SUPREME COURT

OF THE

STATE OF CONNECTICUT

SUPREME COURT NO. SC 20656

JOHN DRUMM, CHIEF OF POLICE, ET AL.
PLAINTIFFS-APPELLANTS

vs.

FREEDOM OF INFORMATION COMMISSION ET AL.
DEFENDANT-APPELLEE

REPLY BRIEF OF PLAINTIFFS-APPELLANTS TO INTERVENOR-APPELLEE ANIKE NIEMEYER

FLOYD J. DUGAS
BERCHEM MOSES PC
75 BROAD STREET
MILFORD, CT 06460
TELEPHONE (203) 783-1200
FACSIMILE (203) 878-4912
EMAIL: fdugas@berchemmoses.com
JURIS NO. 22801

ATTORNEYS FOR PLAINTIFFS-APPELLANTS
JOHN DRUMM, CHIEF OF POLICE
TOWN OF MADISON POLICE DEPARTMENT
TOWN OF MADISON

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

REPLY ARGUMENT

Plaintiffs/Appellants submit this Reply in support of their Brief and in opposition to the Brief of the Intervenor-Appellee, Anike Niemeyer (the "Intervenor" or "Niemeyer") ("Intervenor Brief").

I. The Trial Court erred in adopting the newly announced reasonable possibility standard and applying it retroactively in this case.

Despite Niemeyer's claims to the contrary, the reasonable possibility standard is indeed a new standard that was only used **once** in prior Freedom of Information Commission ("FOIC") decisions and not in this case. Memo. of Decision at 12, 15, and 20, App. 1 at A-537, A-540 and A-545; 23, App. 1 at A-548 ("Lastly, . . . the court has determined that § 1-210 (b) (3) (D) requires the FOIC to determine whether a prospective law enforcement action is a reasonable possibility-a legal standard that the FOIC only expressly applied in **one** previous case . . . .") (emphasis added).[1]

To claim that the reasonable possibility standard is not new and was not retroactively applied in this case is disingenuous at best. Intervenor Brief at 12. Indeed, in the entire existence of the FOIC, it is undisputed that the FOIC explicitly used the reasonable possibility standard in only **one** case and in that case the FOIC did not articulate any factors for deciding if the standard was met. See Graeber v. Chief, Police Department, City of New Haven, Docket #FIC 2016-0865 (Sept. 27, 2017), App. 2 at A-568. Further, a review of the FOIC decision in the instant case shows **no** mention whatsoever of the reasonable possibility standard. FOIC Final Decision, App. 1 at A-309-A-316. Therefore, to claim that a new

[1] All references in this Reply will be to Plaintiffs/Appellants' Appendices ("App. 1" or "App. 2") or the FOIC's Appendix ("FOIC App.").

standard was not retroactively applied here is simply inaccurate.

Further, despite the Intervenor's claim that the reasonable possibility standard "is entirely consistent with the clear language of the Act," (Intervenor Brief at 12), there is no dispute that the standard is not set forth in the FOIA statute or any regulation of the FOIC.

Moreover, Niemeyer's reliance on Dep't of Pub. Safety, Div. of State Police v. Freedom of Info. Comm'n, 51 Conn. App. 100 (1998), to support her claim for disclosure in this case is misplaced as Dep't of Pub. Safety, Div. of State Police is easily distinguishable. Intervenor Brief at 13-14. Dep't of Pub. Safety, Div. of State Police was a case dealing with the requested release of records around an investigation into a drowning. The plaintiffs had withheld the records on the grounds that the investigation into the incident was not completed and that the matter was "potentially criminal." 51 Conn. App. at 103. This is completely different from the case at issue, which has been determined to be a homicide. Unlike Dep't of Pub. Safety, Div. of State Police, this is not "potentially criminal;" it is "definitively criminal." Moreover, the homicide investigation is an open case that was still being actively investigated as recently as the week before the hearing at the FOIC. Additionally, the Madison Police Department has a prime suspect and a prosecution for murder will ensue when sufficient evidence is obtained to do so. Therefore, Dep't of Pub. Safety, Div. of State Police does not control this matter.

