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DEPT. OF PUBLIC SAFETY v. FREEDOM OF INFORMATION
COMMISSION—CONCURRENCE

BERDON, J., concurring. I concur in the result on the basis of the fact that this case is moot, which is the only issue I would reach. Because our Supreme Court previously has indicated that the doctrine of mootness is applicable to the defendant freedom of information commission (commission),¹ I would not address the issues of statutory authorization or whether the trial court applied the proper standard of review.

In this case, the complaint filed by Michelle Tuccitto, a newspaper reporter for the New Haven Register, effectively was withdrawn when the plaintiff, the department of public safety, complied with Tuccitto's request to inspect certain records. This compliance occurred after a hearing before a hearing officer for the commission, in which the officer recommended a proposed final decision to the commission that it issue a formal order allowing for inspection of the requested records. Upon receipt of the proposed final decision, Tuccitto notified the commission that she had been provided with the information she had requested, and that "the commission hearing scheduled . . . on [her] complaint and any further action [were] no longer necessary." "A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists." (Internal quotation marks omitted.) *Crest Pontiac Cadillac, Inc. v. Hadley*, 239 Conn. 437, 439 n.3, 685 A.2d 670 (1996). The case became moot when Tuccitto notified the commission that no further action was necessary because a controversy no longer existed between the parties. Notwithstanding this, the commission entered a formal order, as pointed out in the majority opinion.

In *Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission*, 240 Conn. 1, 4, 688 A.2d 314 (1997), the plaintiff also provided the information requested after a complaint was filed with the commission. Notwithstanding the voluntary compliance, our Supreme Court found that the controversy was not moot because the complainant at the hearing claimed that the documents were not provided to her within a reasonable time and the order issued by the commission was prospective in nature, ordering the plaintiff to comply strictly with provisions of the Freedom of Information Act in the future. *Id.*, 9. In the present case, no such claim was made by Tuccitto and no prospective order was issued by the commission.

I understand the concerns of the commission, as it argued before this court that this position on mootness would encourage an agency "to violate the [Freedom of Information Act] with impunity. An agency could withhold records, which are clearly not exempt and not

turn them over until a proposed final decision is issued that is adverse to the agency. . . . [Furthermore] only a small body of administrative law interpreting the [Freedom of Information Act] would ever develop because the commission would issue few . . . final decisions adverse to public agencies.” The answer to these valid concerns, which I can fully appreciate, lies with the legislature.

I reluctantly concur in the result that this matter is moot.

¹ *Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission*, 240 Conn. 1, 6–9, 688 A.2d 314 (1997).
