KATZ, J., concurring. I agree with part I of the majority's opinion, concluding that, because the decision of the named defendant, the freedom of information commission (commission), turns on the construction of a statutory scheme outside of the Freedom of Information Act (act), the trial court should have applied plenary review to determine whether the commission properly ordered the plaintiff, the department of public safety (department), to disclose certain information sought by the defendant Alexander Wood[1] relating to sex offenders who had obtained court orders barring public dissemination of their registration information pursuant to General Statutes § 54-255. See footnote 1 of majority opinion. That information consisted of the name and location of the court, as well as the names of the persons involved in the underlying criminal proceedings giving rise to the registration requirement: the judge; the clerk, assistant clerk and deputy clerk; and the prosecuting and defense attorneys. Although I also agree with the majority's ultimate conclusion in part II of its opinion that this information cannot be disclosed, I wholly disagree with the reasoning underlying that conclusion, namely, that all of this information is "registration information" subject to the nondissemination order under § 54-255. Instead, the objective evidence clearly demonstrates that only the name and location of the court is registration information subject to the trial court's nondissemination order and thus shielded from disclosure under the act. I also would conclude, however, that the record clearly reflects that the only source for the rest of the information is the court's nondisclosure orders themselves, which cannot be deemed public records subject to the act. Therefore, I also would reverse the trial court's judgment dismissing the department's appeal from the commission's decision.

Although the majority's analysis begins and ends with its interpretation of the sex offender registry scheme, commonly know as Connecticut's "Megan's Law," in my view, the proper starting point of our analysis is the act. "We repeatedly have stated that [t]he overarching legislative policy of the [act] is one that favors the open conduct of government and free public access to government records. . . . The sponsors of the [act] understood the legislation to express the people's sovereignty over the agencies which serve them . . . and this court consistently has interpreted that expression to require diligent protection of the public's right of access to agency proceedings. Our construction of the [act] must be guided by the policy favoring disclosure and *exceptions to disclosure must be narrowly construed.* . . . *Stamford* v. *Freedom of Information Commission*, 241 Conn. 310, 314, 696 A.2d 321 (1997)." (Emphasis added;

internal quotation marks omitted.) *Pane* v. *Danbury*, 267 Conn. 669, 679–80, 841 A.2d 684 (2004). In the present case, the exception to public disclosure arises not within the act, but under another statutory scheme. Although our Megan's Law deems the sex offender "registry" a public record and thus brings information therein within the scope of the act; see General Statutes § 54-258 (a) (1); it also makes limited exceptions to public dissemination of certain information under specified circumstances. See General Statutes §§ 54-255 and 54-258 (a) (3), (4) and (5). Therefore, contrary to the majority's approach, I would conclude that the scope of a court's order barring public dissemination of "registration information," the exception implicated in the present case, must be narrowly construed. See *Ottochian* v. *Freedom of Information Commission*, 221 Conn. 393, 398, 604 A.2d 351 (1992) (applying narrow construction to statute outside of act deeming certain records not subject to disclosure).

As the majority properly recognizes, the central question in the present case is the meaning of "registration information" under § 54-255. The majority determines that the information sought in the present case is registration information, however, by making, what is in my view, two unsupported leaps of reasoning. First, the majority concludes that the undefined term "registration information" is synonymous with another term used throughout the scheme, "registry information." Second, the majority assumes that, because the department, which maintains the sex offender registry, was able to produce some of the information sought, all of the requested information must be registry information and, a fortiori, registration information. In my view, these conclusions contravene our rules of construction, common sense and the clear evidence in the record.

I am not convinced that registration information and registry information are one and the same. As a general rule, "the use of different words in the same enactment must indicate a difference in legislative intention." *Steadwell* v. *Warden*, 186 Conn. 153, 164, 439 A.2d 1078 (1982); accord *State* v. *Bell*, 283 Conn. 748, 798, 931 A.2d 198 (2007) ("[a]s a general rule, [t]he use of . . . different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings" [internal quotation marks omitted]). Throughout the sex offender registry scheme, both "registration information" and "registry information" are used repeatedly, thus suggesting an intentional distinction, not an incidental oversight.[2] One such provision, General Statutes § 54-257 (a), which sets forth various obligations of the department, provides in relevant part: "If a registrant reports a residence in another state, the department shall notify the state police agency of that state or such other agency in that state that maintains registry information, if known. The

department shall also transmit *all registration information*, *conviction data*, *photographic images and fingerprints* to the Federal Bureau of Investigation in such form as said bureau shall require for inclusion in a national registry." (Emphasis added.) The fact that conviction data, photographic images and fingerprints are listed *in addition* to *all* registration information would seem to suggest, at a minimum, that the former are part of the registry, but do not constitute registration information.

