In the Matter of a Complaint by	:	Freedom of Information
	:	Commission of the State of
Adam Osmond	:	Connecticut
Complainant	:	
	:	
against	:	Docket #FIC 2024-0517
	:	
Commissioner, State of Connecticut,	:	
Department of Economic and Community	:	
Development; and State of Connecticut,	:	
Dept. of Econ. & Comm. Dev.	:	
Respondents	:	August 8, 2025

RESPONDENT'S BRIEF

> *"The goal of public access is not the only concern addressed in the [FOI Act] statute. Instead, by shifting some of the financial burden onto the requestor through the fee schedule provisions, the legislature has also manifested a second concern, namely, not to overburden agencies with the expense of complying with the act. Furthermore, to the extent that some requestors may find the cost provided in the fee schedule to be prohibitively expensive, § 1-212(d) provides that the usual fee may be waived in some instances."*
> -Williams v. Freedom of Info. Commission, 108 Conn. App. 471, 485 (2008)

The Proposed Decision, through tortured reasoning, concludes that the Legislature wishes public agencies to charge for labor, if that labor is programming a computer to automatically remove exempt data from a database, but NOT if that labor is reading through an email to format out exempt data. That conclusion is absurd, atextual, and untenable.

The Proposed Decision is also plainly contrary to the holding of the *Williams* court, in that it proposes that at least in the context of emails and similar digital files, subsequent to the search and retrieval of responsive records, the entire actual labor expense associated with providing a person with a copy of non-exempt data simply must be borne by the taxpayers, in all cases, regardless that "*the legislature has also*

manifested a second concern, namely, not to overburden agencies with the expense of complying with the act."

The Proposed Decision's reading may be consistent with the practices of public agencies in the past, anxious to accommodate the public, avoid the burdens of litigation before this Commission and the courts, and perhaps heedless of the cost of such practices on the public fisc. Such a reading likely is consistent with prior, *unreviewed* decisions of this Commission. But the Proposed Decision's reading is inconsistent with the plain language of the statutes, §1-2z, Gen. Stat., and that reading is inconsistent with court decisions, such as *Williams*, that clarify what the law actually is.[1] If it has only now taken the extreme labor burdens of requests such as Complainants to bring this element of the FOI Act into scrutiny, so be it.

First, the FOI Act, §1-212(b)(1), broadly permits a charge for actual labor in service of any request for copies of computer-stored public records. There are only two explicit exceptions; the labor involved in search and retrieval of the records. Thus, no matter what "review and redaction" is, it is subject to the labor fee.

Second, even were that not the case, the "review and redaction tasks" are the formatting of the copied digital record to reflect only the non-exempt data. There is no statutory basis for assigning a "review and redaction task" pejorative to the primary and likely exclusive form of labor engaged in by agency employees in the course of performing the statutory duty of fulfilling FOI requests. When a person exercises the FOI right to request copies of computer-stored records that are created and maintained, in the ordinary course, with both exempt and non-exempt data, labor culling exempt

[1] "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

data from non-exempt data is always required. Email, Word Documents, Excel Spreadsheets, Databases, etc.… they're all computer-stored public records, and there is labor performed when a person exercises their FOI right to a copy. In some cases, the cost of that labor may be minimized by programming. In others, that labor may be naturally called "formatting," or, more specifically, "review and redaction." Formatting is a general term; redacting is a specific type of formatting.

The FOI Act, § 1-212, Gen. Stat., provides a complete statutory scheme for FOI fees, including partial cost recovery for copies of paper records, §1-212(a), Gen. Stat., partial cost recovery for copies of digital records, §1-212(b), Gen. Stat., prepayment of any fee, §1-212(c), Gen. Stat., and fee waiver, §1-212(d), Gen. Stat. That entire scheme was analyzed extensively in our brief to the hearing officer of May 23, 2025, which is being provided in its entirety to the Commission. Collecting FOI fees to reimburse the public fisc is thus a real element of a public agency's statutory duty under the FOI Act, as recognized by the *Williams* court.

