 9

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Request
for Advisory Opinion

Advisory Opinion #41

Town Counsel, Town of Seymour,
Applicant

On April 9, 1980, the Commission considered and agreed to respond to the request for an advisory opinion filed by the Town Counsel, Town of Seymour. In his request, the applicant raises three questions. Each will be treated seriatim.

I

The applicant's first question, in essence, asks what means a public agency must use to assure compliance with the provisions of Conn. Gen. Stat. §1-21 when it wishes to conduct all or part of a meeting by telephone or other electronic equipment.

It is the Commission's opinion that this question cannot be answered definitively, although certain considerations can be set forth to guide public agencies in this era of rapid technological innovation.

The applicant correctly points out that Conn. Gen. Stat. §l-18a(b) defines "meeting" in part, as "communication by or to a quorum of a multi-member public agency, whether in person or by means of electronic equipment...." This seems to indicate that telephonic meetings are permissible for purposes of the Freedom of Information (FOI) Act. On the other hand, Conn. Gen. Stat. 1-21, in relevant part, requires that the "meetings of all public agencies ... shall be open to the public." Consequently, any telephonic meeting, or meeting by other electronic equipment, of a public agency must still be "open to the public," within the meaning of §1-21.

The Commission believes that the phrase "open to the public" contemplates public access to the entire proceedings taking place during the course of a meeting. Compliance with §1-21, therefore, requires that a meeting of a public agency be conducted in such a manner that every person in attendance has the opportunity to observe all of the discussions and actions transpiring at the meeting. In the context of a meeting held by means of telephonic or electronic equipment, the following minimum conditions must be met:

1. Facility must be made for that portion of the public that wishes to attend the meeting to be present at a place where the greatest number of participating agency members are located.

2. If any agency member or other participant in the meeting utilizes physical or demonstrable material in the course of the proceedings, that material, or a copy or facsimile of same, must be present in the place where the public is located. That material also must be available for public observation and inspection, unless otherwise exempt from disclosure under Conn. Gen. Stat. §l-19 (b).

3. All those in attendance at the meeting, at whatever location, must be able to hear and identify adequately all participants in the proceedings, including their individual remarks and votes. While the Commission does not have the technical expertise to advise which telephonic or electronic devices would meet this condition now or in the future, existing conference call equipment in conjunction with loud speakers may be adequate for this purpose.

II

The applicant's second question, in essence, asks what public access is required when a board of finance conducts a poll of its members on an appropriation involving $1,000 or less pursuant to Conn. Gen. Stat. §7-342.

In relevant part, §7-342 states that:

> except where otherwise provided by special act or charter, in any case involving a vote of the board [of finance] on an appropriation, or a transfer within an existing appropriation, of an amount not exceeding one thousand dollars, the chairman or, in his absence, the clerk or any two members, may, in lieu of calling a meeting of the board, poll the members thereof...

(Emphasis added). Thus, the poll contemplated here appears to act as an exemption to the rule that municipal boards "must meet and act as a board at authorized meetings duly held." Ziomek v. Bartimole, 156 Conn. 604, 612 (.1968). The questions then becomes whether such a poll is subject to the FOI Act.

As a primary rule of statutory construction, statutes should be interpreted, if possible, so as to create one consistent body of law. State v. White, 169 Conn. 223, 234 (1975); Spring v. Constantino, 168 Conn. 563, 572 (1975). Likewise, a statute of specific applicability generally supersedes a conflicting provision of a statute of general applicability. State v. Whiter supra. The FOI Act is comprised of statutes of general applicability. In re Planning and Zoning Commission, City of Middletown, FOI Commission Advisory Opinion #34 (December 13, 1978). It is the Commission's opinion that §7-342 is a statute of specific applicability and where its provisions conflict with those of the FOI Act, the provisions of §7-342 generally prevail.

Consequently, it is the Commission's opinion that the poll as described and limited in §7-342, is not a "meeting" subject to the FOI Act. But this should not be construed as a carte blanche for boards of finance to avoid providing public notice for, and access to, their meetings or polls. Section 7-342 is limited to appropriations, or transfers, not exceeding $1,000. Beyond that amount, the poll would be subject to the open meetings requirements of the FOI Act.

Also, a poll is defined as "[t]he casting or recording of the votes of a body of persons." Webster's New International Dictionary, 2nd ed. (unabridged). It is the Commission's opinion that this definition comports with commonly approved usage within the context of §7-342. See Conn. Gen. Stat. §1-1(a). As a result, discussion or other communication between or among agency members does not fall within the purview of a poll. Therefore, a poll is restricted to the casting or recording of votes only. Anything else would constitute a meeting if it otherwise comes within the definition contained in Conn. Gen. Stat. §1-18a(b).

Although it is the Commission's opinion that the poll permitted by §7-342 is outside the coverage of the FOI Act, the Commission hopes that boards of finance nonetheless would comply with the act's public notice and access requirements, whenever possible. In this regard, if telephonic or electronic equipment is used to conduct such a poll, the minimum conditions set forth in section I of this opinion would be both appropriate and satisfactory. By following such procedures, the Commission believes that boards of finance not only would be adhering to the spirit of the FOI Act, but would be helping to implement a consistent public information policy. Furthermore, such boards would avoid the consequences of crossing the line between permissible poll and illegal meeting -- a line that the Commission intends to interpret strictly.

III

The applicant's third question, in essence, asks whether the time period for filing the results of a board of finance poll under Conn. Gen. Stat. §7-342 conflicts with the time periods in Conn. Gen. Stat. §1-21 for making available for public inspection, records of votes; and, if so, which provision governs.

The Commission addressed a similar question in In re Town Clerk, Town of Oxford, FOI Commission Advisory opinion #31 (August 9, 1978). For the reasons stated below, the Commission believes that the substance of Advisory opinion #31 ought to control here. Thus, it is the Commission's opinion that there is no conflict between the foregoing time period provisions of §§7-342 and 1-21 because they can be read consistently to create one body of law.

'The document containing the results of a board of finance poll is a public record within the meaning of Conn. Gen. Stat. §1-18a(d). It is also a record of votes within the meaning of §1-21. Consequently, under Conn. Gen. Stat. §§1-19(a) and 1-21, if a town board of finance has a regular office or place of business, its record of votes, including poll results, must be reduced to writing and kept, maintained and made available there for public inspection within 48 hours, excluding Saturdays, Sundays or legal holidays. In that case, another record of poll results must be filed with the town clerk within two weeks to satisfy the requirements of §7-342.

If, however, a board of finance does not have a regular office or place of business, §§1-19(a) and 1-21 require that the record of its poll results be reduced to writing and kept, maintained and made available for public inspection in the office of the municipal clerk within the same 48 hour period as set forth above. Under these circumstances, it appears academic whether the clerk of the board also files an additional record of poll results in the same municipal clerk's office for purposes of §7-342. It is the Commission's opinion that in this event, compliance with the requirements of the FOI Act would fulfill the requirements of §7-342 as well, because the filing of the record of votes within the time limitations of §1-21 would also meet the time limitations of §7-342.

Since the first part of the applicant's question is answered in the negative, the second part accordingly becomes moot.

By Order of the Freedom of
Information Commission

_____
Judith A. Lahey, Chairman of
of the Freedom of Information
Commission

Date _____

Ordered_____

Leslie Ann McGuire, Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Robert Noiseux, Carolyn Noiseux, Eleanor Orlomoski,
June Leiss, Alison Haber, Steven Orlomoski;
and Concerned Citizens of Plainfield,

Complainants

against Docket #FIC 2009-254

Board of Directors, Connecticut Clean Energy Fund,

Respondent January 13, 2010

The above-captioned matter was heard as a contested case on September 29, 2009, at which time the complainants and the respondent 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 respondent is a public agency within the meaning of §1-200(1), G.S.

2. By letter dated April 28, 2009, the complainants appealed to this Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act by failing to conduct its meeting on April 27, 2009 in compliance with the FOI Act. Specifically, the complainants alleged that:

[a]. Members of the public were deliberately denied access to a public meeting[;]

[b]. Those individuals who had expected to speak, were deliberately distracted from observing the meeting. This distraction was created on purpose by the CCEF [Connecticut Clean Energy Fund] Executive Board[;]

[c]. ... [T]he executive session was improperly used[;] and

[d]. ... [T]he public was denied the right to view much of the Board discussion and deliberations.

3. Section 1-225(a), G.S., provides in relevant part that: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."

4. Section 1-225(f), G.S., provides:

> A public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

5. Section 1-200(6)(E), G.S., permits an executive session for: "discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210."

6. Section 1-210(b)(5)(B), G.S., provides that disclosure is not required of "commercial or financial information given in confidence, not required by statute ..."

7. It is found that, more than a week before the respondent's meeting of April 27, 2009, the respondent anticipated that attendance at the meeting would be much larger than usual, due to a controversial agenda item concerning whether to loan money to Plainfield Renewable Energy, LLC ("PRE").

8. It is found that the respondent realized the need to accommodate a larger audience. It is found that the respondent initially considered moving the location of the meeting, but ultimately rejected that option because the alternative location was at some distance from the regularly scheduled meeting place and, therefore, might be confusing to people trying to find the new location.

9. It is found that the respondent decided, instead, to accommodate overflow attendance in two conference rooms within the same building as the respondent's meeting. It is further found that the respondent connected the overflow rooms to the

respondent's meeting room by a speakerphone that provided an audio feed from the respondent's meeting. It is found that the speakerphone did not have a video component. It is found, therefore, that people listening to the meeting in the overflow rooms could only hear the respondent's meeting, but could not see it at all.

10. It is found that the respondents appointed two of its staff members to accompany members of the public to the overflow rooms and to explain where the restrooms were. It is found that each of the staff members remained in an overflow room throughout the respondent's meeting.

11. It is found that some of the complainants in this matter were seated in the overflow rooms. Two of the complainants testified that the speakerphone reception was inadequate, and that it was difficult, if not impossible, to understand what was being said in the respondent's meeting. Although the staff members who were present in the overflow rooms testified that they were able to hear the meeting through the speakerphone, it is found that the speakerphone failed to provide clear transmission, at least to the members of the audience who are complainants in this matter.

12. It is found that the members of the respondent did not identify themselves for the benefit of the overflow room audience each time they spoke, so the overflow audience was unable to know who was speaking. Furthermore, it is found that at least one member of the respondent attended the meeting via speakerphone, thereby adding another layer of audio difficulty for people in the overflow rooms.