I do not believe that a precise definition of either "registry information" or "registration information" is essential to our resolution of the present case, however, because it is clear from an examination of every available objective source that the information at issue in this case, with one exception, could not fall within *either* category.[3] The sex offender " '[r]egistry' " is defined as "a central record system in this state, any other state or the federal government that receives, maintains and disseminates information on persons convicted or found not guilty by reason of mental disease or defect of criminal offenses against victims who are minors, nonviolent sexual offenses, sexually violent offenses and felonies found by the sentencing court to have been committed for a sexual purpose." General Statutes § 54-250 (9). Therefore, at the very least, it cannot be disputed that registration information would have to be information that the department is required to maintain for each registrant or each type of registrant, depending on the nature of the crime. There are several sources that aid us in determining what information the department is required to maintain.

Sex offenders are required to register their "name," "identifying factors," "criminal history record," "residence address," and "electronic mail address, instant message address or other similar Internet communication identifier . . . ." General Statutes §§ 54-251 (a), 54-252 (a) and 54-254 (a). " 'Identifying factors' " are defined as "fingerprints, a photographic image, and a description of any other identifying characteristics as may be required by the Commissioner of Public Safety. The commissioner shall also require a sample of the registrant's blood or other biological sample be taken for DNA (deoxyribonucleic acid) analysis . . . ." General Statutes § 54-250 (3). For sexually violent offenders, registration also includes "documentation of any treatment received by such person for mental abnormality or personality disorder . . . ." General Statutes § 54-252 (a); see also General Statutes § 54-256 (a) ("[i]n the case of a person being released unconditionally who declines to complete the registration package through the court or the releasing agency, the court or agency shall: [1] . . . provide to the Commissioner of Public Safety the person's name, date of release into the community, anticipated residence address, if known, and criminal history record, any known treatment history

of such person, any electronic mail address, instant message address or other similar Internet communication identifier for such person, if known, and any other relevant information"). In 2006, the legislature added a provision also requiring the courts to provide the department with "a written summary of the offense that includes the age and sex of any victim of the offense and a specific description of the offense." Public Acts 2006, No. 06-187, § 28 (b), codified at General Statutes § 54-256 (b). Thus, there is nothing in the statutory scheme specifically to indicate that the information sought by Wood is maintained by the department.

Because, however, the legislature has vested the commissioner of public safety with the authority to determine what information constitutes "identifying characteristics" that must be obtained for each registrant; see General Statutes § 54-250 (3); we also must consider whether the commission has required the submission of the information sought in the present case. The "Sex Offender Registry—Registration Form" promulgated by the department indicates the scope of such information. That form requires information that can be categorized as descriptive information about the registrant; the crimes requiring registration, contact and location information for the registrant, and conviction data.[4] Of the information sought in the present case, only the court name and location is listed on that form.[5]

We also may assume that any information made available by the department to the public on the Internet is collected and maintained as part of the sex offender registry. A review of hundreds of records, however, has revealed that none of the information sought in the present case is posted on the Internet.

Finally, a review of the actual documents produced by the department in response to Wood's request, in their unredacted form, is particularly telling. They consist of the records of thirty-nine registrants who successfully obtained orders barring dissemination of their registration information. Of these registrants' records, almost one half do not bear any of the names sought by Wood.[6] None of the records have all or even most of the names sought. Therefore, it is not only clear that the names of the judge, clerks and attorneys are not *required* to be provided as part of the registration process, it also is clear that this information is not even routinely collected and maintained as a matter of *practice*.