The Proposed Decision largely upholds the Respondents' construction of most elements of the FOI Act, §1-212, Gen. Stat., but takes a wrong turn in the primary legal issue in dispute, at ¶¶51-58.

FOI Act, § 1-212(b)(1), Gen. Stat. is read by the Proposed Decision as: "(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 [<u>any other labor such as for example</u>] search or retrieval costs except as provided in subdivision (4) of this subsection."

First, it is error to delete and add statutory language to accommodate a result. The plain reading of the entire statute is that the hourly salary (but not fringe benefit cost) for the labor engaged in by agency employees on the FOI task created by the requester – except the labor of searching for and retrieving the records except as provided in §1-212(b)(4) – is part of the FOI fee. Certainly and expressly, the *formatting* and *programming* function labors are indisputably a part of the labor fee. And certainly and expressly, only *search* and *retrieval* labor except as provided in §1-212(b)(4), are indisputably excluded.

The fact that such FOI labor is a "statutory duty" under the FOI Act, ¶53, in no way undermines the fact that such labor is labor. In fact, one would hope that *all* labor performed by public agency employees is pursuant to a "statutory duty or command." Were public agency employees only paid for labor while performing tasks *not* pursuant to statutory duties, legitimate public agency salary expenses would be $0. In other words, the Proposed Decision's construction of the FOI Act, §1-212(b)(1), Gen. Stat., turns the statute on its head and imagines, despite the presence of a fee statute including labor cost recovery, that FOI requesters need not pay fees for labor expenses.

Furthermore, the construction offered by the Proposed Decision, ¶¶52 and 56, contends that the Legislature (a) directed charging requesters only for narrowly prescribed forms of specific and expressly described types of labor (whatever the Commission deems to be programming and formatting) and (b) directed not charging requesters for other narrowly prescribed forms of specific and expressly described types of labor (search and retrieval), but (c) failed to direct anything at all for the primary if not

exclusive labor task involved in any FOI request (identifying exempt data and removing it from the copy provided).

The construction attempts to square the circle by claiming, ¶51, that labor fees may only be charged for expressly included tasks. Yet that construction renders the exclusion of search and retrieval tasks completely superfluous. If "search and retrieval" can't be charged for unless expressly included, why mention "search and retrieval" at all? This construction is not tenable, not internally consistent and coherent, and not supported by court decisions.

Second, the Proposed Decision simply rejects, ¶53, the notion that labor involved with taking a digital file and transforming (or not transforming) it into a copy that may be provided to a requester entitled to "a copy of any nonexempt data contained in such records," §1-211(a), Gen. Stat., is even a "cost of 'providing' a copy." But labor is a cost whenever employees, rather than volunteers, are performing a task. "Review and redaction" is the basic and likely exclusive "formatting" task that is ever necessary to provide a copy of computer-stored public record (after it has been searched for and retrieved). Thus, by deriding and relabeling the only conceivable labor – and formatting labor at that – as "review and redaction tasks" the Commission's construction renders the statute a dead letter, wholly nugatory, a total nullity. This is error.

Singling out email and similar text computer-stored records this way is irreconcilable with the Commission's treatment of other digital files. For example, in the Commission's October 9, 2024 final decision in FIC 2023-0558, Thomas v. Secretary, State of CT, Office of Policy and Management [2], the Commission dismisses a public

[2] The October 9, 2024 final decision in FIC 2023-0558 cited has since been vacated on remand, following the complainant's withdrawal of her complaint.

agency's labor cost concerns by suggesting (FN13) that the public agency may charge an FOI fee for the labor costs of removing exempt data from a copy of a digital database.