13. It is further found that those in the overflow room were unable to observe the "body language and general demeanor of those on the panel," as one complainant stated.

14. The respondent contends that it did the best it could under the circumstances to accommodate the larger than usual attendance. The respondent also contends that no one brought any problems with the intercom to the respondent's attention during the meeting.

15. The respondent relies on Advisory Opinion #41, In the Matter of a Request for Advisory Opinion, Town Counsel, Town of Seymour (1980) to support its claim that the audio access to the meeting was sufficient to make the meeting "open to the public" seated in the overflow rooms, within the meaning of §1-225(a), G.S. In Advisory Opinion #41, the FOI Commission suggested "what means a public agency must use to assure compliance with the provision of [§1-225(a), G.S.,] when it wishes to conduct all or part of a meeting by telephone or other electronic equipment."

16. Advisory Opinion #41, however, concluded that compliance with §1-225(a), G.S., "requires that a meeting of a public agency be conducted in such a manner that every person in attendance has the opportunity to observe all the discussions and actions transpiring at the meeting. (Emphasis added.)"

17. It is found that "observe" means to see, watch, perceive, or notice." Dictionary.com. *Dictionary.com Unabridged.* Random House, Inc. http://dictionary.reference.com/browse/observe (accessed: October 23, 2009).

18. It is found that people who attended the respondent's meeting in the overflow rooms were denied the opportunity to observe all the discussions and actions transpiring at the meeting.

19. Advisory Opinion #41 sets forth "minimum conditions" that must be met when an agency wishes to conduct its meeting by telephone or other electronic equipment:

> 1. Facility must be made for that portion of the public that wishes to attend the meeting to be present at a place where the greatest number of participating agency members are located.
>
> 2. If any agency member or other participant in the meeting utilizes physical or demonstrable material in the course of the proceedings, that material, or a copy or facsimile of same, must be present in the place where the public is located. That material also must be available for public observation and inspection, unless otherwise exempt from disclosure under Conn. Gen. Stat. §l-19(b) [predecessor statute to §1-210(b), G.S.].
>
> 3. All those in attendance at the meeting, at whatever location, must be able to hear and identify adequately all participants in the proceedings, including their individual remarks and votes.

20. Although Advisory Opinion #41 suggests that a meeting conducted by speakerphone might satisfy the minimum conditions, described in paragraph 19, above, it is concluded that the Opinion did not contemplate a meeting where the agency meets in person but restricts access to the in-person meeting and substitutes, instead, access by speakerphone for some members of the public, as was the case for those members of the public who had to listen to the respondent's meeting in an overflow room.

21. It is found that the respondent failed to satisfy the minimum conditions set forth in Advisory Opinion #41. It is found that the respondent failed to accommodate the members of the public who wished to be present and observe at a place where the greatest number of participating agency members were located (Condition 1). It is also found that the complainants who attended

the respondent's meeting in the overflow room were unable to identify adequately all participants in the proceedings, including their individual remarks and votes (Condition 3).

22. The respondent relies on Docket #FIC 2008-356; Nancy Dickal v. Richard D. Schultz, Planning Administrator, City of Shelton; et al (December 10, 2008) to support its argument that the respondent cannot be held responsible for violating the open meeting provisions of the FOI Act, because the complainants failed to alert the respondent that the audio system was not functioning adequately.

23. It is found, however, that in Dickal, it was reasonable for the respondent agency not to know that members of the public who were standing in the hall outside the meeting wished to "observe or hear" the meeting but were unable to do so. It is found that in this matter, the respondent agency knew, or should have known, that people in the overflow room could not observe the meeting and that members of the respondent did not identify themselves when they spoke.

24. It is concluded, therefore, based on the facts and circumstances of this case, that the respondent's meeting of April 27, 2009 was not "open to the public," within the meaning of §1-225(a), G.S.

25. It is concluded that the respondent violated §1-225(a), G.S., as alleged by the complainants in paragraph 2.a, above.

26. With respect to the complainants' allegation, described in paragraph 2.b, above, that the respondent intentionally distracted members of the public who wished to speak at the meeting from observing the meeting, §1-225(e), G.S., provides:

> No member of the public shall be required, as a condition to attendance at a meeting of any such body, to register the member's name, or furnish other information, or complete a questionnaire or otherwise fulfill any condition precedent to the member's attendance.

27. It is found that at the start of the meeting, the respondent announced that, due to the anticipated large number of people who wished to make public comment on the controversial agenda item, speakers would be limited to three minutes per person or organization, that only one speaker per organization would be permitted to speak, and that all those who were not intending to speak should listen to the meeting in an overflow room.

28. It is further found that the respondent preferred that the speakers remain in the meeting room in order to facilitate the public comment portion of the meeting.

29. It is found that the complainants were surprised at the respondent's new rule that only one speaker would be permitted from their organization. It is further found that the complainants were distracted from the first part of the meeting by having to discuss and decide who from their organization would speak and attend the meeting in person, and who would listen to the meeting in the overflow rooms.

30. Although the complainants allege that the respondent conditioned attendance at the meeting upon speaking at such meeting, it is found that the respondent did not bar those who chose not to speak from attending the meeting in person.

31. Accordingly, it is concluded that the respondent did not violate §1-225(e), G.S.

32. It is found that the respondent did not intentionally distract members of the public who wished to speak at the meeting.

33. It is concluded that regulating the public's opportunity to speak at a meeting is not a violation of the FOI Act because nothing in the FOI Act grants the public the right to speak at a meeting. Wesley S. Lubee, Jr. v. Town Council, Town of Wallingford; Docket #FIC 2002-127 (September 25, 2002).

34. Advisory Opinion #35; In the Matter of a Request for Advisory Opinion; Town Counsel, Town of North Haven (December 13, 1978) recognizes:

> The FOI Act neither explicitly mandates nor prohibits public comments at meetings of any public agency. Consequently, such a practice is entirely within the discretion of each agency, unless required or restricted by other applicable law.
> The Commission, however, is strongly in favor of public participation at agency meetings, to whatever extent possible. It is the Commission's firm belief that the spirit of the FOI Act, and the concept of open government that it fosters, is not limited to public agencies disclosing their records and providing access to their meetings. If open government is to become a reality, public agencies must open their proceedings to receive the concerns and opinions of the people whom they serve.

35. It is concluded that the respondent did not violate the FOI Act as alleged by the complainants in paragraph 2.b, above.

36. With respect to the complainants' allegation of an improper executive session, described in paragraph 2.c. and 2.d, above, it is found that the respondent followed proper procedure, pursuant to §1-225(f), G.S., to enter into executive session, which lasted about 90 minutes. It is found that in the executive session, the respondent discussed PRE's financial information, which had

been given to the respondent upon the respondent's promise to maintain its confidentiality.

37. It is found that the respondent reconvened its regular meeting at the end of the executive session. It is further found that the members of the respondent then discussed PRE's loan request in open session. It is found that such discussion lasted about 25 minutes, during which time the members of the respondent articulated their views and then voted to make the loan.

38. The complainants complain that the public discussion that followed the executive session was perfunctory and that the true discussion took place in executive session.

39. It is found, however, that the executive session was proper pursuant to §§1-200(6)(E) and 1-210(b)(5)(B), G.S.

40. It is concluded that the respondent did not violate the FOI Act as alleged by the complainants in paragraph 2.c and 2.d, above.

41. It is found that although the respondent approved the loan to PRE, the company subsequently withdrew its request for funding and the respondent will not be providing money to PRE that was approved at the April 27, 2009 meeting.

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

1. Henceforth, the respondent shall strictly comply with §1-225(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 13, 2010.

S. Wilson
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:

Robert Noiseux, Carolyn Noiseux,
Eleanor Orlomoski, June Leiss,
Alison Haber, Steven Orlomoski; and
Concerned Citizens of Plainfield
C/o Robert & Carolyn Noiseux
447 South Canterbury Road
Canterbury, CT 06331

Board of Directors, Connecticut Clean Energy Fund
C/o Kathleen A. St. Onge, Esq.,
Peter G. Boucher, Esq. and Christopher J. Novak, Esq.
Halloran & Sage, LLP
225 Asylum Street
Hartford, CT 06103

S. Wilson
Acting Clerk of the Commission

FIC/2009-254FD/sw/1/19/2010

TAB 10

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Request
for Advisory Opinion

Advisory Opinion #51

Third Taxing District of the City of Norwalk,
Applicant

On November 25, 1981, the Commission considered and agreed to respond to the request for an advisory opinion filed on behalf of the Third Taxing District of the City of Norwalk.

In its request, the applicant states that it is a small municipal agency whose prime function is to supply electricity to residents of East Norwalk. It has two full-time office employees who answer telephones, receive payments from customers and perform all record keeping tasks.

On various occasions over the past summer, a person inspected the applicant's records for the years 1974 - 1977. This inspection occurred after an agreement whereby the person consented to the presence of counsel for the applicant during her inspections, which were carried out over some 31 hours on several dates. The person had also consented to make appointments with the applicant's counsel prior to conducting her inspection of records. Apparently, this person now desires to inspect the applicant's records from 1977 to the present.

Essentially, the applicant seeks the Commission's opinion as to whether Conn. Gen. Stat. §1-19(a) permits a public agency to require that a person make an appointment for the inspection of records at a mutually convenient time so that the agency can plan staff time and arrange for the presence of non-staff attorneys and/or accountants.

For the reasons set forth below, it is the Commission's opinion that an agency cannot require the imposition of such preconditions.

In relevant part, Conn. Gen. Stat. §1-19(a) states:

> (a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency . . . shall be public records and every person shall have the right to inspect such records promptly during regular office or business hours .... [*] Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the secretary of the state, as the case may be.

This section does not explicitly empower an agency to require that a person make an appointment to inspect public records. Nor does the language of the statute imply the power to impose such a precondition. Obviously, as custodian of its public records, an agency has the right to take necessary steps to protect them from destruction or mutilation. And these steps may properly include supervision of the documents while they are being inspected pursuant to Conn. Gen. Stat. §1-19(a). But again, this does not imply the necessity to incur an additional expense by retaining non-staff attorneys or accountants to be present during such inspections.

What is clear is that public records must be kept accessible and must be made available to a requesting person "promptly during regular office or business hours." Assuming that an agency's regular office or business hours are fixed and established, it remains to consider what the word "promptly" means in the context of the statute and of the

question posed by the applicant.