Likewise, Niemeyer erroneously relies on Graeber in support of her position. Intervenor Brief at 14. In fact, Graeber supports a finding that the law enforcement exemption applies in this matter. To that end, Niemeyer states that "Plaintiffs claim the only thing distinguishing Graeber from this case "is the number of witnesses" presented, Pls.' Br. at 17, but the two records tell a different story." Intervenor Brief at 14. Unfortunately for Niemeyer,

the FOIC specifically references in its decision that "Graeber is distinguished from the current matter in that the respondents in the current matter **did not provide multiple witnesses** to testify specifically about any prospective law enforcement action or how such action would be prejudiced by the disclosure of the requested records." FOIC Decision at 5, App. 1 at A-313 (emphasis added). Further, the likelihood of a prospective law enforcement action in Graeber was no greater than the instant matter. Indeed, because there is a prime suspect in this matter and only 9 years had passed, arguably a law enforcement action is more likely here than it was in Graeber, where there was no prime suspect and 20 years had passed. Therefore, here, as compared to Graeber, there was more evidence in the record that the requested records were to be used in a prospective law enforcement action.

Similarly, Strauss v. Chief, Police Department, Town of Westport et al., Docket #FIC 2010-487 (May 25, 2011) (App. 2 at A-584-586), does not support Niemeyer's position. Intervenor Brief at 15. As was the case with Graeber, Strauss supports a finding that the law enforcement exemption applies in this matter. Indeed, in Strauss, no arrest had yet been made, yet the FOIC found the exemption applied. The FOIC explicitly stated in its decision, "Strauss is distinguished from the current matter in that the **Madison police have not identified any suspects** nor was any evidence of a specific prospective law enforcement action presented at the hearing." FOIC Decision at 6, App. 1 at A-314 (emphasis added). This is a clear error as to fact. Detective Sudock testified that there was a "**number one suspect**" and stated that the individual had his or her phone off for 24 hours around the time of the murder. Sudock Testimony, Record, at 113: 2-8, App. 1 at A-191 (emphasis added). This was plainly a reference to a specific individual, even if the individual was not referred to by name. Although it is not required that a suspect be identified in order to invoke this

exemption, the FOIC's finding that the Madison police "have not identified any suspects" was clearly erroneous in view of the evidence. Madison police have indeed identified one or more suspects and the prospective law enforcement action would plainly be the arrest and prosecution of the suspect for murder once sufficient evidence is obtained.

Further, Niemeyer's reliance on Hoda v. Chief, Police Department, City of New Haven, Docket #FIC 2007-143 (Jan. 23, 2008) (App. 2 at A-572-574) and Rouen et al. v. Chief, Police Department, Town of Groton, Docket # FIC 2006-064 (Jan. 24, 2007) (App. 2 at A-581-583) fares no better. In Hoda, the FOIC held the exemption applied because disclosure of investigative records would prejudice the arrest and conviction of the murderer. However, unlike here, there was no specific articulation as to the existence of a suspect. As far as Rouen the FOIC stated "Rouen is distinguished from the current matter in that the Madison police **have not identified any suspects** and provided no evidence of an anticipated arrest." FOIC Decision at 5, App. 1 at A-314 (emphasis added). Again, this was not supported by the evidence, as Detective Sudock gave information about a "**number one suspect**." Sudock Testimony, Record, at 113: 2-8, App. 1 at A-191 (emphasis added).

