

Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Jim Dobson,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0056

Chairman, State of Connecticut, Department of Energy and Environmental Protection, Public Utilities Regulatory Authority; and State of Connecticut, Department of Energy and Environmental Protection, Public Utilities Regulatory Authority,  
Respondent(s)

September 7, 2016

### Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Thursday, October 13, 2016**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE September 30, 2016**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE September 30, 2016**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE September 30, 2016**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission  
  
W. Paradis  
Acting Clerk of the Commission

Notice to: Jim Dobson  
Attorney Robert L. Marconi

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jim Dobson,

Complainant

against

Docket #FIC 2016-0056

Chairman, State of Connecticut,  
Department of Energy and  
Environmental Protection,  
Public Utilities Regulatory Authority; and  
State of Connecticut, Department of  
Energy and Environmental Protection,  
Public Utilities Regulatory Authority,

Respondents

September 2, 2016

The above-captioned matter was heard as a contested case on April 20, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The respondents submitted the records at issue in this case for an in camera inspection.<sup>1</sup>

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter of complaint filed January 21, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain records.
3. It is found that the complainant made a January 5, 2016 request to the respondents for certain records, most of which are no longer at issue.
4. It is found that the respondents replied to the request on January 20, 2016.
5. It is found that the only two documents remaining at issue are two short emails, both from a staff attorney at the Connecticut Department of Public Utility Control, and both to that

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<sup>1</sup> The records submitted for in camera inspection consist of two email chains, one seven pages long, the other nine pages long. Only the final emails in each chain are claimed to be exempt pursuant to the attorney-client privilege; all of the previous emails in each chain are exchanges to and from the complainant and the respondents.

Department's then Chairman and that Department's then Public Utilities Chief of Utilities Regulation Kevin DelGobbo.<sup>2</sup>

6. The two records at issue are responsive to the complainant's request for all emails to or from Kevin DelGobbo regarding any whistleblower case.

7. It is found that both emails at issue consist entirely of legal advice given by the staff attorney to his two clients.

8. It is found that both emails were sent in the course of the legal relationship between the staff attorney and the two clients.

9. It is found that neither email was disclosed to anyone else, and that the emails were sent in confidence.

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

“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.

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

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.

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

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<sup>2</sup> The Commission takes administrative notice of the fact that the respondent Public Utilities Regulatory Authority (“PURA”) replaces the former Department of Public Utility Control (“DPUC”) and along with the Bureau of Energy and Technology Policy, is part of the Energy Branch of the Department of Energy and Environmental Protection (“DEEP”). DEEP was created in July 2011 and brings together the state's Department of Environmental Protection, the DPUC, and an energy policy group that had been based at the Office of Policy and Management.

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

14. The respondents contend that the requested emails are exempt from disclosure under §1-210(b)(10), G.S., as “communications privileged by the attorney-client relationship.”

15. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. *Maxwell v. FOI Commission*, 260 Conn. 143 (2002). In *Maxwell*, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” *Id.* at 149.

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

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

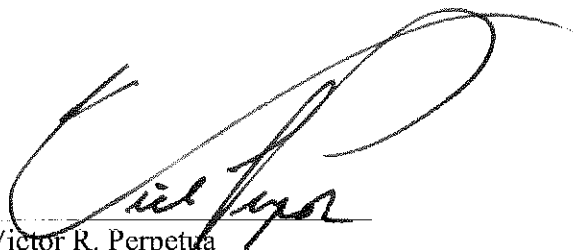
17. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” *Maxwell*, *supra* at 149.

18. It is concluded that the two requested emails are exempt from disclosure under §1-210(b)(10), G.S..

19. It is therefore concluded that the respondents did not violate the FOI Act by failing to disclose the two emails.

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

1. The complaint is dismissed.



Victor R. Perpetua  
as Hearing Officer