"Promptly" has been defined as "[r]eady and quick to act as occasion demands. Black's Law Dictionary, Revised Fourth Edition. See also Webster's New International Dictionary, 2nd Edition (unabridged). The former authority also stresses the caveat that "the word depends largely on the facts of each case."

It is the Commission's opinion that the word "promptly," as used in Conn. Gen. Stat. §1-19(a), means quickly and without undue delay, taking into account all of the factors presented by a particular request. Because the facts are going to vary, and vary in significance, in each case, the Commission cannot definitively set out in this opinion all of the factors that should be considered in determining promptness. The Commission can, however, offer some guidance in this area.

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore a primary duty of all public agencies, and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline. If agency personnel are involved in a high priority project, or one with an immediate or pressing deadline, a request for records should be weighed against that project for priority. Some of the factors that should be considered in this situation are: the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requestor needs the information contained in the records; the time constraints under which the agency must 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 the loss of the personnel time involved in complying with the request.

In weighing these and other factors, common sense and good will ought to be the guiding principles. The Commission believes that if an agency politely explains to a person seeking access to records why immediate compliance is not possible, that person will most likely understand and appreciate the agency's obligation to balance its duties as custodian of public records with its other duties. And as long as it appears to that person that the agency is not trying to unduly delay compliance, or impose unnecessary restrictions, he or she will most likely try to accommodate the agency. Indeed, it has been the Commission's experience that when an agency is sensitive to the needs of the requester, in most cases the agency is able to meet such person's essential requirements in a manner that also permits it to satisfactorily perform its other functions. In the final analysis, it is the Commission's opinion that this rule of reason and courtesy, if implemented, should eliminate the vast majority of potential conflicts between a citizen's right to timely access to public records, and an agency's duty to comply while processing other important business.

By Order of the Freedom of
Information Commission

_____
Judith A. Lahey, Chairman of
of the Freedom of Information
Commission

Date _____

Ordered_____

Mary Jo Jolicoeur
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Richard H. Kosinski,

Complainant

against

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

Respondents

FINAL DECISION

Docket #FIC 2009-176

February 16, 2010

The above-captioned matter was heard as a contested case on August 14, 2009, 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 letter dated January 26, 2009, to the respondents, the complainant made a request, in part, for a copy of the "complete files" related to the State Board of Education Impartial Hearing Officers employment solicitation.

3. It is found that by letter dated February 3, 2009, the respondents provided the complainant with two records in response to his January 26, 2009 request, described in paragraph 2, above.

4. It is found that by letter dated February 23, 2009, to the respondents, the complainant clarified that his January 26, 2009 request was for any and all records related to the State Board of Education Impartial Hearing Officers employment solicitation which records include "each and every communication received or generated [by the respondents] related to or as a result of the solicitation, including but not limited to, letters of application, resumes, writing samples, professional references, and evaluation notes."

5. It is found that the respondents compiled 348 pages of records after receiving the complainant's February 23, 2009 request, and informed him, by letter dated March 4, 2009, that they were available and would be provided to him once he paid the copying fees.

6. It is found that the records were provided to the complainant, with redactions, by cover letter dated March 19, 2009.

7. By letter dated March 26, 2009, and filed on March 30, 2009, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to fully comply with the provisions of §§1-210(a) and 1-212(a), G.S.

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

> "Public 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, printed, photostated, photographed or recorded by any other method.

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

> Except 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 receive a copy of such records in accordance with section 1-212. . . .

10. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon

request, a plain or certified copy of any public record."

11. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

12. At the hearing on this matter, the complainant contended that the redactions were not appropriate and that the respondents failed to promptly comply with his January 26, 2009 request. The complainant also questioned whether he was provided with all responsive records since one of the letters of reference submitted by him, as part of his application, was not included in the records that he was provided.

13. It is found that the solicitation for the position stated the following:

Connecticut State Board of Education Impartial Hearing Officers

Qualified applicants who wish to serve as per diem Impartial Hearing Officers for the State Board of Education for due process hearings regarding transportation, residency, student expulsions, educator certificate revocations and denials of permits should submit a letter of application, resume, writing sample and two professional references by November 14, 2008.

Applicants must have (1) two years of successful experience as a due process hearing officer, (2) knowledge of the Uniform Administrative Procedures Act and (3) general knowledge of public education and the delivery of instruction in the public schools. Please submit a letter of application, resume, writing sample and two professional references by November 14, 2008. . . .

14. It is found that nineteen individuals applied for the position described in paragraph 13, above.

15. It is found that three individuals screened the nineteen applicants to determine who would be interviewed for the position by evaluating their resumes, references and writing samples, using five specified criteria. It is found that each screener was given a scoring sheet for each applicant, with the five criteria printed on each sheet and a line for the screener to write a score ranging from one to five. It is found that the process generated three scoring sheets for each applicant – a total of fifty-seven scoring sheets.

16. It is found that the respondents redacted the five criteria from each scoring sheet.

17. It is found that from the fifty-seven scoring sheets, the respondents generated a master scoring sheet for each of the three screeners - a total of three sheets. It is found that each sheet listed the name of all nineteen applicants with the screener's score for each criterion and the total score given to that applicant. It is found that the respondents redacted the individual scores given for each criterion from the master scoring sheets.

18. It is found that the respondents also generated one document described as the "screener's tally" which listed all nineteen applicants and included the total score given to each applicant by each screener and the sum of those three scores. It is found that the respondents disclosed the sum of the three screeners' scores but redacted the total score given by each screener to each applicant.

19. It is found that the respondents provided the Commission with certain un-redacted records for in camera inspection which records have been identified as in camera records #FIC 2009-176-001 through #FIC 2009-176-082 which were divided into five groups as follows: group #1 is the fact pattern for the interview; group #2 is a list of the "discussion issues" related to the fact pattern; group #3 are the interview questions; group #4 are the scoring sheets completed by the screeners to evaluate each application in order to decide whether to offer the applicant an interview; and group #5 are the candidate rating sheets completed by the interviewers to evaluate the applicants' interviews.

20. It is found that the records in group #4, identified as in camera records #FIC 2009-176-004 through 2009-176-067 are the only records that existed at the time of the complainant's January 26 and February 23, 2009 requests and that remain at issue in this matter. It is found, therefore, that in camera records #FIC 2009-176-004 through 2009-176-067 are the only in camera records that were responsive to the complainant's January 26 and February 23, 2009 requests. Thus, they are the only records that will be addressed herein.

21. At the hearing on this matter, and on the in camera index, the respondents claimed that the five criteria and the scores used to screen the applicants are exempt from mandatory disclosure pursuant to §1-210(b)(6), G.S., as other examination data used to administer an examination for employment. The respondents contended that if the resume, writing sample, references, the five criteria, and the scores, are all disclosed, applicants would know what the respondents considered to be a successful applicant and

would adjust their applications accordingly. The respondents contend that this would be providing an unfair advantage akin to providing the test questions and the answers.

22. However, the complainant contended, at the hearing on this matter, that the screening process used by the respondents, as described in paragraph 15 through 18, above, is not an "examination for employment" within the meaning of §1-210(b)(6), G.S., and therefore, he should have been provided with an unredacted copy of the records described in paragraphs 15 through 18, above.

23. Section 1-210(b)(6), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require the disclosure of:

> (6) Test questions, scoring keys and other examination data used to administer . . . [an] examination for employment ....

24. It is concluded that the phrase "test questions" within the meaning of §1-210(b)(6), G.S., applies to standard test questions and materials related thereto. *See* City of Stamford v. FOIC, No. CV 990497667S, Sup. Ct., Judicial District of New Britain at New Britain (Cohn, J.) (December 6, 1999). (Stating that the exemption in 1-210(b)(6), G.S., applies to standard test questions and materials related thereto.)

25. The Second College Edition of the American Heritage Dictionary defines application as "a request, as for . . . employment . . . the form or document upon which such a request is made."

26. It is found that, in this case, the letter of application along with the resume, writing sample and two professional references constitute the applicant's request to be considered for employment by the respondent, and not their response, or answer, to test questions.

27. It is found that while the respondents, by the use of criteria and ratings, applied a systematic method for determining which candidates would be offered an interview, such criteria and scores do not constitute "test questions, scoring keys and other examination data used to administer . . . [an] examination for employment . . ." within the meaning of §1-210(b)(6), G.S., because the criteria was used as an aid to each screener in their decision to recommend that the applicant be interviewed, rather than a test administered to the applicant. It is found that while the interview might ultimately contain test questions, the initial screening process did not.

28. It is concluded, therefore, that the criteria and the scores are not permissibly exempt under §1-210(b)(6), G.S.

29. It is also concluded that the respondents violated the disclosure provision of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with an unredacted copy of in camera records #FIC 2009-176-004 through 2009-176-067, described in paragraph 20, above.

30. With respect to the complainant's contention that the respondents failed to promptly comply with his request, the meaning of the word "promptly" is a fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

31. It is found that upon receipt of the complainant's January 26, 2009 request, the attorney who responded had not received a records request under the FOI Act for over twenty years and that it did not occur to him that the complainant actually wanted the application materials from all nineteen applicants. Thus, he sent only the two records that he believed were appropriately responsive, as described in paragraph 3, above.

32. It is found, however, that all of the responsive records were readily available and that the respondents were able to compile the records, review, redact and copy them within a week of receiving the complainant's February 23, 2009 letter.

33. It is found that the complainant's January 26, 2009 request was clear and that the application materials from all nineteen applicants, and the records generated by the screeners, fell within the scope of that request. It is found, therefore, that the respondents' initial provision of only two records was unreasonable.

34. It is found that, although it was not willfully done, the respondents unduly delayed fully complying with the complainant's January 26, 2009 records request.

35. It is concluded, therefore, that the respondents failed to promptly comply with the complainant's January 26, 2009 request within the meaning of §1-212(a), G.S.

36. With respect to the complainant's contention that the respondents may not have provided all responsive records, it is found that the attorney who managed the application process personally handled the complainant's records request.

37. It is also found that the aforementioned attorney conducted the search for, and retrieval of, the responsive records by compiling the application files which he personally maintained, by searching his computer for any documents or e-mails, and by directing his assistant to search her computer for any documents or e-mails related to the application process.

38. It is found that the respondents did not intend to omit any responsive records nor are they aware of any records that may not have been provided.

39. It is found, therefore, that, based upon the credible testimony at the hearing on this matter, the respondents have provided the complainant with a copy of all records responsive to his January 26 and February 23, 2009 requests that they maintain, with the exception of the redacted records described, above.

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

1. The respondents shall forthwith provide the complainant with an unredacted copy of the in camera records described in paragraph 20, above.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of February 16, 2010.

