BEFORE THE CONNECTICUT

FREEDOM OF INFORMATION COMMISSION

In re Complaint by ABLECHILD, Complainant, *against* CHIEF MEDICAL EXAMINER, STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER; AND STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER, Respondents.	**ABLECHILD'S OBJECTIONS TO PROPOSED FINAL DECISION** Docket No. FIC 2013-197

ABLECHILD'S OBJECTIONS TO PROPOSED FINAL DECISION

Complainant AbleChild, by counsel, respectfully submits the following Objections to the Hearing Officer's Proposed Final Decision (hereinafter "Proposed Decision") issued September 25, 2013. For the reasons stated below, and the points of law raised in AbleChild's prior submissions now resubmitted before the full Commission, AbleChild respectfully requests that the Commission order the immediate release of OCME records concerning decedent Adam Lanza to AbleChild.

BACKGROUND

1. AbleChild has no objection to paragraphs 1-16 in the Proposed Final Decision.

2. AbleChild hereby objects to paragraphs 17 and 24 to the extent those paragraphs suggest that the Commission on Medicolegal Investigations actually defined the phrase "legitimate interest" in rulemaking or otherwise. It did not.

3. AbleChild hereby objects to paragraph 20 of the Proposed Decision to the extent the Hearing Officer implies that the OCME complied in any substantial way with AbleChild's request.

4. For the following reasons stated fully in the AbleChild's argument below, AbleChild hereby objects to paragraphs 21 through 31 of the Proposed Final Decision to the extent the Hearing Officer's decision violates Connecticut and Federal law.

5. On August 22, 2013, AbleChild appeared before the Commission for a hearing in this contested case. AbleChild presented facts and argument concerning its interest in Adam Lanza's records on file with the OCME. The decedent Adam Lanza is the sole person responsible for the murders committed at the Sandy Hook Elementary School in Newtown, Connecticut on December 14, 2012. AbleChild requested "[t]he complete autopsy report, toxicology reports, and prescription drug history possessed by [the OCME] for and concerning decedent Adam Lanza." *See* Proposed Decision at ¶ 2. AbleChild's request was supported by 263 Newtown, Connecticut residents who all sought access to the OCME's information. *See* AbleChild Hearing Exhibit 3.

6. On March 19, 2013 the OCME denied AbleChild's request for Adam Lanza's records solely on grounds that AbleChild was not one of the persons whom OCME would consider eligible for such records. *See* Proposed Decision at ¶ 3.

7. The applicable statute (Section 19a-411(b)) and the OCME's operative regulation (Section 19a-401-12(c)(2)) both *require* disclosure of OCME files to those with "legitimate

interests" in same. *See* Conn. Gen. Stat. § 19a-411(b) ("Any person may obtain copies of such records upon such conditions and payment of such fees as may be prescribed by the commission, except that no person with a legitimate interest in the records shall be denied access to such records…"); Regs. Conn. State Agencies § 19a-401-12(c)(2) ("If the requester of the records is a member of the general public, he or she may obtain access to records if the person has a legitimate interest in the documents and no court has issued an order prohibiting disclosure pursuant to section 19a-411(c) of the Connecticut general statutes").

8. Without any public meeting and without notice and comment rulemaking, the OCME unilaterally truncated the universe of those with a "legitimate interest" to a small subset:

> In accordance with the regulations of the Commission on Medicolegal Investigations, the complete records of all investigations are made available to the family of the deceased, to any federal, state or municipal governmental agency or public health authority investigating the death; to insurance companies with a legitimate interest in the death; to all parties in civil litigative proceedings, and to treating physicians. In addition, records may be made available to any other individual with the written consent of the family or by court order. Legitimate scientific research organizations may also have access to the records provided the identity of the decedents are not published or otherwise made public. Records are not otherwise open to the general public.

(hereinafter, "Next of Kin Rule"). The Hearing Officer explained that "respondents denied AbleChild's request for records because it did not fit into any of the … categories" in OCME's Next of Kin Rule. *See* Proposed Decision at ¶ 3.

9. The Hearing Officer found that "AbleChild is a non-profit organization, which functions as a public interest group and media organization." The Hearing Officer further found that:

> [AbleChild's] mission is to ensure the safety of parents and caregivers when those for whom they care have been diagnosed as mentally ill and are

> prescribed drug treatments that may induce adverse events, including thoughts of murder or suicide. [AbleChild] contents that it is critical to its interests that it be able to determine whether the killings committed by Mr. Lanza in Newtown, Connecticut in December 2012 were in any way causally connected to prescription medication.

See Proposed Decision at ¶ 13. "AbleChild … contends that the results of its endeavors will better enable caregivers to work with health care professionals in choosing therapies for the treatment of mental illness, and will promote a more informed debate on measures to prevent tragedies like the kind that occurred in Newtown, Connecticut." *Id.*

10. The Hearing Officer concluded that "AbleChild has requested the records described … as a member of the general public." *See* Proposed Decision at ¶ 14.

11. The Hearing officer erroneously concluded that the "Commission on Medicolegal Investigations has defined a person with a legitimate interest…" *See* Proposed Decision at ¶ 17. No facts in the record support the conclusion that the Commission on Medicolegal Investigations ever defined the term "legitimate interest" at all. In fact, at hearing, counsel for the OCME could offer no explanation for the origination of the OCME's so-called definition of "legitimate interest." *See* Video Recording of Contested Case Hearing, FIC 2013-197 (Aug. 22, 2013) (beginning at 1:10.30).[1] If anything, the record shows that the OCME created its "Next of Kin" rule sua sponte without the benefit of a public meeting, notice and comment rulemaking, or any input from the Commission of Medicolegal Investigations.

12. AbleChild explained at hearing, and in its briefing, that the above Next of Kin Rule was adopted in violation of Conn. Gen. Stat. §§ 1-225 and 4-168.without the required public meeting and without notice and comment rulemaking and is thus illegal. *See, e.g.,*

[1] *available at*, http://www.ctn.state.ct.us/ctnplayer.asp?odID=9336.

Proposed Decision at ¶ 19 ("[t]he respondents do not claim that the procedures set forth in the UAPA … were followed in adopting the Next of Kin Rule").