Despite Niemeyer's attempts at distinguishing these cases by citing to facts in each case that she deems differentiate them from this matter, this is not what the FOIC did in its analysis. FOIC Decision at 5-6, App. 1 at A-313-314. Indeed, the FOIC explicitly stated the bases it relied on in distinguishing the cases from here, and as discussed above, there were clear errors made in that analysis. See also Reply to Brief to FOIC at 6-8, App. 1 at A-509-511; Reply to Brief of Intervenor Defendant Anike Niemeyer at 4-7, App. 1 at A-518-521. Niemeyer is now attempting to rescue the FOIC's decision by looking for other bases to distinguish the cases.

Additionally, despite Niemeyer's contentions otherwise, Plaintiffs/Appellants did not urge for a "theoretical possibility standard." Intervenor Brief at 11. Indeed, Plaintiffs/Appellants counsel, Floyd Dugas, when questioned by Judge Klau about a "hypothetical possibility," Attorney Dugas clearly stated "[w]ell, based on the case law Judge, **I would say you need a little bit more than that**." Sup. Ct. Trans. at 7, FOIC App. at A83 (emphasis added). Accordingly, Plaintiffs/Appellants did not argue for a theoretical possibility test, but rather argued for something a "bit more" that better strikes the balance between disclosure and protecting ongoing investigations.

Finally, even if this Court finds the Trial Court's action in announcing and applying the reasonable possibility standard was appropriate, the Trial Court erred in not finding that Plaintiffs/Appellants met the newly adopted standard. Clearly, several of the factors outlined by the Trial Court weigh in favor of Plaintiffs/Appellants. See Plaintiffs/Appellants Reply to FOIC Brief, Section III. Accordingly, the Trial Court erred in adopting the newly announced reasonable possibility standard and applying it retroactively in this case. However, even if the Court finds that the reasonable possibility standard was appropriate, Plaintiffs/Appellants met the newly adopted standard.

II. The "reasonably anticipated" standard is in accordance with Conn. Gen. Stat. §1-210(b)(3)(D) which exempts from disclosure records of law enforcement agencies to be used in a prospective law enforcement action.

Despite Niemeyer's claims otherwise, the reasonably anticipated standard is in accordance with the purpose of Conn. Gen. Stat. §1-210(b)(3)(D) to strike the balance between disclosure and protecting ongoing investigations.

First, as discussed above, Plaintiffs/Appellants did not argue "[b]efore the Commission and the trial court . . . that the law enforcement exemption should apply whenever a

prospective action is theoretically possible." Intervenor Brief at 17. Clearly, Attorney Dugas argued for "more than" a theoretical or hypothetical possibility test. Sup. Ct. Trans. at 7, FOIC App. at A83.

Next, the "reasonably anticipated" standard strikes the right balance between a public's access to records and the importance of protecting ongoing criminal investigations. Indeed, Louisiana, where the standard originates from, enshrines public record access as a "fundamental right" in its Constitution, and whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see." In re Matter Under Investigation, 15 So.3d 972, 991 (La. 2009). However, in recognition of the importance of protecting ongoing criminal investigations, the state supreme court articulated the "reasonably anticipated" standard to determine whether records were exempt from disclosure. Id. The court further stated that the determination as to whether a criminal prosecution is reasonably anticipated "**must be made on a case-by-case basis**." Id. at 991. Moreover, "[i]n making this determination in a specific case, the law requires more than a judicial acceptance of an assertion of privilege by the prosecutor." Id. (internal quotation omitted).

All of these principles are on par with what is required to perform a proper analysis of the law enforcement exemption under Connecticut law. Memo of Decision at 11, 14, 17, App. 1 at A-536 ("'the overarching legislative policy of [the act] is one that favors the open conduct of government and free public access to government records'); A-539 ("It teaches that more than good faith assertions by law enforcement are required"); A-542 ("However, Connecticut has not adopted the categorical approach; it requires exemption claims to be decided on a case-by-case basis"). Clearly, the public policy behind the "reasonably

anticipated" standard in Louisiana is the same as Connecticut. As such, for the reasons cited in Plaintiffs/Appellants opening brief, they believe that this is the better standard as compared to the Trial Court's newly announced reasonable possibility standard.

