FIcaP #2011-025
FIC#2011-022
Atty: VDH

NO. CV 11 6012370S	:	SUPERIOR COURT
CT DEPT. OF EMERGENCY SERVICES AND PUBLIC PROTECTION	:	
	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION, ET AL.	:	AUGUST 10, 2012

MEMORANDUM OF DECISION

The plaintiff, department of emergency services and public protection (the department), appeals from an August 10, 2011 final decision of the defendant freedom of information commission (FOIC) holding that the defendant American News and Information Services, Inc. (American News) may inspect, without fee, accident reports on file with the department.[1]

American News complained to the FOIC and after hearing, the FOIC made the following relevant findings of fact and order:

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2. It is found that, by facsimile dated December 22, 2010, counsel for the complainant [American News] made a request to the respondents to inspect all Police Accident Reports prepared and signed by either Trooper Charles M. Lavoie or Trooper First Class

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[1] The department is aggrieved by the order of the FOIC that it provide inspection to American News without charge.

Timothy Begley as the investigating officer.

3. It is found that, by letter dated December 30, 2010, the respondent Commissioner's staff informed the complainant that pursuant to § 29-10b, G.S., "the fee for a search/copy of each investigative report is $16.00," and that upon receipt of a check for $6,352.00 for 397 reports, the respondents would process the complainant's request. The respondents also enclosed for the complainant, without charge, a list of the case numbers of the relevant reports, "in case you want to narrow the scope to specific incidents."

4. By letter dated December 30, 2010 and filed with the Commission on January 4, 2011, the complainant appealed to the Commission, alleging that the respondents "denied me access to inspect the records pending its receipt of $6,352.00."

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9. At the May 10, 2011 hearing, the complainant introduced evidence suggesting that both Trooper Charles M. Lavoie and Trooper First Class Timothy Begley had given the same municipal police officer lenient warnings when on two separate occasions the municipal police officer was involved with early morning one car accidents involving utility poles. Moreover, the reports in each case did not state the location of the municipal police officer when he was interviewed by the state police. The complainant argued that the search fee in excess of $6,000 was a disincentive to performing a comprehensive review of all Police Accident Reports prepared by Trooper Charles M. Lavoie and Trooper First Class Timothy Begley. It could be logically inferred that the complainant wishes to perform a comparative analysis of the reports prepared by Trooper Charles M. Lavoie and Trooper First Class Timothy Begley in order to judge whether preferential treatment was

accorded to the municipal police officer.

10. At the May 10, 2011 hearing, the respondents argued that the 1992 General Assembly intended that § 29-10b, G.S., establish a fee for a search for an accident or investigation report. The respondents reasoned that a $16.00 fee was self-evidently in excess of the cost of copying and must have been intended by the General Assembly to reimburse the respondents for the cost of search and retrieval.

11. It is found that the basic form of each accident report is on a electronic database, but that statements and other attachments to individual reports are maintained exclusively in paper files. The paper files must be manually retrieved as part of a search.

12. On the face of the Freedom of Information Act statutes ("FOIA"), there is no fee for a person seeking to inspect records pursuant to § 1-210(a), G.S. Section 1-212, G.S., establishes fees to receive and make copies of records, but establishes no fee for inspection of records. . . .

13. The question of this case, then, is whether § 29-10b, G.S., establishes an exception to the general rule of inspection of public records without a fee where there is a request to inspect accident or investigative reports maintained by the respondents?

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16. . . . [I]t is concluded that § 29-10b, G.S., is not applicable to the present case because there is neither a search "which results in no document being produced," as described in subsection (1), nor "a copy of an accident or investigative report," as described in subsection (2). . . .

17. It is concluded that the respondents violated § 1-210(a), G.S., when they failed to allow the complainant to inspect

the requested records without charge.

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 permit inspection of accident or investigative reports without charge.

The department has appealed from this final decision solely on the ground that the American News' right to inspect is subject to General Statutes § 29-10b that provides: "Fees for searches and copies. The Commissioner of Public Safety shall charge the following fees for the item or service indicated: (1) Each search of the record files made pursuant to a request for a copy of an accident . . . report which results in no document being produced, six dollars, and on and after July 1, 1993, sixteen dollars. (2) Each copy of an accident . . . report, six dollars, and on and after July 1, 1993, sixteen dollars."

The Appellate Court has recently stated the standard of review as follows: "We begin by setting forth our well established standard of review of agency decisions. 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. . . . [A]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is ordinarily involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of discretion

. . . . Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference.[2] . . . [I]t is for the courts, and not administrative agencies, to expound and apply governing principles of law." (Citations omitted; internal quotation marks omitted). *Commissioner of Public Safety* v. *Freedom of Information Commission*, 137 Conn. App. 307, 311-12, __ A.3d __ (2012). See also *Tompkins* v. *Freedom of Information Commission*, 136 Conn. App. 496, 504, 46 A.3d 291 (2012).