13. At hearing, respondents' counsel admitted that public persons not falling within the OCME's listed categories were permanently foreclosed and denied access to OCME records regardless of their interest in those records. Video Recording of Contested Case Hearing, FIC 2013-197 (Aug. 22, 2013) (beginning at 1:10.30).[2]

14. The Hearing Officer observed that "respondents do not claim that the procedures set forth in the UAPA with regard to formal rule-making were followed in adopting the Next of Kin Rule." *See* Proposed Decision at ¶ 18.

15. The Hearing Officer noted that AbleChild "contends that the Chief Medical Examiner's posture is that of an unbridled official who can permit or deny access to the requested records, or to information contained therein, as he sees fit. The complainant contends that such unchecked discretion violates the Free Speech Clause of both the Connecticut and United States Constitutions." *See* Proposed Decision at ¶ 27. The Hearing Officer did not address those arguments in the Proposed Decision.

16. Instead, the Hearing Officer deferred to the OCME's decision to withhold records from AbleChild. In her Proposed Decision, the Hearing Officer stated that

> Where the main issue, as in this case, turns not so much on the agency's finding of fact, but on its interpretation of the legal requirement under the statutes and regulations it is charged with enforcing, it is found that deference to the agency's interpretation is sometimes merited.

See Proposed Decision at ¶ 25.

17. The Hearing Officer also ruled that "if this Commission were to find that AbleChild has a legitimate interest in the requested records as a member of the general public, it

[2] *available at*, http://www.ctn.state.ct.us/ctnplayer.asp?odID=9336.

would be permitting AbleChild more access than is allotted to members of scientific or research groups, as these groups, unlike the general public, are required to keep the identity of the deceased confidential." Proposed Decision at ¶ 26.

18. The Hearing Officer did not reach or determine the merits of AbleChild's claims, including the following claims: (1) OCME's Next of Kin Rule is unlawful because it was promulgated without a public meeting as required by Conn. Gen. Stat. § 1-225; (2) OCME's Next of Kin Rule is unlawful because it was promulgated without notice and comment rulemaking as required by Conn. Gen. Stat. § 4-168; (3) neither the Hearing Officer nor this Commission can fulfill its statutory duties and oaths of office by upholding or condoning non-disclosure of the requested records because doing so causes that officer and this Commission to violate the Freedom of Information Act (Conn. Gen. Stat. § 1-205), Public Meeting Act (Conn. Gen. Stat. § 1-225); Uniform Administrative Procedure Act (Conn. Gen. Stat. § 4-168), and the Equal Protection (U.S.C.A. CONST. Amend. XIV) and Free Speech Clauses (U.S.C.A. CONST. Amend. I) of the United States Constitution; (4) OCME's decision to deny AbleChild's is based on prohibited speaker-based and viewpoint-based discrimination in violation of the Free Speech Clauses of the Connecticut and United States Constitutions (*see, e.g., Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995) ("[v]iewpoint discrimination is . . . an egregious form of content discrimination [forbidden by the First Amendment]")); (5) OCME's decision excludes AbleChild from access to records but allows others via a categorical approach which affords those with less of a legitimate interest access to the records in violation of the the Equal Protection Clauses of the Connecticut and United States Constitutions (*see, e.g., Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) ("The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction

against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.")); and (6) the OCME's selective release of Lanza's records is arbitrary and capricious agency action under the Connecticut Administrative Procedure Act (Conn. Gen. Stat. § 4-183(j)(6)), and waived the OCME's objections here.

ARGUMENT

Following a hearing on August 22nd, AbleChild submitted a Post-Hearing brief on September 12, 2013. In reliance on well established precedent, that brief confirmed that (1) the FOIC has jurisdiction and authority to grant AbleChild's requested relief on all claims; (2) that AbleChild has a legitimate interest in Adam Lanza's records; and (3) that the OCME's Next of Kin rule is unlawful and can be afforded no deference.

The Hearing Officer's Proposed Final Decision cannot be upheld because it violates the Connecticut UAPA (Conn. Gen. Stat. §§ 4-168, 4-183) and the Connecticut Freedom of Information Act (§ 1-205). It violates the UAPA and the FOICA by upholding unlawful non-disclosure of agency records. The Hearing Officer chose not to address the legality of the OCME's Next of Kin Rule, which it recited as the basis for its decision to withhold the requested documents. The Hearing Officer also refused to address the legality of the OCME's overt speaker-based and viewpoint-based acts of discrimination, which it plainly stated as additional bases for its decision to withhold the requested documents. Under the FOIC and the UAPA, the Hearing Officer, and this Commission do not have authority to refuse to decide the legality of agency record withholding. *See* Conn. Gen. Stat. § 1-205(d); *Wilson v. Freedom of Information Com'n*, 181 Conn. 324, 339-40 (1980). Rather, it is the irreducible duty and oath of the Hearing Office and the members of the Freedom of Information Act Commission that compels it to

decide the legality of agency withholding of documents. On the merits, there can be no doubt that the Next of Kin Rule is illegally (never lawfully adopted) and its application in this case is unconstitutional, in violation of the Connecticut and United States Constitution's Free Speech and Equal Protection Clauses. *See* AbleChild's Post Hearing Brief (filed Sep. 12, 2013), at 31-48.

The Hearing Officer's Proposed Decision shirks her irreducible responsibility by deferring to the agency's initial decision without evaluating the legality of that decision, thus giving AbleChild no meaningful review as is required by the Freedom of Information Act and the Uniform Administrative Procedure Act. *See* Conn. Gen. Stat. §§ 1-205(d), 4-167, 4-183(j); *Wilson*, 181 Conn. at 339-40. That decision cannot stand in law and should be reversed by this Commission.

In reversing the Hearing Officer's decision, the FOIC should reach the merits of this dispute, which are fully briefed, and should find, consistent with that briefing, that the OCME's bases for non-disclosure of the requested records in this case are unlawful under the Open Meetings Act (Conn. Gen. Stat. § 1-225); the UAPA (Conn. Gen. Stat. § 4-168); the Connecticut and United State's Constitutions' Free Speech Clauses (U.S.C.A. CONST. Amend. I & Conn. Const. art. I, § 4; and the United States Constitution's Equal Protection Claus (U.S.C.A. CONST. Amend. XIV). On those ample grounds, the Commission should order the immediate release of the requested records. Refusing to decide on the merits is not a lawful option for this Commission and is, instead, a fundamental abuse of agency discretion. *See* Conn. Gen. Stat. §§ 1-205(d), 4-183(j).