Niemeyer also takes issue with Plaintiffs/Appellants' citations to caselaw from other jurisdictions for the proper standard to be used. Niemeyer Brief at 17 ("Plaintiffs derive this formulation from Louisiana precedent rather than any Connecticut decisions."). However, Plaintiffs/Appellants cited to cases from other jurisdictions (Washington and New York) with similar law enforcement exemptions to show this Court how other courts under similar circumstances handled the determination as to whether investigation records were protected from disclosure under similar circumstances. As the Trial Court stated, to its "knowledge, no Connecticut court ha[d] directly addressed" the standard used to determine whether "a 'prospective law enforcement action,' will occur." Memo. of Decision at 11-12, App. 1 at A-536-A-537. Therefore, Plaintiffs/Appellants' citation to caselaw from other jurisdictions was entirely appropriate.

Lastly, Niemeyer's public policy argument misses the mark entirely. Niemeyer Brief at 23-25. This is not a case involving the withholding of records from a theft, an assault and battery case, or other similar type crimes; this case involves a murder investigation. There is an overwhelming public interest in apprehending, prosecuting, and removing murderers from society. By requiring Plaintiffs/Appellants to release the requested records, this interest will be put in jeopardy in regard to Ms. Hamburg's murderer. Accordingly, there is a compelling public interest in ensuring that the requested records are not released, and any potential law enforcement action not prejudiced.

III. The Trial Court committed reversible error in construing Conn. Gen. Stat.§ 1-210(b)(3)(D) to impose a "reasonable possibility" standard.

Niemeyer's claim that the Trial Court did not commit reversible error in construing Conn. Gen. Stat.§ 1-210(b)(3)(D) to impose a "reasonable possibility" standard lacks merit.

First, for Niemeyer to claim that the reasonable possibility standard is not new and was not retroactively applied in this case is disingenuous at best. Intervenor Brief at 24-25. Indeed, in the entire existence of the FOIC, it is undisputed that the FOIC explicitly used the reasonable possibility standard in only one case and in that case the FOIC did not articulate any factors for deciding if the standard was met. Common sense would dictate that a standard used only **once** that is not found in the FOIA statute or any regulation of the FOIC, would not set a precedent and put law enforcement agencies on notice of the applicability of the standard. Indeed, here, the FOIC decision made no mention whatsoever of the "reasonable possibility" standard. Further, the one FOIC decision that mentioned the "reasonable possibility" standard failed to articulate any factors on how the standard would be applied.

Moreover, to repeatedly claim throughout her brief that the "Hamburg investigation had reached a dead end" is simply false. Intervenor Brief at 25. No matter how she attempts to parse or take out of context Detective Sudock's testimony, Detective Sudock repeatedly testified that the case remained active. In fact, Detective Sudock testified that the homicide investigation was an open case that was still being actively investigated with new information as recently as the week before the hearing at the FOIC. Sudock Testimony, Record at 96-97, 103: 2-6, App. 1 at A-174-175, A-181. Detective Sudock further testified that that the case gets worked on at least monthly, and that he still has the responsibility to follow leads, review evidence, talk to experts, and look for ways to advance the investigation. Id. at 096;

104-105, App. 1 at A-174; A-182-183. Accordingly, the case remains open and the investigation active.

Next, Niemeyer's claim that this Court should not consider the unfairness Plaintiffs/Appellants are being subjected to by the retroactive applicability of the Trial Court's newly announced "reasonable possibility" standard misses the mark. Plaintiffs/Appellants were prejudiced by not knowing that the number of witnesses – a seemingly arbitrary factor – would change the FOIC's analysis. Had the Plaintiffs/Appellants known that simply having multiple people make the same point that Detective Sudock made would constitute a significant legal difference, they would have put on multiple witnesses. Notably, the FOIC never suggested that it did not find Detective Sudock to be a credible witness. If the FOIC had used the reasonable possibility standard more than once and had announced factors that met the standard, Plaintiffs/Appellants would have tailored their presentation of evidence and arguments to meet the standard and the announced factors rather than relying on prior FOIC decisions and the standards used in those decisions.