There is no defensible distinction with the present case. The public agency labor tasks are indistinguishable. In FIC 2023-0558, an agency employee is directed to look at the data in a copy of the requested database, and remove data that is exempt, so that the copy of the requested database including only the nonexempt data can be provided to the requester. The exact same labor tasks are performed by agency employees looking at email and any other computer-stored public records. And – were the conclusions in the Proposed Decision correct – there needs to be some rational explanation for why the Legislature would decree that one public agency's actual hourly salary labor engaged removing exempt data from a database is to be charged to the requester, but another public agency's actual hourly salary labor engaged removing exempt data from a vast collection of emails is to be charged to the taxpayers. All while the Legislature has articulated the permissible fee waiver reasons in the FOI Act, § 1-212(d), Gen. Stat., as found in *Williams*. There's no articulable distinction justified in the Proposed Decision; the labor fee is waived, or not, pursuant to the fee waiver provision.

There can be no doubt that the primary underlying policy of the FOI Act favors "the open conduct of government and free public access to government records." *Stamford v. Freedom of Information Commission*, 241 Conn. 310, 314 (1997). Respondents understand and support FOI policy with, if anything, greater vigor than other major public policies. Respondents field many FOI requests, and Respondents

devote substantial taxpayer-funded agency resources to our statutory duties under the FOI Act.

The *Williams* court, however, recognized the Legislature's decision to balance expense burdens with public access, and how the Legislature created a complete statutory scheme to balance those interests. The Commission may not ignore the balance struck by the Legislature under the fiction, ¶60, that taxpayers do not pay the taxes that compensate public employees for their labor, just as taxpayers pay the taxes that compensate third parties for services contracted by public agencies, or pay for thumb drives, copy paper, and other copy media formats.

It would be wonderful if email records could, all by themselves, transform into copies that include nonexempt data only, or if a computer program could do it at the press of a button. It's not our present reality.[3] To the extent that Complainant's requests will require Respondents' paralegal to devote over half a year's worth of taxpayer-funded labor to that task, the projected FOI fee is anything but excessive. The Proposed Decision, ¶49 FN7, cites to *Hartford Courant Co. v. FOIC*, 261 Conn. 86, 101 (2002), to contend a fee based upon half a year's hourly labor "would have a practical effect of denying the plaintiff access to records that, by statute, must be made available to the public." However, *Hartford Courant Co.* was about charging $25-per-search fees 815,000 times under the State Police code, § 29-11(c), G.S., not the copy fee for computer-stored public records under the FOI Act.

[3] To the extent the Commission would have the State of Connecticut contract with Microsoft to build a custom version of its Office productivity software suite, requiring all email and other data that is computer-stored, to be flagged as exempt and nonexempt data upon creation, the Commission should direct that idea to the Legislature. Respondents have no role in such State of Connecticut procurement.

The *Hartford Courant Co.* court dispositively found, 261 Conn. at 101, that no § 29-11(c), G.S., search was necessary or requested in the first place, and thus the $20M fee was not supported in law.[4] In contrast, Loretta Boggan's employment is entirely paid for by taxpayers, and there is no dispute that her paid labor is needed to format out the exempt data from the nonexempt data in the emails. According to the State Comptroller's Open Payroll system, her 2025 annual cash salary is $82,970. But her non-retirement fringe benefits cost taxpayers over $40,000. The FOI Act, §1-212(b) splits[5] these public employee labor costs as follows: actual hourly salary is paid by the requester, and the substantial additional fringe benefit costs are always borne by the taxpayer. So, if Loretta Boggan spends an entire year engaged in labor formatting out exempt data so that Respondents can fulfill our statutory duties providing Complainant with copies of the nonexempt data in computer-stored public record emails, the taxpayer will cover $18,409 of "non-retirement fringe" plus $22,702 in "SERS Retirement" costs no matter the benefit to the general welfare. Not only is requester responsibility for labor expenses consistent with the plain language of the statute and the public policy of the Legislature, it is also eminently reasonable that Complainant cover her salary, if he is going to consume all her time.

No one is to blame for the fact that substantial labor will be necessary to satisfy Complainant's FOI requests. No one is telling Complainant that Respondents are unwilling to perform our important statutory duty to promptly provide copies of non-exempt data in computer-stored records. But the Legislature, in crafting the FOI Act,

[4] "Thus, the plaintiff's request plainly is incompatible with the concept of a search for the criminal histories of specific individuals." *Hartford Courant Co.*, 261 Conn. at 101.
[5] If waiver of the FOI fee benefits the general welfare, taxpayers bear the entire labor expense. §1-212(d)(3).