A. The FOIC Is Obliged to Interpret the Laws Governing Disclosure of Records

The Proposed Decision erroneously abdicates the Commission's duty to resolve administrative appeals involving access to records under Connecticut law. By categorically deferring to the OCME's Next of Kin Rule, the Commission abandoned its role as the body responsible for resolving questions of fact and law pertaining to public records. *See* Conn. Gen. Stat. § 1-205(d). The FOIC has jurisdiction and a statutory obligation to resolve those questions. *See Wilson v. Freedom of Information Com'n*, 181 Conn. 324, 339-40 (1980) ("Where the nature of the documents, and, hence, the applicability of an exemption, is in dispute it is not only within the commission's power to examine the documents themselves, it is contemplated by the act that the commission do so"). The Hearing Officer proposes to defer to the OCME's decision regarding the "legitimate interest" under Conn. Gen. Stat. § 19a-411(b) and Conn. Regs. State Agencies § 19a-401-12(c)(2). Because it is the fundamental duty of the FOIC to decide the legality of agency decisions to withhold requested records, the FOIC acts unlawfully and in dereliction of its duty when it refuses to decide.[3] Complaint to the FOIC is the statutorily mandated avenue to contest agency decisions to withhold public documents and is the means by which the State of Connecticut adjudicates such contests in the first instance.[4] There is no legal

[3] At one point, the Hearing Officer proposes that a decision on AbleChild's claims is for the Courts, not the Commission. *See* Proposed Decision at ¶ 28. That position is surprising given that the Commission has argued in prior cases that the Commission, and not the Courts, has jurisdiction and authority to determine whether the agency has properly interpreted law. *See, e.g., Wilson v. Freedom of Info. Comm'n*, 181 Conn. 324, 341-42 (1980). The scope of review before the Courts is generally limited, making the Hearing Officer's proposal appear at odds with governing law. *See, e.g., Lash v. Freedom of Info. Comm'n*, 300 Conn. 511, 517 (2011).

[4] Exhaustion of remedies to contest the denial of access to public records is satisfied through appeal to the FOIC. *See* Conn. Gen. Stat. Ann. § 1-206(b)(1); *Messenger v. Connecticut Dep't of Motor Vehicles*, 0115796, 1993 WL 498988 (Conn. Super. Ct. Nov. 19, 1993) ("[1-206(b)] specifically sets forth the proper appeal procedure for a person who has been denied access to public records") (unpublished); *Pane v. City of Danbury*, CV97347235S, 2002 WL 31466332 (Conn. Super. Ct. Oct. 18, 2002) (unpublished).

authority for the FOIC to refuse to decide. On the merits, as explained in the briefs filed with the Hearing Officer, the Commission should order the OCME to produce the requested records forthwith.[5]

In her Proposed Decision, the Hearing Officer accepts that the Commission has jurisdiction over this contested case. *See generally* Proposed Decision at ¶¶ 21-28. The Commission's jurisdiction is consistent with the *Galvin* decision. *See Galvin v. Freedom of Information Com'n*, 201 Conn. 448, 454-55 (1986). In *Galvin*, the Connecticut Supreme Court addressed the OCME's authority to withhold records under regulatory section 19a-401-12(c)(1). *Id.* The *Galvin* complainant had asked the FOIC to determine whether the OCME's decision to withhold documents under statutory Section 19a-411(b) was lawful. *Id.* The Court unequivocally held that the Commission's enabling authority had "preserved the FOIC's jurisdiction to act in [the] case." *Id.* at 454. Thus, the FOIC possesses jurisdiction over contested cases that proceed under Conn. Gen. Stat. § 19a-411 and regulations that implement that section.

The FOIC is the administrative body charged with determining the parties' relative rights and obligations under Connecticut records laws. *See, e.g.,* Conn Gen. Stat. § 1-205(b) ("[t]he commission *shall* … promptly review the alleged violation … and issue an order pertaining the same") (emphasis added). The FOIC routinely construes the statutory and regulatory provisions of other agencies, and that precedent conflicts with the Hearing Officer's proposed deference in this case. *See, e.g.*, *American News and Information Services v. Dept. of Public Safety*, Docket

[5] On September 12, 2013, AbleChild submitted a Supplemental Brief that addressed legal issues raised during the August 22, 2013 hearing. In that brief AbleChild explained that the FOIC has jurisdiction and authority to rule on all of AbleChild's legal claims. AbleChild also explained that it possesses a bona fide, legitimate interest in Adam Lanza's records, and that the OCME's unlawful Next of Kin Rule should be afforded no deference in this proceeding. AbleChild hereby renews all of those points and incorporates its prior pleadings by reference.

No. FIC 2011-002 (interpreting Title 29, which concerns Public Safety and State Police); *The Greenwich Time v. Dept. of Public Health*, Docket No. FIC 2010-026; *Faroulh Dorlette v. Connecticut Dept. of Correction*, Docket No. FIC 2010-284. The FOIC has stricken regulatory actions withholding documents when inconsistent with the FOIC Act and the enabling acts of the OCME, all without deferring to the underlying administrative decisions. *See, e.g., Nancy Rice v. Kent Haydock, et al.*, Docket No. 2011-176.

The FOIC has "full authority to determine...the propriety of disclosure [of public records]," and that authority exists regardless if an agency adopts criteria for disclosure concerning its own records. *See Bd. of Educ. for City of New Haven v. Freedom of Info. Comm'n*, 545 A.2d 1064, 1070 (Conn. 1988); Conn. Gen. Stat. Ann. § 1-205(d); *Wilson v. Freedom of Info. Comm'n*, 435 A.2d 353, 362 (Conn. 1980) (holding that the FOIC is empowered to investigate "all alleged violations" of Connecticut's Freedom of Information Act). Further, the FOIC has specific authority to determine the meaning of broad terms where the legislature has not provided a definition. *See Ottochian v. Freedom of Info. Comm'n*, 604 A.2d 351, 354 (Conn. 1992) ("When the legislature uses a broad term ... in an administrative context, without attempting to define that term, it evinces a legislative judgment that the agency should define the parameters of that term on a case-by-case basis"); *Wiese v. Freedom of Info. Comm'n*, 82 Conn. App. 604, 608 (2004); *Carpenter v. Freedom of Info. Comm'n*, CV 980577840, 1998 WL 886615 (Conn. Super. Ct. Dec. 8, 1998) *aff'd*, 755 A.2d 364 (2000); *Sinchak v. OCME*, Docket No. FIC 2005-035 (finding that complainant had not met the conditions set forth under 19a-401-12(f), and therefore, the records could not be disclosed).[6] Such authority allows for

[6] The FOIC consistently makes determinations concerning the nature of public records when parties to a contested case disagree on whether certain records may be disclosed. *See Wilson v. Freedom of Info. Comm'n*, 181 Conn. 324, 340, 435 A.2d 353, 362 (1980) (finding that

interpretation of all terms concerning disclosure regardless of whether such terms fall under statutes other than the FOIA. *See Cos Cob Volunteer Fire Co. No. 1, Inc. v. Freedom of Info. Comm'n*, 561 A.2d 429, 431 (Conn. 1989) (upholding FOIC's interpretation of term "operational" under Gen. Stat. § 7-314(b) to determine whether an entity was a public agency).