Because this Court is being asked to "decide whether the trial court applied the correct legal standard . . . [its] review is plenary." Hartford Courant Co. v. Freedom of Information Commission, 261 Conn. 86, 96–97 (2002). Further, the "[t]he process of statutory interpretation involves a reasoned search for the intention of the legislature.... In other words, [the Court] seek[s] 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." Smith v. Yurkovsky, 265 Conn. 816, 821-22 (2003). This determination requires the Court to "look to the words of the statute itself, 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." Id.

Here, the "reasonable possibility" standard is not found in the FOIA statute or any regulation of the FOIC. Moreover, the FOIC has referenced the standard in only one decision without announcing any factors to determine if the standard is met, and no trial court had previously addressed the appropriate standard for determining how certain a prospective law enforcement action must be. Memo. of Decision at 11-12, App. 1 at A-536-A-537. To allow the Trial Court's decision to stand, which based its decision on a standard that the FOIC did not even use in making its initial determination, would result in an "unreasonable" interpretation of the FOIA statute. See Ventura v. Town of E. Haven, 170 Conn. App. 388, 405, aff'd, 330 Conn. 613 (2019) ("The unreasonableness of the result obtained by the acceptance of one possible alternative interpretation of an act is a reason for rejecting that interpretation in favor of another which would provide a result that is reasonable."). Therefore, it is entirely within this Court's authority to reverse the Trial Court's decision based on the unfairness and prejudice Plaintiffs/Appellants would suffer if the decision were to stand.

Further, notwithstanding Niemeyer's claims otherwise, the Trial Court made reversible error in upholding the FOIC decision in which the FOIC made clear errors of fact. Niemeyer Brief at 26 ("Plaintiffs are equally mistaken in arguing that the trial court's decision effectively requires presentation of multiple witnesses to establish a prospective law enforcement action;" "Nor does the trial court hold that law enforcement must present evidence of an actual action—an 'actual arrest' or 'actual charges pending."). In fact, there can be no dispute that in the FOIC's attempt at distinguishing the seven cases Plaintiffs/Appellants cited in support

of their position, it made clear errors of fact. The FOIC purported to distinguish cases on arbitrary grounds (number of witnesses) and factually inaccurate grounds (the claim that no suspect has been identified in the current case) and introduce new standards, i.e., requiring an actual pending law enforcement action (search warrant versus arrest warrant, etc.). See Section I, supra; see also Reply to Brief to FOIC at 6-8, App. 1 at A-509-511; Reply to Brief of Intervenor Defendant Anike Niemeyer at 4-7, App. 1 at A-518-521.

As such, The Trial Court erred in not finding that the FOIC acted arbitrarily and capriciously in violation of Conn. Gen. Stat. § 4-183(j) when in its decision it required Plaintiffs/Appellants to provide (a) evidence that an actual law enforcement action was pending, and (b) multiple witnesses to testify about any prospective law enforcement action resulting from the murder investigation.

IV. There was substantial evidence in the record of a prospective law enforcement action.

Plaintiffs/Appellants provided the FOIC with substantial evidence of a of a prospective law enforcement action. To that end, Plaintiffs/Appellants presented the unrefuted, credible, and well-founded testimony of Detective Sudock as to what the prospective law enforcement action would be, i.e., a murder prosecution, and that it would make it "extremely more difficult" to make an arrest and to prosecute the case if the records were disclosed. Sudock Testimony, Record at 098: 15-25, 099: 1-2, App. 1 at A-176-177. There was **no evidence to the contrary.**

Despite this, Niemeyer maintains that the FOIC was "plainly correct" when it determined that Plaintiffs/Appellants "presented only speculation that the requested records would ever be used in a prospective law enforcement action." Intervenor Brief at 26-27 (internal quotations omitted). In support of this argument, Niemeyer claims that Detective

Sudock could only offer speculation and/or "had no idea what a future law enforcement action could possibly be." Id. at 27. However, the testimony she relies on for this position was taken out of context.