Petrea A. Jones
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:

Richard H. Kosinski
106 Farmington Avenue, Suite 2B
New Britain, CT 06053-2982

Commissioner, State of Connecticut,
Department of Education; and State
of Connecticut, Department of Education
c/o Emily V. Melendez, Esq.
Assistant Attorney General
55 Elm Street
PO Box 120
Hartford, CT 06141-0120

Petrea A. Jones
Acting Clerk of the Commission

TAB 11

2012

Freedom of Information Commission

Decisions of Note

Summary

2012 FOIC Decisions of Note

Supreme Court

- University of Connecticut v. Freedom of Information Comm., 303 Conn. 724, 36 A.3d 663 (2012): UConn refused to disclose certain databases of season ticket holders and donors on the grounds that the databases constituted "trade secret" customer lists. The FOIC found that the information itself satisfied the trade secret exception, but that UConn could not assert the exception because it is not an entity engaged in trade. The Supreme Court overruled the FOIC and found that all public agencies can assert the trade secret exception as long as the information itself satisfies the test for trade secrets.

- Commissioner of Correction v. Freedom of Information Comm., 307 Conn. 53 (2012): The Commissioner of Correction refused to disclose a document contained in the National Crime Information Center database, that an illegal immigrant requested after he was arrested and deported. The US Attorney's office intervened in the case and claimed the document was exempt from disclosure pursuant to a federal regulation. The FOIC ordered disclosure, but the Supreme Court disagreed and found that the document was exempt pursuant to the federal law.

Appellate Court

- Germain v. Town of Manchester, 135 Conn.App. 202, 41 A.3d 1100 (2012): Affirming FOIC and trial court holding that portable flat bed scanner is not a "hand-held" scanner for purposes of scanning records as permitted under CGS § 1-212.

- Tompkins v. FOIC, 136 Conn.App. 496, 46 A.3d 291 (2012): Affirming FOIC and trial court holding that disclosure of police officer's redacted termination records to newspaper (records included inappropriate instant message conversations inadvertently found on employee's computer) did not satisfy invasion of privacy exception and that FOIC and trial court were not required to consider plaintiff's constitutionally-based right to privacy arguments since claims went beyond the scope of administrative appeal. On the FOIA, invasion of privacy exception claim the Court found that the FOIC properly determined that the records concerned legitimate matters of public concern.

- Lucarelli v. FOIC, 135 Conn.App. 807, 43 A.3d 237 (2012): Affirming FOIC and trial court holding that FOIA does not require public agencies to preserve, transcribe, tape or record voicemail messages.

Superior Court

- Connecticut Dept. of Educ. v. Freedom of Info. Comm'n, CV116009562S, 2011 WL 7095183 (Conn. Super. Ct. Dec. 29, 2011) *appeal pending* CV-6009584: On appeal from FOIC decision finding that evidentiary portions of teacher interest arbitration hearings are

public meetings...Judge Cohn affirms FOIC on the basis of prior cases finding evidentiary portions of grievance hearings to be public meetings.

- Smith v. Freedom of Info. Comm'n, CV115015510S, 2012 WL 4378028 (Conn. Super. Ct. Aug. 30, 2012): Affirming FOIC decision holding that FOIA does not place an affirmative obligation on public agencies to inform members of the public that a requested record does not exist.

- Univ. of Connecticut Health Ctr. v. Freedom of Info. Comm'n, CV116008847, 2012 WL 1003757 (Conn. Super. Ct. Feb. 27, 2012): Affirming FOIC decision rejecting UConn Health Center's attempt to prevent disclosure of certain labor relations records on the grounds that they were preliminary drafts or notes. The Court set out the following test for the preliminary draft or note exception:

> The court concludes that a preliminary draft or note under § 1–210(b)(1) is one which is (1) preparatory, (2) not a complete resolution of a matter in itself, (3) not germane to the eventual end product of the record, and (4) takes the form of deliberation over a matter. A document that is final in itself and not deliberative does not qualify for the exemption.

FOIC

- Maurer v. Office of Corp. Counsel, City of Danbury, FIC 2011-370: Point by point analysis of invasion of privacy exception for various types of health records including physical examination reports, hospital records, work status forms, excused absence records, work capacity reports, etc.

- O'Reilly v. Chairman, Region One Board of Education, FIC 2010-766: Decision that calls into question when evidentiary portions of grievance hearing can be held in executive session

- Lambiase v. City Manager, City of Norwich, FIC 2010-630: Disclosure of employee assistance plan social worker records not an invasion of personal privacy according to FOIC because the records concerned employee relations difficulties and not employee's personal mental health issues and therefore were personnel records that pertained to legitimate matters of public concern.

- Stamford Professional Fire Fighters Ass'n. v. Chief, Springdale Fire Company, FIC 2010-795: Expensive, forensic search of deleted e-mail records not warranted where public agency diligently searched its records

- Jones v. Director, Office of State Comptroller, Connecticut Retirement Services, FIC 2011-147: Legal opinion not subject to disclosure, even though agency employees were arguably the real parties that benefitted from the contents of the legal opinion regarding IRS tax treatment of retirement benefits.

- Lubee v. Town Council, Town of Wallingford, FIC 2011-121: Meeting minutes that failed to indicate how town council members voted on "actions passed" were improper.

- Miner v. Water and Sewer Department, Town of Wallingford, FIC 2011-005: Report on municipal water supply properly withheld from disclosure based on possible safety risk of release.

TAB 12

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Mary C. O'Reilly,

Complainant

against

Chairman, Board of Education, Regional School District; Personnel Committee, Board of Education, Regional School District 1; and Board of Education, Regional School District 1,

Respondents

FINAL DECISION

Docket #FIC 2010-766

July 13, 2011

The above-captioned matter was heard as a contested case on May 12, 2011, 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 the respondent board conducted a special meeting on November 12, 2010 (hereinafter "the meeting").

3. By letter filed on December 14, 2010, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to vote in public at the meeting and by failing to record the votes of each member in the minutes of the meeting.

4. The respondents claim that the Commission lacks subject matter jurisdiction over the complainant's appeal because it was filed more than 30 days after the November 12, 2010 meeting.

5. Section 1-206(b)(1), G.S., provides in relevant part:

> Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed within thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed within thirty days after the person filing the appeal receives notice in fact that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken. [Emphasis added.]

6. It is found that the complainant's appeal was postmarked on December 13, 2010.

7. The Commission takes administrative notice of the fact that the thirtieth day after November 12, 2010, was Sunday, December 12, 2010, a day on which the offices of the Commission were closed.

8. Section 1-21j-22 of the Regulations of Connecticut State Agencies provides:

> All papers and other recorded information governed by sections 1-21j-1 to 1-21j-57 of the Regulations of Connecticut State Agencies, shall be deemed to have been filed on the date they are recorded as having been received by the commission at its principal office. The commission shall accept papers and other recorded information transmitted by electronic mail or fax to the same extent permitted by the rules of the superior court in civil actions.

9. Section 1-21j-15 of the Regulations of Connecticut State Agencies provides:

> Computation of any period of time referred to in sections 1-21j-1 to 1-21j-57, inclusive, of the Regulations of Connecticut State Agencies begins by first counting the day after the day on which the precipitating event occurs, and ends on the last day of the period so computed. The last day of the period is to be included unless it is a day on which the principal office of the commission is closed, in which event the period shall run until the end of the next following business day. If the period of time, including the intervening Saturdays, Sundays and legal holidays, is five (5) days or less, such Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise such days shall be included in the computation. [Emphasis added.]

10. It is concluded that the complaint in this matter was required to be postmarked by the end of the business day on Monday, December 13, 2010.

11. It is concluded that the Commission has subject matter jurisdiction over the complaint, which was postmarked on December 13, 2010.

12. It is found that on November 12, 2010, the respondents held a level-three grievance hearing in compliance with the collective bargaining agreement between the complainant's union and the respondent Board of Education.

13. Section 1-225(a), G.S., provides, in relevant part:

> The meetings of all public agencies, except executive sessions as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken . . .

14. It is found that the evidentiary portion of the grievance hearing was open to the public.

15. It is found that after the evidentiary portion of the hearing, the respondents met in a closed session to deliberate on the grievance.

16. It is found that the discussion in the closed session concerned whether there had been any adverse action taken against the complainant. It is found that the respondents used the closed session to discuss and make a decision about the complainant's grievance.

17. It is found that the only people permitted to attend the respondents' closed session at the meeting were members of the Personnel Committee and another member of the Board of Education.

18. It is found that neither the complainant nor the complainant's union representative participated in or was permitted to attend the closed session.

19. It is found that the respondents subsequently reconvened in open session and announced that the complainant's grievance was denied.

20. The respondents claim that their closed session was not a "meeting," within the definition of §1-200(2), G.S., because it was strategy or negotiations with respect to collective bargaining.

21. Section 1-200(2), G.S., provides: "Meeting" does not include ... strategy or negotiations with respect to collective bargaining[.]"

22. The respondents contend that the deliberations in closed session were strategy or negotiations with respect to collective bargaining because, they assert, any board determination about whether the complainant substantiated the grievance under the collective bargaining agreement necessarily further defined the terms of the agreement.

23. The respondents rely on Waterbury Teachers Association v. Freedom of Information Commission, 240 Conn. 835, 843 (1997), which held:

> Grievance hearings are meetings that must be open to the public during the presentation of evidence regarding the underlying facts allegedly giving rise to the grievance, but they may be closed to the

public, in the absence of a waiver, during negotiations regarding appropriate remedies or settlements.

24. In Waterbury Teachers Association, the board of education conducted the entire grievance hearing in closed session. On appeal, the court rejected the argument of the board and the union that grievance hearings, in their entirety, are strategy or negotiation sessions. Instead, the court held that the evidentiary portion must be open to the public. Waterbury did not address, however, whether grievance proceedings that are not evidentiary are, by default, strategy and negotiations with respect to collective bargaining. Waterbury did not answer the precise issue presented in this case: whether deliberations about an alleged violation of a collective bargaining agreement must be considered strategy or negotiations with respect to collective bargaining.