In *Carpenter*, for example, the FOIC determined whether school-related records were "records of teacher performance and evaluation." *Carpenter*, 1998 WL 886615 at 1. Such records were exempt from disclosure under Conn. Gen. Stat. Ann. § 10-151c. *Id.* No definition existed for that phrase, and the teacher argued that the requested records fell under a FOIA exemption. *Id.* at 3. The FOIC held that the records were not "records of teacher performance and evaluation," thus interpreting the meaning of regulatory language. *Id*. That interpretation of the FOIC was affirmed on appeal. *See Carpenter v. Freedom of Info. Comm'n*, 755 A.2d 364, 366 (Conn. 2000). Similarly, the phrase at issue in this case, "legitimate interest," is not defined by statute or regulation, and the FOIC is obliged to construe "legitimate interest" or, more particularly here, to determine if OCME acted wrongfully when it limited the availability of records to a subclass of individuals with "legitimate interests" in a way that reduced to a single proviso the wording duly promulgated by the Commission on Medicolegal Investigations in Section 19a-401-12(c)(2). *See Office of Health Care Access v. Freedom of Info. Comm'n*, CV030521573S, 2005 WL 1095361 (Conn. Super. Ct. Apr. 19, 2005) (unpublished) (rejecting the CT Office of Health Care Access' proposed meaning of statute that would frustrate lawful access to records).

Sec. 1-205(d) "anticipates that the commission will play a central role in resolving disputes administratively under the act"). The FOIC would be rendered feckless if it could not interpret the statutes of agencies concerning disclosure. *See* Conn. Agencies Regs. § 1-21j-3 ("The commission is generally empowered to exercise specified grants of authority for the administration of statutes that provide access to public records, public meetings, and other sources of public information, as set forth in the Freedom of Information Act").

If the FOIC adopts the Hearing Officer's Proposed Decision, it will establish a dangerous administrative precedent whereby other agencies may likewise demand that the FOIC defer to rules adopted sua sponte, without meritorious review of the legality of those rules as justifications for non-disclosure, thus effectively gutting the Freedom of Information Act and transferring the authority to decide records disputes from this Commission back to the agencies (returning the law to a state that existed before the FOIC Act was adopted).

The Hearing Officer suggests in paragraph 28 that the UAPA contemplates exhaustion of administrative remedies before the agency holding records and, therefore, that the FOIC may not be the best forum to address AbleChild's claims. *See* Proposed Decision at ¶ 28 n. 2. That conclusion is contrary to the statutory scheme which places appeals from agency decisions to withhold documents squarely in the FOIC. That conclusion would require all records requesters to first seek a declaratory judgment by the very agency that denied records before proceeding before the FOIC, a likely futile and costly procedure and one unprecedented—mandated by neither statute nor precedent. Rather, when an agency rejects a request for records, this Commission is the statutorily defined agency for complaint and relief and, therefore, this Commission is the appropriate agency to determine whether the OCME's decision not to disclose records violates the law. All appeals arising out of the non-disclosure of public records must be heard by the FOIC. *See* Conn. Gen. Stat. Ann. § 1-206(b)(1) ("Any person denied the right to inspect or copy records under section 1-210… may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission"). The OCME is a public agency, and its records are "public records." *See* Proposed Decision at ¶ 8 ("It is found that the records requested by the complainant are public records within the meaning of §§ 1-200(5), 1-210(a), 1-212(a), G.S."); *see also* Conn. Gen. Stat. Ann. § 1-200 (1), (5); *Sinchak v.*

OCME, Docket No. FIC 2005-035. AbleChild was not, therefore, required to pursue a declaratory judgment in lieu of an appeal to the FOIC. *See Hill v. State Employees Ret. Comm'n*, 851 A.2d 320, 325 (Conn. 2004) ("Declaratory rulings are not proper for review of an agency's prior administrative decisions"). Questions concerning the merits or "correctness" of an agency's decision to withhold records may be resolved "only by appeal" to the FOIC, and not through seeking a declaratory judgment. *See Young v. Chase*, 557 A.2d 134, 137-38 (Conn. 1989) (holding that declaratory action was inappropriate to determine whether the plan and zoning commission's decision to grant a modification for the location and height of a radio transmission tower).

This case proceeds from the OCME's denial of AbleChild's request for records. AbleChild's standing to litigate stems from that denial, and the issues *sub judice* arise from the OCME's invocation of its definitional rule against disclosure. AbleChild was not required to pursue a declaratory ruling prior to appealing the OCME's non-disclosure to the FOIC. Exhaustion of remedies to contest the denial of access to public records is satisfied through appeal to the FOIC. *See* Conn. Gen. Stat. Ann. § 1-206(b)(1); *Messenger v. Connecticut Dep't of Motor Vehicles*, 0115796, 1993 WL 498988 (Conn. Super. Ct. Nov. 19, 1993) ("[1-206(b)] specifically sets forth the proper appeal procedure for a person who has been denied access to public records") (unpublished); *Pane v. City of Danbury*, CV97347235S, 2002 WL 31466332 (Conn. Super. Ct. Oct. 18, 2002) (unpublished).[7] The FOIC consistently determines the legality of agency policies that limit access to public records without the necessity for commencement of

[7] Section § 4-176 of the UAPA does not replace the defined appeals process before the FOIC. *See LaCroix v. Bd. of Educ. of City of Bridgeport*, 199 Conn. 70, 78 (1986) ("where a statutory right of appeal from an administrative decision exists, an aggrieved party may not bypass the statutory procedure and instead bring an independent action to test the very issue which the appeal was designed to test") (internal citations omitted).

rulemakings at the agency or actions for declaratory judgment. Where, as here, a case develops through a request for records, there is a single, defined appeals process for the denial of access and that process is through an appeal to the FOIC. The statute and precedent demand an appeal directly to the FOIC. *See* Conn. Gen. Stat. Ann. § 1-206(b)(1); *Messenger v. Connecticut Dep't of Motor Vehicles*, 0115796, 1993 WL 498988 (Conn. Super. Ct. Nov. 19, 1993). AbleChild has pursued that required process. The FOIC is statutory obliged to render a decision on the merits of AbleChild's complaint.