§1-212, Gen. Stat., assigned Respondents the responsibility to consume the taxes paid by our citizens in ways to benefit the general welfare. Spending at least $41,485 in taxpayer dollars on at least half a year's salary of our paralegal to labor on Complainant's requests to review emails that mention his name is, in Respondents' opinion, an abuse of the public fisc not sanctioned by the Legislature, and thus not required by the FOI Act. The General Assembly, not Complainant, determine how to spend the public fisc. Complainant, not Respondents, ultimately control the scope of their own request.[6]

Adoption of the Proposed Decision's construction leads to the absurd conclusion that a single person could make daily requests for copies of all the email records maintained by all the public agencies, and the Legislature would expect all public agencies to spend all the taxpayer-funded employee time laboring on never-ending public records requests. Not one single court decision supports such a fanciful view of the FOI, *Williams* flatly rejects that construction, and so should this Commission.

[6] It is indisputable that "all records maintained or kept on file by any public agency . . . shall be public records and every person shall have the right to (1) inspect . .. (2) copy, or (3) receive a copy of such records in accordance with section 1-212." Thus, it is Complainant, *not* Respondents, whose decisions ultimately control how much labor will be necessary.

Respondent's proposed amendments to the Proposed Decision is attached hereto, as an Exhibit.

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT; STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

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NOTATION: THIS BRIEF HAS BEEN NOTICED TO ALL PARTIES AS FOLLOWS:

Adam Osmond: Email to AdamOsmond14@gmail.com

Freedom of Information Commission: Hand Delivery to Commission, 165 Capitol Ave, Hartford, with copy by email to FOI@ct.gov

NOTATION: PREVIOUSLY FILED RESPONDENT'S BRIEF DATED MAY 23, 2025 HAS BEEN FILED WITH THE COMMISSION FOR DISTRIBUTION TO EACH MEMBER OF THE COMMISSION.

EXHIBIT
to Resp. Brief

RESPONDENTS' RECOMMENDED AMENDMENTS TO PROPOSED DECISION OF HEARING OFFICER

¶22 FN3: [Add to end] The giving and receiving of legal advice by licensed attorneys is fundamental to the functioning of the American system of justice. Rather than raise concerns, the active role of respondents' counsel provides reassurance that the respondents' actions were grounded in presumptively meritorious legal positions. Complainant's contention that the provision of legal advice provides a basis for the imposition of a civil penalty demonstrates a profound misunderstanding of both the role of this Commission and the proper role of attorneys in the adjudication of legal disputes. The Commission rejects the invitation to supervise the practice of law, and, pursuant to the FOI Act, §1-206(b)(3). G.S, in making its findings and determinations under the FOI Act, §1-206(b)(2), G.S., will consider complainant's abuse of administrative process in requesting imposition of a civil penalty.

¶36: It is found that the complainant's July 26, 2024, emails, described in paragraphs 20 and 21, above, constituted a narrowed renewal of his prior records requests of February 18, 2024, and May 7, 2024. Therefore, it is concluded that the Commission has jurisdiction over the August 23, 2024 complaint insofar as it relates to respondents' handling of complainant's July 26, 2024 requests, which was filed less than 30 days after the alleged denials, within the meaning of § 1-206(b), G.S. Insofar as it relates to respondent's handling of the February 18, 2024, and May 7, 2024 requests on July 24, 2024, the Commission does not have jurisdiction. While complainant has the right to renew past requests, doing so does not retroactively create jurisdiction to investigate alleged denials of earlier requests. If the Commission were to hold otherwise, a person could renew a request every 30 days for 20 years, and the Commission could investigate the handling of 600 separate requests stretching back for 20 years.