25. In a case concerning binding arbitration, and which, like this case and Waterbury Teachers Association, required the court to determine the applicability of the exemption for strategy and negotiations with respect to collective bargaining, the Superior Court in Waterbury Firefighters Assn. v. City of Waterbury, No. CV 01166380S, at *17, Judicial District of Waterbury, at Waterbury (September 26, 2001), stated:

> Whether any portion of an arbitration hearing constitutes strategy or negotiations is a question that must be answered on a case by case analysis based on the particular facts and circumstances of the arbitration. The Board's decision to conduct the proceedings in public, except to the extent that a *particularized showing is made that the discussion before*, or presentation of evidence to, *the Board constitutes 'strategy or negotiations,'* is legally correct. (Emphasis added.)

26. Glastonbury Education Association v. Freedom of Information Commission, 234 Conn. 704, 712-713 (1995) stated:

> [T]he statutory definition of public meetings contained in § [1-200(2), G.S.] must be read to limit rather than to expand the opportunities for public agencies to hold closed hearings. Accordingly, the language providing that public meetings 'shall not include . . . strategy or negotiations with respect to collective bargaining' means as the FOIC maintains that what is excluded from the term 'meeting' is not *all* collective bargaining, but only 'strategy or negotiations' sessions that relate to collective bargaining. This interpretation accords proper respect for the manifest legislative policy expressed in the FOIA. It also comports with its legislative history, which suggests that the collective bargaining exception was understood to provide privacy for 'the *give-and-take in negotiating sessions* of collective bargaining. . . .' 18 H.R. Proc., supra, p. 3896. Had the legislature intended a broader exclusion, it could have excluded 'collective bargaining' without limitation, or it could have excluded 'collective bargaining, including but not limited to strategy and negotiations relating thereto.' ... It chose neither of these options. (Citation omitted; emphasis in original.)

27. It is concluded that Waterbury Teachers Association v. Freedom of Information Commission, supra, 240 Conn. 842, clearly contemplates a closed session only where any strategy is discussed in the context of active negotiations:

> [T]he parties 'bargain back and forth' and often resolve the grievance through a new interpretation of the collective bargaining agreement. That new interpretation may result in the execution of new memoranda of understanding that may become part of present or future collective bargaining agreements.

28. Although the FOI Act does not define the terms "strategy" and "negotiations," the state's appellate courts have examined such terms in the context of the collective bargaining exemption:

> Strategy is defined as a careful plan or method and the art of devising or employing plans or stratagems toward a goal. ... Negotiations is a broad term, not in all connotations a term of art, but in general it means the deliberation which takes place between the parties touching a *proposed agreement* . . . the deliberation, discussion, or conference on the terms of a *proposed agreement;* a treating with another with a view to coming to terms. . . . Negotiations look to the future, and are preliminary discussions... (Citations omitted; emphasis in original; internal quotation marks omitted.)

Bloomfield Education Assn. v. Frahm, 35 Conn. App. 384, 390, cert. denied, 231 Conn. 926, (1994).

29. Based on the findings of fact set out in paragraphs 14 through 19, above, it is found that the respondents' did not "bargain back and forth" with the complainant or her union representative, as neither was permitted to participate in or even attend the closed session. It is found that the respondents' deliberation among the members of the board of education was not the "give-and-take in negotiating sessions of collective bargaining" that the legislature intended to exempt from the FOI Act's access requirements. (See paragraph 26, above.)

30. It is found that the respondents' closed session was not negotiations with respect to collective bargaining, within the

meaning of §1-200(2), G.S.

31. With respect to whether the closed session was strategy with respect to collective bargaining, it is found that, notwithstanding the respondents' claim, described in paragraph 22, above, the respondents failed to prove that their deliberation in closed session was the devising of a careful plan or method, or tactics, toward a goal.

32. It is found that the respondents failed to prove that their closed session was strategy with respect to collective bargaining, within the meaning of §1-200(2), G.S.

33. The respondents also rely on a previous Commission decision, Borer v. Personnel & Negotiations Committee, Board of Education, Milford Public Schools, Docket #FIC 1999-611 (May 24, 2000). It is concluded, however, that Borer is not inconsistent with the Commission's decision in this case. In Borer the board of education's closed session to discuss "the appropriate remedy, if any, regarding the complainant's grievance" was found not to be a meeting within the meaning of §1-200(2), G.S. Although the Commission concluded that the closed session was strategy with respect to collective bargaining, it is not apparent from the final decision what evidence the respondents submitted to prove that the proceeding was not a meeting. *Cf.* Doninger and the Monroe Courier v. Chairman, Monroe Board of Police Commissioner, Town of Monroe; and Monroe Board of Police Commissioners, Town of Monroe; Docket #FIC 1998-58 (August 24, 1998), where the Commission's conclusion that the respondents' closed session was not a meeting within the meaning of §1-200(2), G.S., was based on evidence that the respondents met privately with their attorney in order to strategize about the union grievance and the *upcoming* evidentiary hearing, and also met in closed session with the grievant and his union representative in an effort to negotiate a resolution of the grievance.

34. Furthermore, since 1997, when the Connecticut Supreme Court decided Waterbury Teachers Association v. FOI Commission, supra, 240 Conn. 835, public agencies have held grievance proceedings in sessions that were meetings within the meaning of §1-200(2), G.S. See, for example, O'Connell v. Chairman, Board of Fire Commissioners, City of Bridgeport; and Board of Fire Commissioners, City of Bridgeport; Docket #FIC 2003-189 (January 14, 2004) (agency deliberated and voted on grievance in open session); Mara v. Carriero, Chairman, Police Commission, Borough of Naugatuck, et al. Docket #FIC 2001-199 (April 10, 2002) (agency convened in executive session for discussion of complainant's grievance).

35. It is found that the respondents' closed session of November 12, 2010 was a "meeting" within the meaning of 1-200(2), G.S.

36. It is found that such meeting failed to comply with the access requirements of §1-225(a), G.S., in that it was not open to the public and the vote of each member of the respondent committee was not reduced to writing and available to the public within 48 hours. (It is found that although the respondents stated in open session that the vote was 3 to 1, the vote of each member was not reduced to writing and available to the public.)

37. Accordingly, it is concluded that the respondents violated §1-225(a), G.S.

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

1. Henceforth, the respondents shall strictly comply with §1-225(a), G.S.

2. Forthwith, the respondents shall file amended minutes of its November 12, 2010 meeting. Such amended minutes shall include a detailed summary of what was discussed at the closed session and shall include a record of all votes taken.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 13, 2011.

S. Wilson
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:

Mary C. O'Reilly
1 Lower Deer Run
Sharon, CT 06069

Chairman, Board of Education,
Regional School District; Personnel
Committee, Board of Education,
Regional School District 1; and
Board of Education, Regional School
District 1
246 Warren Turnpike Road
Falls Village, CT 06031

S. Wilson
Acting Clerk of the Commission

FIC/2010-766FD/sw/7/18/2011

2011 WL 7095183
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of New Britain.

CONNECTICUT DEPARTMENT OF EDUCATION et al.
v.
FREEDOM OF INFORMATION COMMISSION et al.

Nos. CV116009562S, CV116009584S. | Dec. 29, 2011.

Opinion

HENRY S. COHN, Judge.

*1 The plaintiffs, department of education (the department), Victor Schoen, and Martin Gould, [1] have appealed from a February 23, 2011 final decision of the defendant freedom of information commission (FOIC). The FOIC ordered that the plaintiffs open the evidentiary portion of certain arbitration hearings, held in accordance with the Teacher Negotiation Act, (TNA), General Statutes § 10–153(f), to the defendants-complainants, Jim Moore and the Waterbury Republican American.

The FOIC's final decision, issued after a hearing and after approval of a proposed final decision, reads in part as follows:

1. The respondent Department of Education is a public agency within the meaning of § 1–200(1), G.S.

2. The respondent Contract Arbitration Panel maintains that it is not a public agency within the meaning of § 1–200(1), G.S.

...

7. It is found that the respondent Contract Arbitration Panel consists of three members, drawn from the pool of arbitrators maintained by the respondent Department of Education pursuant to § 10–153f(a) and (c), G.S. One member was selected by the employer, a second by the employees' collective bargaining unit, and the third by the first two arbitrators.

8. It is found that the respondent panel is a board of appointed individuals to whom the consideration and determination of contractual disputes between boards of education and teachers unions have been committed by the General Assembly.

9. It is concluded that the respondent arbitration panel is a committee of the State [Department] of Education, and therefore a public agency within the meaning of § 1–200(1), G.S.

10. [The claimant's analysis regarding quasi-public "functional equivalents" is not necessary as respondent arbitration panel is a committee of a public agency. Also the "functional equivalent" analysis" was satisfied.]

...

14. Since the respondent arbitration panel is a committee of the respondent Department of Education, it is concluded that the Department of Education is a proper party. If the Department of Education believes it has no interest in this dispute, it will not be affected by the decision, and its designation as a party cannot prejudice or harm it.

15. By letter of complaint filed March 1, 2010, the complainants appealed to the Commission, alleging that the respondents violated the open meetings provisions of the FOI Act when, on January 30, 2010, they convened privately to hear testimony from the Torrington Board of Education and the Torrington Education Association, as required by the Teacher Negotiation Act, following rejection, by the Torrington City Council on December 21, 2009, of a negotiated agreement between the Torrington Board of Education and the Torrington Education Association. The complainants "reserve[d] the right to seek imposition of civil penalties."

16. It is found that the respondent panel, after a request by the Torrington Education Association to exclude the Republican–American reporter from the hearing in its entirety, adjourned to what arbiter Foy described as an "executive session," without taking a vote to do so ...

*2 ...

19. The respondent Department of Education maintains that the January 30, 2010 hearing is not a "meeting" because the arbitrators are chosen by the parties, because

the fees of the arbitrators are paid for by the parties to the arbitration; and because the arbitrators are not agents of the Department of Education.

20. However, it is concluded that the January 30, 2010 hearing is a "hearing or other proceeding" of the respondent arbitration panel, and the fact that the panel has some independence from the Department of Education does not take its hearings outside of § 1–200(2), G.S.

21. Both respondents maintain that the January 30, 2010 hearing of the arbitration panel constitutes "strategy and negotiation with respect to collective bargaining," and therefore is an exception to the definition of "meeting" in § 1–200(2), G.S.

22. In *Glastonbury Education Association v. FOIC,* 234 Conn. 704 (1995), our Supreme Court construed the "strategy and negotiation with respect to collective bargaining" language in § 1–200(2), G.S., to exclude from the term "meeting" only those parts of collective bargaining sessions that relate specifically to "strategy or negotiation," rather than to collective bargaining proceedings in their entirety. Because the Commission in that case had concluded that the entirety of an arbitration hearing should have been open to the public, including those parts that related specifically to "strategy and negotiations," the Court "postpone[d] to another day questions concerning the validity of a more narrowly tailored FOIC order that requires open hearings only with respect to evidentiary presentations and permits executive sessions for discussion and argument about the contents of the parties' last best offers." *Id.* at 718.