B. The OCME's Decision Should Receive No Deference From This Commission

As AbleChild explained in more detail in its Post-Hearing brief at pages 31 through 48, the OCME Next of Kin Rule which discriminatorily favors certain "legitimate interests" over others violates law and cannot therefore be sanctioned by the FOIC. *See* AbleChild Post-Hearing Brief, at 31-48 (resubmitted before the Commission as Attachment C); *see also Salmon Brook Convalescent HomeInc. v. Comm'n on Hospitals & Health Care*, 177 Conn. 356, 366, 417 A.2d 358, 368 (1979) (holding that agency's "guidelines" were not adopted under the rule-making provisions of the UAPA and were thus "void and of no effect").

"Administrative agencies … are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon … the statutes vesting them with power and they cannot confer jurisdiction upon themselves…" *Fullerton v. Administrator, Unemployment Compensation Act*, 280 Conn. 745, 755 (2006). Thus, "it is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner… *It cannot modify, abridge, or otherwise change the statutory provisions ... under which it acquires authority unless the statutes expressly grant that power*." *Id.* at 755 (emphasis added) (quoting

Tele Tech of Connecticut Corp. v. Dept. of Public Utility Control, 270 Conn. 778, 789 (2004)). Put simply, the OCME has no statutory authority to prioritize certain legitimate interests over others. The text of Section 19a-411(b) expressly states that, while the OCME may promulgate regulations governing the method by which citizens seek records, "no person with a legitimate interest in the records shall be denied access to such records…" *See* Conn. Gen. Stat. § 19a-411(b). An analysis of a requester's "legitimate interest" must proceed on a case-by-case basis so that the OCME can determine the precise interest at stake. *See Meriden Record Co. v Browning*, 6 Conn. Cir. Ct. 633, 634-35 (1971) (holding that "legitimate interests" can be of all kinds); Opinion of the Connecticut Attorney General, 1971 WL 21766 (Conn. A.G. 1971). That analysis never occurred in this case.

The OCME never considered AbleChild's interest in Adam Lanza's records. At the time OCME issued its initial decision, the agency never determined, for example, whether that interest was equivalent to, or perhaps more significant, than the interests the OCME had already deemed legitimate under its unlawful Next of Kin Rule. The OCME's rule therefore substantially changed its obligations under the law, which obligations required it to consider whether AbleChild had a legitimate interest in records based on AbleChild's actual submission, not on a categorical inclusion/exclusion approach. By deferring wholesale to that decision, the Hearing Officer's proposed decision upholds the OCME's illegality, making the decision itself unlawful for the same reasons.

At a minimum, even assuming that OCME had authority to unilaterally modify the enabling law (it does not), the Connecticut UAPA required that the OCME change the legal requirements through administrative procedures that are designed to provide the public, like AbleChild's members, with procedural safeguards and an opportunity to be heard to avoid the

type of unbridled discretionary action that occurred here. *Pet v. Department of Health Services*, 228 Conn. 651, 683 (1994) ("[b]ecause the UAPA is designed and intended to safeguard minimal due process rights, strict compliance with its mandate is necessary to ensure that significant property rights are not unlawfully destroyed").

Before promulgating its Next of Kin Rule, OCME was legally obligated to: (1) give thirty days notice to the public; (2) give notice to each joint standing committee of the General Assembly with interest in the subject matter; (3) give notice to interested persons; (4) provide a paper copy or electronic version of the proposed regulation to persons requesting it; (5) prepare a fiscal note that includes an estimate of the cost or revenue impact; (6) afford interested persons a reasonable opportunity to submit data, views, or arguments; (7) grant oral argument; and (8) consider all written and oral submissions concerning the proposal. *See* Conn. Gen. Stat. § 4-168(a). The OCME did none of that. Instead, it created the Next of Kin Rule sua sponte, in an imperial fashion, without notice and comment from any member of the public.

In this case the OCME flouted the law. *See* Proposed Decision at ¶ 19 ("The respondents do not claim that the procedures set forth in the UAPA with regard to formal rulemaking were followed in adopting the Next of Kin Rule"). "[R]espondents … stated that the kind of records requested by the complainant were available to next of kin, attorneys involved in litigation or attorneys handling the estate of the deceased, as well as physicians involved in the patient's care, insurance claims agents, and investigative authorities" and the "respondents denied AbleChild's request for records because it did not fit into any of the aforementioned categories." *See* Proposed Decision at ¶ 3.

The statutory and regulatory text expressly *requires* access to those records whenever a person with a "legitimate interest" submits a formal request and follows OCME regulations

pertaining to same. The regulations are codified in Section 19a-401-12(c). AbleChild followed those regulations. The OCME's rule governing disclosure, which dramatically changes the substantive provisions of the enabling statute and implementing regulations, is legally erroneous on many grounds, particularly as applied in this case. That policy directly violates constitutional law, in part, by discriminating against AbleChild based on the content of AbleChild's prospective speech. *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995) ("[v]iewpoint discrimination is . . . an egregious form of content discrimination [forbidden by the First Amendment]").[8] In fact, the OCME has repeatedly admitted its prejudice, stating that it denied AbleChild's request for records because it disagreed with AbleChild's message. *See* Respondents' Post-Hearing Brief, at 9-10; *See* Video Recording of Contested Case Hearing, FIC 2013-197 (Aug. 22, 2013) (beginning at 1:04.10).[9] That forms a meritorious constitutional challenge under the state and federal constitution's free speech and equal protection clauses. *See* U.S.C.A. CONST. Amend. I; Conn. Const. art. I, § 4; U.S.C.A. CONST. Amend. XIV. The Hearing Officer never reached those claims. In addition, AbleChild explained that by upholding the OCME's decision here, the FOIC allows the OCME to change the legal meaning of the statute and regulation simply by updating its website, all without the benefit of key procedural and substantive safeguards for the public, including notice and comment rulemaking.