¶39 The respondents were provided with insufficient notice when the Notice of In-Person Hearing and Order to Show Cause was sent to the parties on January 14, 2025. Such notice includes a general reference to the FOI Act, but no "reference to the *particular* sections of the statutes and regulations involved." Furthermore, the alleged violations of the FOI Act, ¶22, were (a) general, not specific, (b) grounded in conclusory language untethered from actual duties under the FOI Act, and (c) with the exception of the allegation of "failing to provide prompt access to public records" unsupported by reference to any response to the July 26, 2024 requests. Commission staff routinely assist members of the public with understanding their rights under the FOI Act. As such, complainant's failure or refusal to provide a more "definite and detailed statement" in response to respondents' application violates respondents' due process rights.

¶42 The respondents maintain that they have not denied the complainant access to the requested records and that the complainant was simply asked to prepay the fees associated with providing responsive records.[5] The respondents contend that in calculating such fees under the FO I Act they may charge 25 cents per page for copies of paper documents ~~printing the copies~~, as well as hourly salary labor costs for employees' time engaged in labor in service of providing requested copies of computer-stored public records, including labor reviewing and redacting exempt information from the requested computer-stored public records, i.e., formatting the digital files, but not the hourly salary labor costs for employees' time engaged in labor searching for and retrieving the requested computer-stored public records. Respondents further maintain that they may charge any 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.

¶42 FN5 In their post-hearing brief, the respondents contend that the prepayment of fees demanded of the complainant is a "retainer" and that "[a] retainer estimate is not a bill, and cannot violate the FOI Act." A retainer is "a fee paid in advance to someone, especially an attorney, in order to secure or keep their services when required." *See Oxford English Dictionary*, Oxford University Press, 2025. As the prepayment fees demanded by the respondents Accordingly, the Commission finds that as the prepayment fees demanded by the respondents under the FOI Act in this matter and as contemplated by the FOI Act, §1-210(b), G.S., can not be determined until expenses are actually incurred, such prepayment fees are ~~not~~ a retainer.

¶47 With respect to the respondents' ~~initially~~ July 24, 2024 proposed prepayment of $41,943.28 based upon an anticipated imposition of a charge of 25 cents per page for ~~printed~~ copies ~~and demand for prepayment of $41,943.25 for copies of the requested records~~ in response to the February 18 Request, as described in paragraph 18, above, it is found that the Commission lacks jurisdiction. With respect to the respondents' claims that such proposed prepayment of $41,943.28 is reasonable in response to the July 26 requests, use of the per page fees set forth in §l-212(a)(A), G.S., it is found that estimates of any kind are not required under the FOI Act, and that respondents subsequently clarified that upon a prepayment of any amount respondents would commence incurring expenses for which the prepayment would be used. As the Connecticut Supreme Court explained in *Pictometry Int'l Corp. v. FOIC*, 307 Conn. 648, 685 *esp*. fn35 (2013), §1-212(a)(A) provides that the 25 or 50 cent per page charge applies to copies of public records that are not maintained in a computer storage system, while §1-212(b) provides the fee structure for copies of public records that are maintained in a computer storage system. Accordingly, the applicable fee structure is based upon the format of the original public record, not

whether ~~apply in circumstances where~~ an individual has requested a paper copy or a digital copy.

¶48 FN6 The Commission notes that if a public agency receives a request ~~for a copy of, or~~ to inspect~~,~~ a record that contains information that is required by law to be redacted, and the public agency must make a copy of the record in order to redact such information, the public agency may charge the requester the statutory fee for that copy. *See Kozlowski v. Freedom of Information Commission*, superior court, docket number CV-96 0556965 (judicial district of Hartford-New Britain at New Britain), July 29, 1997. In the instant matter, the complainant has not requested to inspect, but to copy, and respondents have ~~halted their review of the responsive records and therefore it is unknown whether any~~ a reasonable basis to presume that some of these records contain information that is required by law to be redacted.