23. The *Glastonbury* court did provide some guidance in distinguishing between discussion and argument about the last best offers, which it concluded constituted "strategy and negotiations," and the evidentiary portions of the proceedings, which it concluded did not fall within that meeting exclusion.

24. First, the *Glastonbury* court concluded that the actual presentation of last best offers by the parties sufficiently resembles negotiations, despite the fact that they occur during a proceeding denominated as "arbitration," to be excluded from the "meeting" requirements of the FOI Act. *Id.* at 717.

25. Second, the *Glastonbury* court at 717–18 observed that the Teacher Negotiations Act "permits each party, in its presentations to the arbitral board, 'to submit all relevant evidence, to introduce relevant documents and written material, and argue on behalf of its last best offer.' [Citation omitted]. In aid of this *evidentiary* process, the arbitrators have the 'power to administer oaths and affirmations and to issue subpoenas requiring the attendance of witnesses.' [Citation omitted.] Thus, the arbitration hearing also provides an opportunity for the parties to *create an evidentiary record* on which the arbitrators can rely in making their final determination of any issues left unresolved." [Emphasis added.]

***3** 26. Third, the *Glastonbury* court noted that the TNA "specifically contemplates the presentation of certain financial data. General Statutes § 10–153fc(2) provides in relevant part: 'At the hearing a representative of the fiscal authority having budgetary responsibility or charged with making appropriations for the school district shall be heard regarding the financial capability of the school district, unless such opportunity to be heard is waived by the fiscal authority." *Id.,* at n. 9. This financial data would be contained in the evidentiary record.

27. Finally, the Commission is guided by the *Glastonbury* court's analysis of the policy underlying its conclusion that only the "strategy and negotiations" portions of an arbitration hearing fall within the statutory exclusion contained in § 1–200(2), G.S.:

> Inquiry into the scope of the statutory exclusion for collective bargaining contained in § 1–18a(b) [now § 1–200(2)] must commence with the recognition of the legislature's general commitment to open governmental proceedings ...

...

29. It is found that evidence was presented at the January 30 hearing as to all the statutory factors that the arbitrators are required to consider: the financial capability of the town; the history of the negotiations between the parties prior to arbitration, including the offers and the range of discussion of the issues; the interests and welfare of the employee group; changes in the cost of living; the existing conditions of employment of the employee group and similar groups; and the salaries, fringe benefits and other conditions of employment prevailing in the state labor market. *See* § 10–153f(c)(4)(A) through (E), G.S.

30. It is found that evidence in support of the statutory factors set forth in § 10–153f(c)(4), G.S., included tax collections, debt, capital improvement plans, state aid or

grants received by the city, what the city was providing as salary increases if any to its municipal employees, what salary increases if any the board of education was presenting to other board of education employees, what was in the interest and welfare of the Torrington teachers in terms of the ability of the board of education to recruit and retain teachers, the cost of living, and what other settlements had been reached in other school districts.

31. It is found that the evidence presented at the January 30, 2010 hearing was recorded stenographically.

32. It is found that the parties at the arbitration hearing at issue in this case also presented several "last best offers," beginning with an "initial last best offer" and concluding with "final last best offers," and possibly with "interim last best offers" between the two.

33. It is found that the evidence described in paragraphs 30 and 31, above, was in support of the parties' "last best offers," but that the evidence was not itself a "last best offer."

34. It is also found that negotiation was conducted by the parties out of the presence of the panel chair or the panel as a whole, although each party "caucused" separately with its "own" arbitrator.

***4** 35. It is found that negotiations conducted by the parties out of the presence of the panel chair or the panel as a whole were not stenographically recorded.

36. It is concluded that the negotiations portion of the January 30, 2010 hearing, conducted off the record away from the panel, and the evidentiary portion of that hearing, conducted on the record in the presence of the panel, were separate.

37. It is concluded that the evidentiary portion of the January 30, 2010 hearing that was recorded stenographically was not "strategy or negotiations with respect to collective bargaining," and therefore was a "meeting" within the meaning of § 1–200(2), G.S., that was required to be open to the public.

38. It is therefore concluded that the respondents violated § 1–225(a), G.S., by conducting the evidentiary portion of its hearing in private.

* * *

The FOIC entered the following order:

1. Henceforth the respondents shall strictly comply with the requirements of §§ 1–225(a) and 1–200(2), G.S.

2. The respondents shall forthwith, at their own expense create a transcript of the stenographic record of the January 30, 2010 hearing, and provide it to the complainants, free of charge.

ROR, pp. 309–19.

This appeal followed. The court's review of the plaintiffs' claims is guided by well established principles as set forth by our Supreme Court. "[J]udicial review of the [FOIC's] action is governed by the Uniform Administrative Procedure Act [(UAPA), General Statutes §§ 4–166 through 4–189], and the scope of that review is very restricted ... [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable ... Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact ... Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.

"Cases that present pure questions of law, however, traditionally invoke a broader standard of review than ordinarily is involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion ... We have determined, therefore, that we will defer to an agency's interpretation of a statutory term only when that interpretation of the statute previously has been subjected to judicial scrutiny or to a governmental agency's time-tested interpretation and is reasonable." (Citations omitted; internal quotation marks omitted.) ***Board of Selectmen v. Freedom of Information Commission,*** 294 Conn. 438, 446, 984 A.2d 748 (2010).

On interpretation of statutes, the court has stated: "[W]ell settled principles of statutory interpretation govern our review ... Because statutory interpretation is a question of law, our review is de novo ... When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature ... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory

language as applied to the facts of [the] case, including the question of whether the language actually does apply ... In seeking to determine that meaning, General Statutes § 1–2z directs us first to consider 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 considered ... The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation ... When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter ..." (Citation omitted; internal quotation marks omitted.) *Commissioner of Public Safety v. Freedom of Information Commission,* 301 Conn. 323, 337, 21 A.3d 737 (2011).

***5** The plaintiffs first argue that the contract arbitration panel is not a committee of the department,[2] thus falling outside FOIC jurisdiction. While it is true that the panel sets its own schedule and convenes, after the first notice from the department, without being so directed by the department, the plain language of § 10–153f(a) places the panel "in" the department. The members of the panel (between 24 and 29 persons) are appointed by the governor with the advice and consent of the legislature. In this same statute, the department may assist the panel in both its selection and the substance of its hearings. A report of the panel is to be sent to the department on conclusion of its deliberations. See § 10–153f(b), (c)(4), (c)(5). Pursuant to § 10–153f(f), the state board of education has drafted regulations on selection of the panel. One regulation requires the department to conduct a thorough evaluation of all arbitrators. Regulation § 10–153f–10.

The record shows that the reason that the department was to supervise the arbitration panel was the legislature's intent that the state, not private arbitrators alone, have involvement in the negotiation process. This was a "delegation of authority" concern for the legislature, resolved by its placing the panel within the department. (ROR, pp. 181–82).[3] Indeed, if the local board of education rejects the panel's award, the department is to arrange for a review of the award through another set of arbitrators. § 10–153f(c)(7). The court concludes that FOIC correctly interpreted § 1–200(1)(A) and §§ 10–153a through 10–153f in holding that the arbitration panel is a "committee" of the department.

Moreover, the Supreme Court in *Elections Review Committee of the Eighth Utilities District v. FOIC,* 219 Conn. 685, 697, 595 A.2d 313 (1991), stated that "the legislature intended ... that committees of public agencies that are subunits composed of members of the public agency [are] subject to the provisions of FOIA." In prior decisions, this court has held that a "committee of a public agency" is a public agency for purposes of access to meetings under FOIA, § 1–200(1)(A). See, e.g. *Perez v. Freedom of Information Commission,* Superior Court, judicial district of New Britain, Docket No. CV 08 4019077 (June 3, 2009, Cohn, J.) [47 Conn. L. Rptr. 674].

In *Perez,* this court held that a committee that consisted of officials of the city of Hartford and leaders of private corporations formed to discuss future management of the Hartford XL Center was a committee of a public agency, the city of Hartford. Its meetings were therefore open to the public. See also *Winton Park Association, Inc. v. Freedom of Information Commission,* Superior Court, judicial district of New Britain, Docket No. CV 08 4019339 (October 7, 2009, Cohn, J.) [48 Conn. L. Rptr. 624], where the court held that civic group formed to supervise drains in a subdivision was a public agency. In the course of that opinion, the court agreed with Finding 10 of the final decision in this administrative appeal that the "functional equivalent test" did not apply. The functional equivalent test only applied to private entities that also had public characteristics.[4]

***6** To the contrary argument by the plaintiffs, the FOIC found that the panel members are not independent contractors. Finding of fact # 20. The court agrees, based on § 10–153f as construed above and the FOIC's factual findings reviewed under the substantial evidence test.[5] An earlier FOIC case, *Williams v. State of Connecticut Office of Labor Relations,* Docket # 2004–178 (2005), is inapposite. There, the FOIC agreed with the state office of labor relations that a news reporter was properly excluded from a grievance arbitration conducted by a single arbitrator under a provision of a collective bargaining agreement. Unlike here, no finding was made in *Williams* that the arbitrator was acting pursuant to a statute as a representative of the office of labor relations; rather the FOIC found that the arbitrator was an independent agent who entered into a contract with the office of labor relations and the union.