Rather than address the key legal issues presented by the OCME's unlawful decision to withhold, including the OCME's substantial infringement of AbleChild's constitutional and

[8] In defending the OCME's initial decision to reject AbleChild's request, respondents have argued before the Commission that AbleChild lacks a "legitimate interest" in Adam Lanza's records because OCME disagrees with the content of AbleChild's presumed prospective speech. *See* Respondents' Post-Hearing Brief, at 9-10.

[9] *Available at*, http://www.ctn.state.ct.us/ctnplayer.asp?odID=9336.

fundamental rights, the Hearing Officer proposes that the Commission simply defer to the OCME's decision. *See* Proposed Decision at ¶¶ 24-25 ("it is found that deference to the agency's interpretation is sometimes merited"). In doing so, the Hearing Officer abdicated her basic duty under the law. She refused to decide whether an agency's non-disclosure of requested records was lawful. That, she cannot legally do, and neither can this Commission.

The Hearing Officer erroneously characterizes the OCME's action as an "interpretation of the legal requirement under the statutes and regulations it is charged with enforcing." *See* Proposed Decision at ¶ 24. The OCME's decision was not an "interpretation" at all. The Next of Kin Rule is a substantive change in the pre-existing law that fundamentally affects who may have access to public records by truncating the universe of those eligible to a small subset of those with a "legitimate interest." *See Salmon Brook Convalescent Home, Inc. v. Comm'n on Hospitals & Health Care*, 416 A.2d 358, 362 (Conn. 1979) (explaining that "substantive rules" are those that have a "substantial impact on the rights and obligations of parties who may appear before the agency in the future"). That rule proceeds on the patently erroneous legal assumption that the OCME has the legal authority to revise Regs. Conn. State Agencies § 19a-401-12(c)(2) to determine at its whim or caprice who may receive public records. The Hearing Officer also erroneously determined that "the Commission on Medicolegal Investigations has defined a person with a legitimate interest…" *See* Proposed Decision at ¶ 17. The OCME's office is under the supervision of the Commission on Medicolegal Investigations, but no record evidence exists to support the Hearing Officer's finding. The Commission on Medicolegal Investigations did not define "legitimate interest" beyond its duly adopted regulation in § 19a-401-12(c)(2).

The OCME Next of Kin Rule violates the plain and unambiguous language of Conn. Gen. Stat. § 19a-411(b), which states that "no person with a legitimate interest … shall be denied

access to [OCME] records." The OCME rule actually says that, except for the persons chosen by the OCME in its restrictive policy, "[r]ecords are not otherwise open to the general public." The OCME rule thus undermines the disclosure law in Section 19a-411(b) because it permits the OCME to reject entities and persons like AbleChild, who have demonstrated a legitimate interest in Adam Lanza's records. At hearing, respondent's counsel stated that, because AbleChild did not fit within the OCME's chosen categories, it could never obtain access to the OCME records, no matter what type of interest it asserted. *See* Video Recording of Contested Case Hearing, FIC 2013-197 (Aug. 22, 2013) (beginning at 1:10.30).[10] The Next of Kin Rule directly contradicts the statutory and regulatory text.

C. The Hearing Officer's Wholesale Reliance on the Connecticut Supreme Court's Decision in *Galvin* is Misplaced

The Hearing Officer stated in Paragraph 21 that "[t]he Commission must decide this case in accordance with the direction provided in *Galvin*, wherein the Connecticut Supreme Court stated the following: 'We hold therefore that autopsy reports are not records accessible to the general public pursuant to General Statutes [§ 1-210, G.S.].'" Proposed Decision at ¶ 21 (citing *Galvin*, 201 Conn. at 461). However, the Hearing Officer provided no basis to apply *Galvin* to the facts of this case.

The *Galvin* decision does not grant the FOIC license to ignore AbleChild's legal claims, and rubber stamp the OCME's underlying decision. The *Galvin* decision held that the applicable statute (Section 19a-411(b)) and regulation (Section 19a-401-12(c)(2)) impose "stricter limitations on the disclosure of … records than the Freedom of Information Act." *Galvin*, 201 Conn. at 254. The Court observed that "General Statutes § 19a-411 is not a model of the

[10] *available at*, http://www.ctn.state.ct.us/ctnplayer.asp?odID=9336.

draftsman's art," in part, because the statute apparently provides inconsistent access for certain scientific parties, which could potentially be circumvented. *Id.* at 456. Yet the *Galvin* decision restated the applicable rule in this case, which is that members of the public "may obtain copies of [OCME] records upon such conditions and payment of such fees as may be prescribed by the commission, provided no person with a legitimate interest therein shall be denied access to such records." *Id.* at 458 (noting that, "[u]nlike the language relating to the two specific classes of record seekers, the language in this portion [Section 19a-411(b)] of the statute does not set forth any express restrictions on disclosure"). When citing *Galvin*, the Hearing Officer focused only on that first part of the statutory text in paragraph 19a-411(b), wherein she cited the following text: "[i]n seeking copies of records, disclosure seekers are subject to 'such conditions and payment of such fees as may be prescribed by the commission.'" *See* Proposed Decision at ¶ 23 (citing *Galvin*, 201 Conn. at 459). The Hearing Officer did not, however, recognize in her decision that "conditions" established by the OCME are ostensibly unlawful if they operate to prevent persons with "legitimate interests" from receiving OCME records. *See* Conn. Gen. Stat. § 19a-411(b) ("no person with a legitimate interest therein shall be denied access to such records"). The *Galvin* decision does not upset that clear statutory command and, because the Hearing Officer's Proposed Decision defers to the OCME's categorical rejection of AbleChild's legitimate interest in the requested records, it conflicts with *Galvin*.