¶49 It is further concluded that the respondents have not violated the provisions of §§ 1-211 and 1-212, G.S., by conditioning ~~receipt~~ commencement of engaging in labor necessary to satisfaction of complanaint's request for copies of the requested records on the complainant's prepayment of ~~exorbitant~~ estimated fees, at the estimated cost of 25 cents per page, for a total of $41,943.25, subject to reconciliation of actual expenses as they are actually incurred.[7]

¶49 FN7 The conclusion in paragraph 49, above, is consistent with the reasoning of the Appellate Court in *Williams v. FOIC*, 108 Conn. App. 471, 485 (2008), wherein the Court ruled: "The goal of public access is not the only concern addressed in the [FOI Act] statute. Instead, by shifting some of the financial burden onto the requestor through the fee schedule provisions, the legislature has also manifested a second concern, namely, not to overburden agencies with the expense of complying with the act. Furthermore, to the extent that some requestors may find the cost provided in the fee schedule to be prohibitively expensive, § 1-212(d) provides that the usual fee may be waived in some instances." Furthermore, the conclusion in paragraph 49, above, is not inconsistent with the reasoning of the Supreme Court *in Hartford Courant Co. v. Freedom of Information Comm 'n*, 261 Conn. 86, 101 (2002), wherein the Court ruled ~~-~~no criminal record search, § 29-11(c), G.S., was either requested or necessary~~,~~: ~~"Were we to hold otherwise, the fee for the plaintiffs request would be $20,375,000, a result that would have the practical effect of denying the plaintiff access to records that, by statute, must be made available to the public. *Such a result would be inconsistent both with the act's broad policy favoring the disclosure of information and with the well established canon of statutory construction 'that those who promulgate statutes or rules do not intend to promulgate statutes of rules that lead to absurd consequences or bizarre results*.'"~~ [Emphasis added.]. A $40,000 fee

arising under the FOI Act, §1-212(b), G.S., to cover quantifiable agency employee expenses directly attributable to satisfying the request, which may be waived if incurring the expense provides a benefit to the general public, is not remotely the same as $20,375,000, the total criminal record search fee claimed under State Police code, § 29-11(c), G.S., in *Hartford Courant*.

¶50 With respect to the respondents' contention that the fee provisions in § l-2I2(b), G.S., ~~are not exhaustive and~~ by their terms permit them to charge for employees' time reviewing and redacting exempt data from computer-stored public records, the Commission ~~dis~~agrees, for the reasons set forth in paragraphs 51 through 58, below.[8]

¶50 FN8 At this time, the Commission is unaware of any other contested case brought before it, wherein the respondent agency has claimed that the provisions of §1-212(b)(1), G.S., permit the kinds of fee calculations that the respondents seek to impose in this case, since the passage of such provisions in 1991. *See* Public Act, 91-347*, An Act Concerning Computer Stored Records*. In the absence of any such claim, the Commission must interpret the statutory text pursuant to the plain language rule, §1-2z, Gen. Stat., and look to caselaw. Despite the admonition of the *Williams* court, incentives at public agencies favor conflict avoidance over fealty to the public fisc. The Commission infers that public agencies generally do not charge FOI fees out of a desire to avoid complaints from FOI requesters and litigation before the Commission~~understand the scope and limitations of the fee provisions set forth therein relative to computer-stored records~~.

¶52 Second, it is found that § l -212(b)(1), G.S., provides for recovery of labor costs attributable to satisfying the request for copies. It further provides ~~consists of~~ two specific lists, setting forth what labor costs attributed to an employee's time engaged in providing computer-stored public records expressly can be passed on to the re quester (i.e., their time performing formatting or programming functions) and what labor costs cannot (i.e., their time for search or retrieval).

¶53 DELETE

¶54 DELETE

¶55 [Add as follows] As respondent's interpretation is correct, the Commission agrees that there would be no need for such a statute.

¶56 [Replace as follows] Therefore, the logical conclusion to the statutory construction of the two lists contained in §1-212(b)(1), G.S., is that labor searching for and retrieving the requested computer-stored public records is an expense borne by the public fisc, and that all other labor necessarily engaged in to provide copies, whether that labor involves

programming a non-exempt-data extracting computer program, or an agency reading through and removing or formatting-out exempt data, is an expense borne by the requester.