The plaintiffs further contend that the *Glastonbury* case, *supra,* at note 3, has already resolved the issues of this administrative appeal. As here, a newspaper in *Glastonbury* received an order from the FOIC allowing access to an arbitration panel convened under § 10–153f. However, the FOIC order in *Glastonbury* required that the entire session be open to the public under FOIA. On appeal, the Supreme Court reversed because the presentation of last best offers before the panel by both the town and the teachers' union were equivalent to "strategy and negotiation" sessions, exempted from the open meeting provisions of FOIA. [6]

The Supreme Court "postpone[d] to another day questions concerning the validity of a more narrowly tailored FOIC order that requires open hearings only with respect to evidentiary presentations and permits executive sessions for discussion and argument about the contents of the parties' last best offers." *Id.,* at 718. As did the FOIC in its findings in the present appeal, the Court in *Glastonbury* noted that the evidentiary portions of the panel's proceedings are not, by the language of FOIA, subject to specific exclusion from the open meeting law. Findings 23–27; *Glastonbury* at 712–13. Justice Berdon dissented from the majority's "reservation" because he concluded that the public should be excluded from "such proceedings in their entirety." *Id.*

Then in *Waterbury Teachers Assn. v. Freedom of Information Commission,* 240 Conn. 835, 839, 694 A.2d 1241 (1997), while concluding that teacher grievance sessions were open under FOIA, the Supreme Court stated: "In *Glastonbury Education Assn. v. Freedom of Information Commission,* 234 Conn. 704, 711–13 ... we recently construed [the FOIA] subsection to exclude from the term 'meeting' only those parts of collective bargaining sessions that relate specifically to 'strategy or negotiations,' rather than to collective bargaining proceedings in their entirety." Two Superior Court cases have held that *Glastonbury* and *Waterbury Teachers* approve a result under FOIA "to allow public access to the presentation of evidence of the underlying facts but not to the negotiations or settlement discussions." [7] See *East Lyme Teachers Association v. Freedom of Information Commission,* Superior Court, judicial district of Hartford–New Britain, Docket No. CV 97–0571973 (June 5, 1998, DiPentima, J.), and *Waterbury Firefighters Association,* Superior Court, judicial district of Waterbury, Docket No. 01–166380 (September 26, 2011, Holzberg, J.), noting that the Supreme Court only affirmed denial of access because the FOIC order was "overly broad."

*7 The FOIC in its final decision in this case clearly has backed away from its sweeping order that was overturned in *Glastonbury.* The FOIC's order here is not the same as the *Glastonbury* order when the FOIC's findings are read in conjunction with its order that the respondents comply with FOIA. Rather, the FOIC has now issued the more limited order envisioned by the majority in *Glastonbury.* This court concludes that the statutory construction of the FOIC finding that the evidentiary portion of the arbitration was a public meeting was correct.

The plaintiff Gould argues that the hearing officer predetermined the outcome of the hearing because he stated at first that he would not allow evidence on the "functional equivalent" test and then restricted the plaintiffs in giving an offer of proof. Our Supreme Court has ruled, however, that to establish such claims, the plaintiff must demonstrate actual bias, rather than mere potential bias, "unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable." *O & G Industries, Inc. v. Planning & Zoning Commission,* 232 Conn. 419, 429–30, 655 A .2d 1121 (1995). A review of the record by the court establishes that the hearing officer was not predisposed, but gave the plaintiffs a fair hearing. See *Cioffoletti v. Planning & Zoning Commission,* 209 Conn. 544, 554, 552 A.2d 796 (1989) (no predetermination even though chairman of agency hearing evidence made an "extraordinary effort" prior to the hearing to investigate circumstances of application).

The final matter is that the FOIC's order requires the "respondents" to furnish at their own expense a transcript of the evidentiary proceeding to the complainant newspaper reporter. [8] At the same time in Finding 39, the FOIC declined to consider imposition of a civil penalty, as "the issue decided in this case was specifically left open in *Glastonbury.*" Since the individual arbitrators are respondents, have been ordered to expend funds to produce the transcript, and yet were excused from a civil penalty, the court modifies the FOIC order so that the department is solely responsible for the cost of the transcript.

The appeal is dismissed, subject to the modification of the order regarding the transcript.

Parallel Citations

53 Conn. L. Rptr. 397

Footnotes

1 Gould brought his case separately, but it is considered jointly with the administrative appeal of the other plaintiffs as there was only one final decision rendered. The plaintiffs are aggrieved for purposes of General Statutes § 4–183(a) as they have been given orders adverse to their position.

2 In § 1–200(1)(A), a public agency is defined to include "any committee of ... any [state department]."

3 The case of *Glastonbury Education Assn. v. Freedom of Information Commission,* 234 Conn. 704, 663 A.2d 349 (1995), discussed below, states that the parties agreed that the panel was a public agency under FOIA. See 234 Conn. 711, n. 6.

4 The court also agrees with FOIC Finding 10 that the arbitration panel is, if the analysis is made, the "functional equivalent" of a public agency: "... Little about the respondent arbitration panel is private, other than per diem pay being provided by collective bargaining unit. See § 10–153f(a) and (c), G.S. The Commission agrees with the complainants that the panel performs a governmental function, is a creature of statute, and is highly intertwined with the respondent Department of Education, which is at the core of the program. These facts would indeed satisfy the functional equivalent analysis required by § 1–200(1)(B) and *Woodstock Academy v. FOIC,* 181 Conn. 544 (1980)."

5 The record supports the FOIC's findings of fact. (ROR, pp. 150–53.)

6 Under FOIA, a meeting does not include "strategy or negotiations with respect to collective bargaining." § 1–200(2).

7 Clearly, the arbitrators may exclude the public if the hearing turns from evidence to negotiations between the parties. See the discussion of this point in *Waterbury Firefighters Association v. Waterbury,* Superior Court, judicial district of Waterbury, Docket No. CV 01–166380 (September 26, 2001, Holzberg, J.).

8 At the oral argument in this case, the parties agreed that the stenographic notes of the reporter had not been transcribed.

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Britain.

UNIVERSITY OF CONNECTICUT HEALTH CENTER
v.
FREEDOM OF INFORMATION COMMISSION, et al.

No. CV116008847. | Feb. 27, 2012.

Opinion

HENRY S. COHN, Judge.

***1** The plaintiff, state of Connecticut, University of Connecticut Health Center (the university) appeals [1] from a December 15, 2010 final decision of the defendant Freedom of Information Commission (FOIC) in response to the complaint of the defendant Priscilla Dickman (Dickman). In this appeal, the university has only appealed from the portion of the final decision in which the FOIC rejected the applicability of an exemption to the Freedom of Information Act (FOIA), General Statutes § 1–210(b)(1) ("Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.")

The relevant findings of the FOIC on the appealed issue in the final decision are as follows:

* * *

2. It is found that on February 2, 2010, the complainant made a written request to the respondents for all e-mails that referenced the complainant sent or received by three named individuals from May 2004 through January 28, 2010.

* * *

4. By letter filed on February 11, 2010, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to respond to her request, described in paragraph 2, above.

* * *

8. It is concluded that the records requested by the complainant are public records within the meaning of §§ 1–200(5), 1–210(a), and 1–212(a), G.S.

9. It is found that on April 6, 2010 the respondents provided 141 pages of records, some with redactions.

* * *

18. The respondents also claim that § 1–210(b)(1), G.S., exempts some of the records from mandatory disclosure.

* * *

20. Upon careful examination of the records claimed to be exempt pursuant to § 1–210(b)(1), G.S., as referenced in the Index, it is found that the redactions claimed as to IC–2010–092–7, 9, 25, 26, 30, 31, 32, 41, 42, are not preliminary notes or drafts, within the meaning of § 1–210(b)(1), G.S.

21. It is further found that the records referenced in paragraph 20, above, are intra-agency records comprising part of the process by which governmental decisions and policies are formulated, within the meaning of § 1–210(e)(1), G.S., and that none is 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 the respondents.

22. It is concluded, therefore, that the records referenced in paragraph 20, above, are not exempt from disclosure and the respondents violated the FOI Act by failing to provide them to the complainant.

23. With respect to IC–2010–092–43 through IC–2010–092–50, it is found that the respondents redacted preliminary drafts, and that the respondents determined that the public interest in withholding such documents clearly outweighed the public interest in disclosure.

***2** 24. It is found, however, that the preliminary drafts were provided to respondents' Direction of Labor Relations for review and decision; such intra-agency records comprised part of the process by which governmental decisions and policies were formulated, within the meaning of § 1–210(e)(1), G.S.

25. It is concluded, therefore, that the records referenced in paragraph 23, above, are not exempt from disclosure and the

respondents violated the FOI Act by failing to provide them to the complainant.

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

> 1. The respondents shall provide forthwith to the complainant the records referenced in paragraphs 20 and 23 of the findings of fact. (Return of Record, ROR, pp. 164–67.)

The university timely appealed from the FOIC's final decision. Subsequently on February 9, 2012, the parties agreed to submit the *in camera* records under seal to the court.[2] The court has reviewed each of the records submitted *in camera* to determine whether the FOIC has acted correctly in determining whether the exemption applies. The court has conducted its own review under the authority of § 1–206(d) and *Shew v. Freedom of Information Commission,* 44 Conn.App. 611, 621, 691 A.2d 29 (1997), aff'd, 245 Conn. 149, 714 A.2d 664 (1998) (approving trial court's conclusion after *in camera review* that five documents were "either unfinished or preliminary.")

The university argues that the records in question are "preliminary drafts or notes." A record is "preliminary" if it "precedes formal and informed decision making ... It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass." *Shew v. Freedom of Information Commission,* 245 Conn. 149, 165, 714 A.2d 664 (1998), quoting *Wilson v. Freedom of Information Commission,* 181 Conn. 324, 332–33, 435 A.2d 353 (1980). In *Wilson,* the Court also observed that a preliminary document often plays a part in the agency's exchange of options of how to proceed in a certain matter. *Id.,* at 333. A "preliminary" record is one containing "data not required or germane to the eventual purpose for which [it] was undertaken and it was therefore modified to excise the material that was irrelevant to its ... purpose." *Van Norstrand v. Freedom of Information Commission,* 211 Conn. 339, 343, 559 A.2d 200 (1989).

Shew v. Freedom of Information Commission, supra, 245 Conn. at 164–65, further analyzes "preliminary," quoting in part from *Van Norstrand* and *Wilson:* "Examining, first, the common meaning of the words contained in this phrase, we observed that 'preliminary' is defined as 'something that precedes or is introductory or preparatory.' As an adjective it describes something that is 'preceding the main discourse or business.' A 'draft' is defined, as 'a preliminary outline of a plan, document or drawing ...' American Heritage Dictionary of the English Language. By using the nearly synonymous words 'preliminary' and 'draft,' the legislation makes it very evident that preparatory materials are not required to be disclosed ... Furthermore, the concept of preliminary, as opposed to final, should not depend upon ... whether the actual documents are subject to further alteration." (Brackets omitted; internal quotation marks omitted.) See also *Coalition to Save Horsebarn Hill v. Freedom of Information Commission,* 73 Conn.App. 89, 98, 806 A.2d 1130 (2002), cert. denied, 262 Conn. 932, 815 A.2d 132 (2003) (agency had complied documents contemplating future contract and thus the requested documents were preliminary).