In *Galvin*, the complainant's request for records was premised on regulatory section 19a-401-12(c)(1), not on Section 19a-401-12(c)(2) which is at issue in this case. Section 19a-401-12(c)(1) granted the OCME clear "discretion" to withhold or release records. Thus, the complainant in *Galvin* could only succeed by arguing that Section 1-19 (now Section 1-210) of the general FOIA law rendered Section 19a-411 invalid and, thus, requesters should have

unfettered access to OCME records under the general FOIA law. *See Galvin*, 201 Conn. at 458-59. The Court in *Galvin* rejected that theory, of course, and held that Section 19a-411(b) was a valid limitation. *See Galvin*, 201 Conn. at 458-60. Unlike in *Galvin,* AbleChild's case concerns a request under Regs. Conn. State Agencies § 19a-401-12(c)(2). OCME expressly lacks "discretion" to withhold records under that section, Section 19a-401-12(c)(2), which is the statutory section AbleChild falls within. *See* Proposed Decision at ¶ 14 ("It is found that AbleChild has requested the records described in paragraph 2 [Section 19a-401-12(c)(2)], above, as a member of the general public"). That fact fundamentally changes the analysis, and renders *Galvin* inapplicable.

The *Galvin* decision held only that application of the general FOIA law did not trump the more specific statute in Section 19a-411(b), not that the OCME has a right to unilaterally change the statutory and regulatory text to suit its needs. *Id.* In her proposed decision, the Hearing Officer therefore mischaracterizes the *Galvin* holding by stating that "the *Galvin* court cautioned against an irrational construction" that would "allow the general provisions of the statute governing 'the public' to supersede the express provisions governing the specifically enumerated classes of disclosure seekers…" *See* Proposed Decision at ¶ 26 (quoting *Galvin*, 201 Conn. at 458-59). That quoted discussion from *Galvin* focused on the defendant's attempt to cause the general FOIA law in Section 1-19 to be viewed in conflict with the Office of Medicolegal regulation in Regs. Conn. State Agencies § 19a-401-12(c)(1). *See Galvin*, 201 Conn. at 458-59. Here, by contrast, AbleChild does not argue the existence of any such conflict, but, rather, argues for enforcement of the Medicolegal regulation, Section 19a-401-12(c)(2), against OCME's demand for adherence to its own sua sponte Next of Kin Rule which conflicts with the Medicolegal regulation.

When the court discussed the statute governing "the public," it referred to the general FOIA law (Section 1-210), not the more specific sections in 19a-411(b) and regulation 19a-401-12(c)(2), which were never at issue in *Galvin*. *See id.* Thus, in *Galvin*, the Court easily held (as the Hearing Officer restated) that a "broad construction would defeat the policy behind the principle that specific statutory references prevail over general references where the same subject is concerned." *Id.* That same discussion is entirely irrelevant in this case, however, where AbleChild proceeded under a separate and equally specific part of the regulation (Section 19a-401-12(c)(2)). If anything, the *Galvin* holding requires that the FOIC give effect to the specific regulatory text of Section 19a-401-12(c)(2), which requires an analysis of AbleChild's "legitimate interest" in Adam Lanza's records independent of the "scientific researcher" provisions in Section 19a-401-12(c)(1). In fact, the Court in *Galvin* specifically noted that "[t]he defendants *do not claim that that they are persons with 'a legitimate interest'* within the meaning of either the statute or the regulation. *See Galvin*, 201 Conn. at 460 n.11. The Court therefore explained that "[w]e need not and do not consider, therefore, the validity of administrative distinctions between persons based on the presence or the absence of a 'legitimate interest' in disclosure." *Id.* In other words, the Court expressly stated that it did not decide the very issue before the Commission in this case. Accordingly, the Hearing Officer's reliance on *Galvin* is plain legal error.

Galvin stands for the proposition that "[t]o the extent that Section 1-19 (now section 1-210) requires unconditional disclosure of the records of public agencies, its literal incorporation into § 19a-411 would defeat the policy of § 19a-411 and make its own provisions hopelessly inconsistent." *Galvin*, 201 Conn. at 459. By applying *Galvin* strictly, the Hearing Officer erroneously conflates AbleChild's direct claim under Section 19a-411(b) with a more general

claim under Section 1-210, only the latter of which was addressed by the *Galvin* decision. In so doing the Hearing Officer erred.

By proceeding under Paragraph (c)(2), AbleChild has fully complied with the agency's own policies and procedures. The concerns expressed in the *Galvin* decision are not at issue. AbleChild does not fall within the type of organizations identified in Paragraph (c)(1), which include "public authorit[ies], professional, medical, legal or scientific bod[ies] or university[ies] or similar research bod[ies], seeking access to records for scientific or research purposes." *See* Regs. Conn. State Agencies § 19a-401-12(c)(1). AbleChild is none of those. It is a non-profit group of parents and caregivers consisting of interested citizens who want access to information that might help inform their future decisions concerning medical care and treatment. *See* AbleChild FOIC Complaint at 1-2 (resubmitted as Attachment A in AbleChild's renewed filing).[11] AbleChild was founded by two concerned mothers, Sheila Matthews and Patricia Weathers. Its membership consists of parents and custodians of minor children. *Id.*[12] AbleChild's initial request for records was supported by its members (citizens) and 263 individuals and families living in Newtown, Connecticut. These facts were not in dispute at the hearing, and they are not in dispute before the full Commission.

The law stands as written. The drafters (both statutory and regulatory) provided a different pathway to records for scientific organizations in Paragraph (c)(1) and members of the general public under Paragraph (c)(2). Whatever the Commission's prudential concerns, it should not erroneously apply the standard applicable to research organizations in paragraph (c)(1) after having determined through un-contradicted evidence that AbleChild properly sought

[11] *See also* AbleChild Website, "Board of Directors," *at* http://ablechild.org/about-us/board-of-directors/.

[12] *See also* AbleChild Website, "About Us," *at* http://ablechild.org/about-us/.

records as a member of the general public under Paragraph (c)(2). The standards in Section 19a-401-12(c) apply based on the identity of the requester, not the purpose for which the requester would use the information. *See Galvin*, 201 Conn. at 457 ("[t]he statute differentiates among three classes of record seekers" and "[t]wo of the classes are restricted to specific types of persons").[13]

CONCLUSION

For the foregoing reasons, and the reasons set forth in AbleChild's briefs resubmitted here before the full Commission under separate cover, this Commission should grant AbleChild the relief requested and instruct the OCME to disclosure Adam Lanza's records.

Respectfully submitted,

ABLECHILD

/s/ Jonathan W. Emord

By: Jonathan W. Emord
EMORD & ASSOCIATES, P.C.
11808 Wolf Run Lane
Clifton, VA 20124
Ph: (202) 466-6937
Fx: (202) 466-6938
Em: jemord@emord.com

Peter A. Arhangelsky
Lou F. Caputo
EMORD & ASSOCIATES, P.C.