In the testimony in question, Detective Sudock had been asked to specify whether the disclosure would prejudice a search warrant or an arrest warrant. No FOIC decision has ever required the police department to identify the precise step in the process that would be compromised by the disclosure of the evidence, and that was what Detective Sudock was being asked to do. His reluctance to "speculate" as to whether it would be a search warrant or an arrest warrant that would be compromised does not mean that all of his testimony about prejudice or prospective law enforcement actions was merely speculative. The FOIC also contends that there was no suspect, but Detective Sudock has made clear that there is a suspect. There is not enough evidence at this moment in time to charge that individual, but if sufficient additional information is obtained, the Madison Police Department would arrest that individual and pursue a murder prosecution. Sudock Testimony, Record at 098: 15-25, 099: 1-2, 113: 9-16, 136: 1-25, 137: 1-7, App. 1 at A-176-177, A-191, A-214-215.

Detective Sudock clearly testified that given that a homicide had occurred, a prospective law enforcement action could be preparation of a future search warrant, preparation of a future arrest warrant, the ability to identify another suspect, and/or the identification of another scene. Id. Therefore, the FOIC's finding that there was not substantial evidence in the record a prospective law enforcement action was not only incorrect but based on clear mistakes of fact as discussed above.

Accordingly, the Trial Court erred in upholding the FOIC's finding that there was not substantial evidence in the record that the requested records were to be used in a prospective law enforcement action.

V. Niemeyer's brief repeatedly mischaracterizes or misrepresents the testimony in this case.

As was the case with the FOIC's brief, Niemeyer's brief makes many of the same mischaracterizations of testimony. Rather than rehashing the same arguments, Plaintiffs/Appellants refer the Court to Section V of Plaintiffs/Appellants Reply to FOIC Brief. However, it bears repeating that an examination of Detective Sudock's testimony does not confirm that the Madison Police Department had "nothing" as Niemeyer repeatedly claims throughout her brief. Niemeyer Brief at 1, 3, 4, 17, n. 2, 28.

Indeed, Detective Sudock repeatedly testified that the case has always remained open, and he and others continued to investigate it. In fact, Detective Sudock testified that he was currently investigating the murder and that **one week prior** to the FOIC hearing, new information was obtained:

> Q: *Do you recall that last time you were either analyzing data or looking at a new possible lead in this case*?
>
> A: **Yes. Last week we had information on this investigation. Last week.**

Sudock Testimony, Record at 103: 2-6, App. 1 at A-181 (emphasis added); see also Id. at 118-19, App. 1 at A-196-197.

Niemeyer bases her claim that Plaintiffs/Appellants had nothing on Detective Sudock's conversation with the victim's son. However, in his conversations with the Mr. Hamburg, Detective Sudock intentionally did not share with him or anyone else in his family certain

information that was "critical to prosecuting the case." Id. at 65: 9-25, App. 1 at A-175. His testimony was as follows:

> Q. **When you met with Madison Hamburg did you share all the information you knew and had on the case with him**?
>
> A. **No, sir**.
>
> Q. **Did you, when you met with any member of the Hamburg family, did you share any and all information you had on the case**?
>
> A. **No, we do not**.
>
> Q. And why would you not do that?
>
> A. **There's information contained in those files that only the perpetrator of this crime would know, and if that information – if we presented that information and it got out into the public it allows for suspects, perpetrators to create alibis. They could also use that information to influence or intimidate witnesses. So there's always information that's not revealed that's critical to prosecuting a case**.