***3** This precedent was also followed in *Lewin v. Freedom of Information Commission,* 91 Conn.App. 521, 881 A.2d 519, cert. denied, 276 Conn. 921, 888 A.2d 88 (2005). There, the Appellate Court did not have to determine whether the records were "preliminary," as the parties did not dispute "that the notes taken by the acting chairman are preliminary notes." *Id.,* at 526. These were described as handwritten notes taken during a probable cause investigation of a town officer for violation of municipal ethics code, "containing the acting chairman's summary of witness testimony, his impressions of the credibility of witnesses and his theories of the case." *Id.,* at 523.

The court concludes that a preliminary draft or note under § 1–210(b)(1) is one which is (1) preparatory, (2) not a complete resolution of a matter in itself, (3) not germane to the eventual end product of the record, and (4) takes the form of deliberation over a matter. A document that is final in itself and not deliberative does not qualify for the exemption.

Under these constraints, the court has undertaken an *in camera* review of the documents under seal in this appeal. The records set forth in Finding 20 were held by the FOIC not to be exempt under § 1–210(b)(1). The court cannot find any reason to differ with the FOIC's analysis. Two documents are 2009 requests from a university staff member to obtain information regarding a proceeding involving the complainant at the university in 2005 and responses to the request. This exchange is complete in itself, and not deliberative; thus it is not a preliminary draft or note.

Other documents referenced in Finding 20 are taken from the course of the 2005 proceeding, such as a statement of

the complainant's attendance and a request to run an audit. These documents also involve permission to use a computer program to obtain information. These again are final, non-deliberative matters .[3]

Finding 23 lists the second set of documents.[4] The court reviewed these documents as well under the standard stated about for preliminary drafts and notes. Items 43 and 49 are identical. As to this document (Item 43/49) and Item 48 the court agrees with the FOIC that while these documents are preliminary, they were disclosed to the recipient as part of an intra-agency communication. Therefore, they are subject to disclosure pursuant to § 1–210(e)(1). The court rejects the university's contention that the recipient of the e-mails in question was part of the investigative team. This contention is not supported by the record. (ROR, pp. 44–45, 57–58.)

The appeal is dismissed as to all documents referenced in Finding 20 and those specified above by the court from Finding 23. As to the remaining documents (in camera items 44, 45, 46, 50), pursuant to an oral argument held on February 17, 2012, further briefing is to take place and the court will rule on these documents thereafter.[5]

Footnotes

1 The university is aggrieved for purposes of § 4–183(a), as it has been ordered to release certain records to Dickman.

2 The appropriate steps under Practice Book § 11–20A to seal the records in this court were taken by the FOIC.

3 The court also agrees with the FOIC that these documents are not subject to an exemption because of § 1–210(e)(1). The documents at issue were part of the process by which government decisions are completed.

4 The parties agree that item 47 is not exempt and should not have been included in Finding 23.

5 As to these documents, the parties are to brief whether the university may raise the FOIA exemption of attorney-client privilege in this court or whether the attorney-client privilege has been waived. Further, assuming that the university may raise the exception to disclosure, does the attorney-client privilege apply to any or all of the documents?

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of New Britain.

Bradshaw SMITH
v.
FREEDOM OF INFORMATION COMMISSION et al.

No. CV115015510S. | Aug. 30, 2012.

Opinion

HENRY S. COHN, Judge.

*1 The plaintiff, Bradshaw Smith, appeals [1] from a September 14, 2011 final decision of the defendant freedom of information commission (FOIC) dismissing the plaintiff's complaint. The plaintiff's complaint alleged that the defendant town of Windsor's police department (the town) did not provide the plaintiff with a copy of a "leash law" as set forth in the General Statutes.

The FOIC, after a hearing, issued the following final decision:

1. The respondents are public agencies within the meaning of § 1–200(1)(A), G.S.

2. It is found that, by letter dated October 19, 2010, the complainant requested a copy of the "leash law," citing the Connecticut General Statutes, which required the complainant to put his dog on a leash (the "requested record"). The complainant added that he "look[ed] forward to hearing from you by the end of this business day." The complainant's letter did not include any return address or other contact information.

3. It is found that on October 19, 2010 Captain Kelvan Kearse of the respondent Department responded to the complainant's letter with a telephone call and message on the voicemail of the complainant. The respondent Police Chief asked Captain Kearse to call the complainant. Captain Kearse testified that he responded by telephone because the request asked for a response by the end of the day. Captain Kearse's voicemail message asked the complainant to verify that the letter was his letter; stated that Captain Kearse understood that the complainant had a question concerning dogs which had to be under control; and asked that the complainant call back to either the cell or work telephone numbers provided. The complainant did not respond to this phone message.

4. By letter dated November 2, 2010 and filed with the Freedom of Information Commission (the "Commission") on November 3, 2010, the complainant appealed to the Commission, alleging that the respondents failed to provide access to public records in violation of the Freedom of Information Act ("FOIA"). In addition to other relief, the complainant requested the assessment of civil penalties against the respondent Police Chief and two other members of the respondent Department.

5. At the June 6, 2011 hearing, the respondents filed a motion seeking a civil penalty against the complainant for taking both appeals (this case and Docket # FIC 2011–185) without reasonable grounds and solely for the purpose of harassing the respondents. The respondents stated that the complainant knew there is no "leash law" in the Connecticut General Statutes.

* * *

8. It is concluded that the requested record described in paragraph 2, above, is, if such a record exists, a "public record [...]" within the meaning of § 1–210(a), G.S.

9. It is found that there is no "leash law" in the Connecticut General Statutes. Section 22–364, G.S., prohibits allowing dogs "to roam at large upon the land of another and not under the control of the owner ..." but does not in any respect address leashes.

*2 10. It is found that the respondents do not maintain or keep on file any record that is within the scope of the request set forth in paragraph 2, above. Moreover, there is no FOIA requirement to notify a requester when a public agency does not maintain any record within the scope of a request. See Docket H FIC 2008–776; *Bradshaw Smith v. Donald S. Trinks, Mayor, Town of Windsor.*

11. It is concluded that the respondents did not violate § 1–210(a), G.S. Given this conclusion, there is no need to address the issue of imposing civil penalties on the respondent Police Chief and two other members of the respondent Department.

* * *

13. Nonetheless, in this matter, it cannot be concluded that the complainant was acting frivolously, without reasonable grounds, and solely for the purpose of harassing the respondents. At the time he filed his complaint, the complainant did not believe there was a "leash law" in the Connecticut General Statutes, but he could be seen as acting in good faith with reference to the possibility that there was a "leash law" concerning which he was not aware.

14. It is therefore concluded that in this matter there is no legal basis for imposing a civil penalty against the complainant.

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

1. The complaint is dismissed.

(Return of Record, ROR, pp. 214–18).

The sole issue [2] raised by the plaintiff is that, assuming that the requested record did not exist, as found by the FOIC in Finding # 9, the FOIC erred in Finding # 10 by concluding that the town was not legally required to respond to the plaintiff with that information. [3] In other words, the plaintiff contends that freedom of information act (FOIA) § 1–206(a) [4] requires a respondent to an FOIA request to respond to a complainant with the information that a requested record does not exist.

In deciding this issue, the court follows settled precedent on the standard of review: "It is well established that [j]udicial review of [an administrative agency's] action is governed by the Uniform Administrative Procedure Act [(UAPA) General Statutes § 4–166 et seq.] ... and the scope of that review is very restricted ... With regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency ...

"Even as to questions of law, [t]he court's ultimate duty is to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion ... Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts ... Ordinarily, this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes." *Dept. of Public Safety v. Freedom of Information Commission,* 298 Conn. 703, 716, 6 A.3d 763 (2010).

***3** In addition, "We have determined ... that we will defer to an agency's interpretation of a statutory term only when that interpretation of the statute previously has been subjected to judicial scrutiny or to a governmental agency's time-tested interpretation and is reasonable." *Albright–Lazzari v. Freedom of Information Commission,* 136 Conn.App. 76, 82–83, 44 A.3d 859 (2012), cert. denied, 305 Conn. 927, 47 A.3d 886 (2012), citing *Board of Selectmen v. Freedom of Information Commission,* 294 Conn. 438, 446, 984 A.2d 748 (2010). In light of prior final decisions, the Appellate Court "agreed with the trial court that the commission's interpretation of the relevant statutes and case law was time-tested and reasonable." The Appellate Court found that the appeal was controlled by these FOIC decisions. *Id.,* at 83.

Here, the FOIC has issued final decisions prior to this appeal giving an identical determination as was made in this final decision. In *Smith v. Trinks,* Docket # FIC 2008–776 (June 10, 2009), Findings12 and 13, the FOIC stated: "12. Section 1–206(a), G.S., requires a public agency to provide a written response denying a request for public records, within the applicable number of days and permits a requester to invoke his right to file a complaint in the event an agency fails to comply with a request within the applicable number of days-without having to wait indefinitely for compliance that may never be forthcoming. Nothing in § 1–206(a), G.S., requires a public agency to provide a written response to a request for public records informing the requester that there are no public records. 13. It is concluded that the respondent did not violate the FOI Act by not responding to the complainant's request ..." *Smith v. Trinks* also cites as holding identically as *Smith v. Feser,* Docket # FIC 2007–574. [5]

The court concludes that the FOIC has set forth a time-tested and reasonable interpretation of FOIA to which the court defers. Therefore the appeal is dismissed. [6]

Footnotes

1 The plaintiff, who had his complaint dismissed by the FOIC, is aggrieved for purposes of § 4–183(a).

2 At the oral argument in this court on August 29, 2012, the plaintiff stated that he does not contest Finding # 9 that the general statutes do not contain a "leash law," only a law, § 22–364, that prohibits owners from allowing their dogs to roam. Therefore, the plaintiff's request was for a record that does not exist.

3 The FOIC in Finding # 3 found that the town did make an effort by telephone to reach the plaintiff to discuss his request, but the effort proved unsuccessful.

4 Section 1–206(a) provides in relevant part as follows: "Any denial of the right to inspect or copy records provided for under section 1–210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request ... Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed a denial."

5 The complainant in these two cases was the plaintiff in this appeal.

6 Even if the court were to evaluate the plaintiff's claim de novo as a matter of law, it would reach the same conclusion. Section 1–206(a) provides that the requester has to wait four days and if the respondent does not reply, then the requester may elect to bring a complaint to the FOIC. The four-day deadline insures that the plaintiff does not have to wait indefinitely for a response from the town, and the FOIC will resolve the issue of whether the agency has a record "maintained or kept on file," § 1–210(a).

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