[13] After all, "treating physicians" and "insurance companies" could use the information in the same manner as AbleChild, yet the former entities would fall within the general "public" paragraph, according to the OCME's Next of Kin Rule.

3210 S. Gilbert Rd., Ste 4
Chandler, AZ 85286
Ph: (602) 388-8899
Fx: (602) 393-4361
Em: parhangelsky@emord.com

Counsel for AbleChild

APPENDIX A

Relevant Statutes and Regulations

Conn. Gen. Stat. § 19a-411:

(a) The Office of the Chief Medical Examiner shall keep full and complete records properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause and manner of death and containing all other relevant information concerning the death and a copy of the death certificate. The full report and detailed findings of the autopsy and toxicological and other scientific investigation, if any, shall be a part of the record in each case. The office shall promptly notify the state's attorney having jurisdiction of such death and deliver to the state's attorney copies of all pertinent records relating to every death in which further investigation may be advisable. Any state's attorney, chief of police or other law enforcement official may, upon request, secure copies of such records or other information deemed necessary by such official for the performance of his or her official duties.

(b) The report of examinations conducted by the Chief Medical Examiner, Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner, and of the autopsy and other scientific findings may be made available to the public only through the Office of the Chief Medical Examiner and in accordance with this section, section 1-210 and the regulations of the commission. Any person may obtain copies of such records upon such conditions and payment of such fees as may be prescribed by the commission, except that no person with a legitimate interest in the records shall be denied access to such records, and no person may be denied access to records concerning a person in the custody of the state at the time of death. As used in this section, a "person in the custody of the state" is a person committed to the custody of (1) the Commissioner of Correction for confinement in a correctional institution or facility or a community residence, (2) the Commissioner of Children and Families, or (3) the Commissioner of Developmental Services.

(c) Upon application by the Chief Medical Examiner or state's attorney to the superior court for the judicial district in which the death occurred, or to any judge of the superior court in such judicial district when said court is not then sitting, said court or such judge may limit such disclosure to the extent that there is a showing by the Chief Medical Examiner or state's attorney of compelling public interest against disclosure of any particular document or documents. Public authorities, professional, medical, legal or scientific bodies or universities or similar research bodies may, in the discretion of the commission, have access to all records upon such conditions and payment of such fees as may be prescribed by the commission. Where such information is made available for scientific or research purposes, such conditions shall include a requirement that the identity of the deceased persons shall remain confidential and shall not be published.

Regs. Conn. State Agencies § 19a-401-12(a)-(e):

(a) **Reports of investigations and of autopsies are prepared on standard forms issued by the Office of the Medical Examiner.** The original reports of investigations, reports of hospital deaths, and of authorized autopsies are transmitted to the Office of the Medical Examiner and copies are obtainable only from the Chief Medical Examiner. The standard forms utilized by the Office of the Medical Examiner include: (1) telephone notice of death; (2) report of investigation; (3) hospital report of death; (4) identification form; (5) autopsy report; (6) receipt of evidence.

(b) **Retention of records; inspection of records.** The Office of the Medical Examiner keeps full and complete records of every death reported and investigated. They are retained at the Office of the Medical Examiner. The original records shall be disposed of in accordance with section 11-8a of the Connecticut general statutes.

(c) **Inquiries and requests for copies of records.** Inquiries concerning a death may be made in person or by letter to the Chief Medical Examiner, Office of the Medical Examiner, 11 Shuttle Rd., Farmington, Connecticut 06032. Copies of reports prepared by personnel of the Office of the Medical Examiner, Assistant Medical Examiners and designated pathologists and other laboratories where pertinent, or detailed findings of other scientific investigations, are furnished upon payment of fees and upon conditions established by the Commission on Medicolegal Investigations. Copies of such reports may be obtained as follows:

> (1) If the requester of the records is a public authority, professional, medical, legal or scientific body or university or similar research body, seeking access to records for scientific or research purposes, access to the records is in the discretion of the commission. Such persons should address a letter to the chief medical examiner stating the general purposes for which access to the records is required and stipulating under oath that the identity of the deceased persons or any references which might result in the disclosure of the identity of the deceased persons, shall remain confidential and not be published.
>
> (2) If the requester of the records is a member of the general public, he or she may obtain access to such records if the person has a legitimate interest in the documents and no court has issued an order prohibiting disclosure pursuant to section 19a-411(c) of the Connecticut general statutes.
>
> (3) If the requester of the records is a member of the general public and the records concern a person in the custody of the state at the time of death, as defined in section 19a-411(b) of the Connecticut general statutes, he or she may obtain access to such records if no court has issued an order prohibiting disclosure pursuant to section 19a-411(c) of the Connecticut general statutes.
>
> (4) If the requester of the records is a pro se litigant seeking access to medical records, he or she may obtain access to such records if the records are legitimately sought for pending litigation and no court has issued an order prohibiting disclosure pursuant to section 19a-411(c) of the Connecticut General Statutes. Such person should address a letter to the chief medical examiner stating the case name, docket number, court where the litigation is pending, and why the requester believes these records reasonably relate to his or her case.

(d) Requests for copies of records should be in writing addressed to the Chief Medical Examiner, Office of the Medical Examiner, 11 Shuttle Rd., Farmington, Connecticut 06032. Requests for copies of records will be accepted in person during normal business hours upon such conditions as indicated for written requests and provided that such requests will not interfere with the normal operations of the Office of the Medical Examiner. Requests for copies of records should list the name of the deceased, date of death and place of death.

(e) Requests for records sought by an attorney acting on behalf of an estate should be accompanied by a duly executed authorization by the executor or administrator of the estate. Requests by attorneys, insurance claims agents or other interested parties, other than the next of kin or persons acting on behalf of the next of kin, should state reasons for which records are required.

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2013, a copy of the foregoing, **ABLECHILD'S OBJECTIONS TO THE PROPOSED FINAL DECISION**, was electronically delivered and mailed to the following:

Patrick B. Kwanashie
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5210
Fax: (860) 808-5385
Served with electronic PDF copy and hardcopy via UPS

Kevin D. Heitke
Heitke Law Office, LLC
365 Eddy Street
Providence, RI 02903
Served with electronic PDF copy

/s/ Jonathan W. Emord
Jonathan W. Emord