¶57 [Replace as follows] To the extent complainant's arguments and previous conclusions of the Commission distinguish "formatting" from "redacting," there is no difference. "Formatting" is a *general* term that "refers to the way content is arranged and presented in various contexts." "Redacting" is a specific term that refers to "the process of deleting or removing private or sensitive information from a document in preparation for publication." Thus, in the context of a computer-stored public record that must be copied for release, the specific type of formatting required is called "redacting."

¶58 It is found that the review and redaction tasks associated with the provision of the requested records in this case constitute labor "engaged in providing the requested computer-stored public record" within the meaning of § l-212(b)(1), G.S. Additionally, such tasksdo not constitute "formatting or programming functions", ~~within the meaning of § l-212(b)(1), G.S.~~ and do not constitute "search and retrieval."; and it is concluded therefore that the hourly fee charged by the respondents for the review and potential redaction of the requested records is ~~not~~ permitted under § 1-212(b)(1), G.S.

¶59 It is further concluded therefore that the respondents have not violated §§ 1-210(a) and 1-212, G.S., by conditioning the fulfillment of the requests on the complainant's prepayment of fees, in an amount equal to the respondents' employees' time reviewing the records for exempt information and potentially redacting certain information therein.

¶60 The respondents rely upon *Pictometry Int'l Corp. v. Freedom of Info. Comm'n*, 307 Conn. 648, 683-686 (2013); ~~however,~~ such reliance is ~~misplaced~~instructive. In *Pictometry*, the Supreme Court held that the Department of Environmental Protection was not barred from passing on to the requester a $25 per image fee that the Department was required to pay Pictometry to reproduce copyrighted aerial photographs. The Supreme Court held that:

> [T]he $25 per image copying fee is not a fee for the disclosure or copying of 'public records in a computer storage system' and, therefore, is not governed by §§1-211(a) and 1-212(b)(3), [G.S.]. Rather, it is a fee for copying a copyrighted public record .... The $25 per image fee provided for in the licensing agreement is not ... a fee for the mechanical, material or labor costs of reproducing copies of the copyrighted materials. Rather, it is a *licensing* fee, i.e., a fee for the use of another entity's private property. Nothing in §1-212, [G.S.] suggests that it was intended to prohibit state agencies from passing on licensing fees." [Emphasis in original; citations omitted].

The Court further held that "prohibiting state agencies from passing fees incurred pursuant to federal copyright law on to the person who requested the copy would have the practical effect of barring, or at least drastically limiting, the use of copyrighted materials by state agencies." Id. Here, ~~un~~like in *Pictometry*, the applicable fees are potentially astronomical, as emails are the contemporary and ubiquitous form of records of communication, and must be laboriously reviewed in order to format out exempt information to satisfy FOI requests ~~set forth in §§1-211 and 1-212, G.S., and not in a separate statutory scheme~~. In addition, the ~~respondents are not~~ the *Williams* court held that it is the fee waiver provisions, §1-212(d), G.S., that determine whether the public fisc is called upon to expend~~ing any amount of~~ money to ~~acquire or otherwise~~ produce the records to deliver them to the complainant; ~~instead, they~~ respondents reasonably and responsibly seek prepayment in an amount equivalent to the employees' salary for performing formatting labor necessary to fulfilling complainant's request, a statutory duty.

¶71 Based on the foregoing, and under the facts and circumstances of this case, it is concluded that the respondents have not violated the promptness requirements of § l-212(a), G.S.~~, but only with respect to the outstanding responsive records.~~

¶82 It is concluded that, under the facts and circumstances of this case, the respondents have not violated §1-211(a), G.S., because they have ~~not~~ promised to provide~~d~~ the ~~vast majority of the~~ requested records to the complainant, in any format, subject to his prepayment of FOI fees.

¶83 [Delete in its entirety]

ORDER:

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

[Delete orders 1, 2, and 3.]

1. The complaint is hereby dismissed.