Commissioner of Public Safety also has relevancy to the interpretation of a statute in the context of the Freedom of Information Act. "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

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[2] The only exception to this rule is where the agency's interpretation has been "time tested." *Christopher R.* v. *Commissioner of Mental Retardation*, 277 Conn. 594, 603, 893 A.2d 431 (2006). The only reference to an official determination by the department is in the department's brief to this court that states that the department has taken this position since the passage of § 29-10b. At an oral argument on the stay, the department referred to *Dept. of Public Safety* v. *Freedom of Information Commission*, Superior Court, judicial district of Hartford, Docket No. 96-0565901 (August 25, 1997, *McWeeny, J.*), aff'd., per curiam, 247 Conn. 341, 720 A.2d 1111 (1998). This case approves of charges authorized by § 29-10b, but does not decide whether inspections alone are subject to a fee. *Christopher R.*, supra, 277 Conn 604, n.9 rejects deference to the agency under similar circumstances.

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 the existing legislation and common law principles governing the same general subject matter. . . .

"[P]ursuant to § 1-2z, [the court is] to go through the following initial steps: first, consider the language of the statute at issue, including its relationship to other statutes, as applied to the facts of the case; second, if after the completion of step one, [the court] conclude[s] that, as so applied, there is but one likely or plausible meaning of the statutory language, [the court] stops there; but third, if after the completion of step one, [the court] conclude[s] that, as applied to the facts of the case, there is more than likely or plausible meaning of the statute, [the court] may consult other sources, beyond the statutory language, to ascertain the meaning of the statute. . . .

"It is useful to remind ourselves of what, in this context, we mean when we say that a statutory text has a plain meaning, or, what is the same, a plain and unambiguous meaning. [Our Supreme Court] has already defined the phrase. By that phrase we mean the meaning that is so strongly indicated or suggested by the language as applied to the facts of the case, without consideration, however, of its purpose or the other, extratexual sources of meaning . . . that, when the language is read as so applied, it appears to be *the* meaning and appears to preclude any other likely meaning. . . . Put another way, if the text of the statute at issue, considering its relationship to other statutes, would permit more than one likely or plausible meaning, its meaning cannot be said to be plain and unambiguous." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Commissioner of Public Safety* v. *Freedom of Information Commission,* supra, 137 Conn. App. 312-13.

The department argues that § 29-10b applies to the inspection of accident reports, when a copy is not requested, and therefore inspection may be denied until the statutory fees are paid by the requestor. According to the department, this statute operates as an exception to the general rule of § 1-210 (a) that the public should have the right to inspect public records without charge. The department contends that the General Assembly's increasing the fees to $16 reflects its need to cover searches alone. At the hearing, the department's witness testified that obtaining the accident reports for inspection of this

magnitude was time-consuming for the staff. (ROR, pp. 62, 82).

On the other hand, under the methodology for construction of statutes set forth above, the court finds that § 29-10b plainly and unambiguously provides that the charge for a search is permitted when one requests *a copy* of an accident report. Indeed § 29-10c, mirroring FOIA § 1-210 (a), states that accident reports "shall be open to public inspection." The department's own witness agreed with the complainant at the FOIC hearing that the statute itself does not provide for a fee when one merely asked for inspection. (ROR, p. 59).

Having determined the plain meaning of the statute, the court cannot turn to the department's references to extratextual materials or presumptions drawn from legislative history. See *Germain* v. *Manchester*, 135 Conn. App. 202, 204, n.3, 41 A.3d 1100 (2012) (a FOIA statute was unambiguous and extratextual evidence would not be considered). The plain language of § 29-10b does not apply to the present factual situation. See *Hartford Courant Co.* v. *Freedom of Information Commission*, 261 Conn. 86, 100, 801 A.2d 759 (2002).

The FOIC's final decision is not arbitrary, illegal or unreasonable. Therefore the department's appeal is dismissed.[3]

Henry S. Cohn, Judge

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[3] The court in this opinion has not considered an issue raised only in the defendant's brief and at oral argument, and not before the FOIC-- that the department must make a copy of an accident report whenever it receives a request for inspection, because the department must first scrutinize the report. This scrutiny is required to insure that the record sought is not subject to mandatory redaction. See department brief at note 4. The resolution of this contention of the department must await its proper presentation to the FOIC. *Burnham* v. *Administrator*, 184 Conn. 317, 323 439 A.2d 1008 (1981).