Id. (emphasis added). Therefore, the up-to-date status of the investigation was intentionally withheld from Mr. Hamburg during the 2019 meeting, and at that time, up to today, the investigation remains open and active.

VI. Whether Plaintiffs/Appellants established that the disclosure of the requested records would prejudice a prospective law enforcement action is not at issue in this appeal.

While Plaintiffs/Appellants maintain that there is sufficient evidence in the record establishing that the release of the requested records would prejudice the investigation, this issue is not subject to this appeal. Indeed, because the Trial Court upheld the FOIC's finding that there was substantial evidence in the record that a prospective law enforcement action was purely speculative, it did not address Plaintiffs/Appellants' "**argument that the FOIC erred when it concluded that [Plaintiffs/Appellants] had not met its burden of proving prejudice**." Memo. Of Decision at 21, n. 7., App. 1 at A-546 (emphasis added). Accordingly,

the Trial Court did not make a finding on the prejudice prong of the analysis. Therefore, Plaintiffs/Appellants' initial brief and this Reply brief focus on the reasons why the Trial Court erred in finding that the requested records were not going to be used in a prospective law enforcement action.[2]

VII. Conclusion.

For the foregoing reasons, as well as those set forth in Plaintiffs/Appellants' initial Brief, Plaintiffs/Appellants the Town of Madison, the Town of Madison Police Department, and its Chief of Police John Drumm, urge this Court to reverse the decision of the Trial Court.

PLAINTIFFS/APPELLANTS
JOHN DRUMM, CHIEF OF POLICE;
TOWN OF MADISON POLICE
DEPARTMENT; TOWN OF MADISON

By: /s/ Floyd J. Dugas, Esq.

Floyd J. Dugas, Esq.
Berchem Moses PC
75 Broad Street
Milford, CT 06460
(203) 783.1200
fdugas@berchemmoses.com
Juris No.: 22801

[2] Moreover, Niemeyer's attempt at painting Plaintiffs/Appellants' actions after the FOIC decision was issued as inappropriate is misplaced. Plaintiffs/Appellants' actions were totally appropriate, and the Madison Police Department should not be penalized for their good faith attempt at providing additional documents prior to their appeal of the FOIC decision. See also Plaintiffs/Appellants' Reply to FOIC Brief, Section VI.

CERTIFICATION OF SERVICE AND COMPLIANCE

In accordance with Connecticut Rules of Appellate Procedure §§ 67-2(g) and (i), the undersigned, counsel for Plaintiffs/Appellants in the above appeal, certifies as follows:

A copy of the electronically filed Reply Brief has been electronically delivered to all counsel of record listed below, to wit, Valicia Dee Harmon, Esq., at her email address, Valicia.harmon@ct.gov, and David Schulz, Esq., at his email address, david.schulz@yale.edu. Said document does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court or case or law;

A paper copy of Plaintiffs/Appellants' Reply Brief, as submitted, has been sent to each counsel of record, to wit, Valicia Dee Harmon, Esq., Freedom of Information Commission of the State of Connecticut, 18-20 Trinity Street, Hartford, CT 06106, and David Schulz, Esq., Media Freedom and Information Access Clinic, Yale Law School, 127 Wall Street, P.O. Box 208215, New Haven, CT 06520 in compliance with § 67-2;

A paper copy of Plaintiffs/Appellants' Reply Brief, as submitted, has been sent to the Honorable Daniel J. Klau, Connecticut Superior Court, 90 Washington Street, Hartford, CT 06106, the judge who rendered a decision that is the subject matter of this appeal;

That the Reply Brief being filed with the Appellate Clerk is a true copy of the reply brief that was submitted electronically pursuant to § 67-2(g) and does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court or case or law; and

that, to the undersigned's best knowledge and belief, the reply brief complies with all provisions of this rule.

Dated at Milford, Connecticut this 17th day of May, 2022.

/s/ Floyd J. Dugas
Floyd J. Dugas, Esq.