Indeed, it would not advance the purposes of the sex offender registry for the department to collect the names of the judge, clerks, prosecuting attorney and defense attorney. The information mandated to be provided by the registrant, the courts or the relevant agencies clearly serves one of the following purposes: aiding the public and law enforcement in identifying the registrant and assessing the risk he poses; deterring the

registrant from engaging in future criminal acts by his knowledge that this information is accessible to others; and facilitating the accurate administration of the registry scheme. See *State* v. *Arthur H.*, 288 Conn. 582, 592–93, 953 A.2d 630 (2008) ("Megan's Law was enacted to alert the public by identifying potential sex offender recidivists and was based on the view that sex offenders have a greater likelihood to reoffend than other criminal actors" [internal quotation marks omitted]); see also National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,051–38,061 (July 2, 2008) (explaining law enforcement uses and deterrent purposes for collecting certain information not publicly available); J. Comparet-Cassani, "A Primer on the Civil Trial of a Sexually Violent Predator," 37 San Diego L. Rev. 1057, 1061 (Fall 2000) ("[t]he registration requirement is intended to control crime and prevent recidivism by making sex offenders readily available for police surveillance at all times"). None of these purposes is advanced by providing the names of the judge, clerks, prosecuting attorney and defense attorney.

This conclusion is bolstered by a review of the sex offender registries of other jurisdictions. The federal government and every other state has a sex offender registration scheme.[7] J. Comparet-Cassani, supra, 37 San Diego L. Rev. 1063. Several states require information relating to the location of the court where the offender entered his plea or was convicted. See B. Smith, "Fifty State Survey of Adult Sex Offender Registration Laws" (August 1, 2009), available at http://ssrn.com/abstract=1517369 (last visited October 18, 2010).[8] None of these jurisdictions requires the collection of the names of any of the persons involved in the criminal proceedings.

In sum, although the name and location of the court seem to fall squarely within the scope of registration information under our Megan's Law and thus would be shielded from a freedom of information request by the court's nondissemination order, there is no objective evidence to support a similar conclusion with respect to the names of the persons involved in the criminal proceedings. Accordingly, the mere fact that, on an ad hoc basis, the department's records contain *some* documents that include *some* of the names of persons involved in the criminal proceedings for *some* of the registrants who had obtained nondissemination orders does not mean that those names are part of the registry. The department's *records* are not the statutory equivalent to the sex offender *registry*.

I am mindful of the department's concern that disclosure of these names could, with additional freedom of information requests and considered effort, eventually lead to the identity of the victim, which would undermine the purpose of the court order. I also am mindful, however, that the victims' identities are not shielded

during the underlying court proceedings and that the public has a right to inspect the records of such criminal cases, barring a sealing order. See *Hartford Courant Co.* v. *Pellegrino*, 380 F.3d 83, 96 (2d Cir. 2004) (docket sheets are presumptively open to public, and public and press have qualified first amendment right to inspect them); *State* v. *Ross*, 208 Conn. 156, 158, 543 A.2d 284 (1988) (public and press have right of access to court records); *State* v. *Ross*, supra, 159 (noting first amendment interest of public and press in "full access to all aspects of criminal proceedings"); see also Practice Book § 11-20A (a) ("[e]xcept as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public"). For other reasons, however, I am convinced that, although the names sought are not registration information within the meaning of § 54-255, this information is not a public record and therefore is not subject to the act.

My review of the unredacted records produced by the department reveals that these records are sent by the court to the department solely to inform the department that the court has entered a nondissemination order. These records come in various forms—in some cases, they are simply a nondissemination application signed by the court; in other cases, they are a mittimus or an information containing, among other notations relating to the court proceedings, a notation that the court has entered the nondissemination order. These court records, before they leave the court, are not public records subject to the act. See *Clerk of the Superior Court* v. *Freedom of Information Commission*, 278 Conn. 28, 53, 895 A.2d 743 (2006) (concluding "that, for purposes of the act, the judicial branch's administrative functions consist of activities relating to its budget, personnel, facilities and physical operations and that records unrelated to those activities are exempt"). It is my view that it would be entirely incongruous to conclude that information that is *not* a public record subject to the act becomes a public record when transmitted to an agency *solely* for the purpose of communicating an order to *bar* public dissemination of information. Therefore, in light of the particular context in which the department obtains this information, I would conclude that the names of the judge, clerks and attorneys to the underlying criminal proceedings leading to sex offender registration do not become public records when that information occasionally is transmitted to the department.

Accordingly, I respectfully concur in the judgment.

[1] See footnote 3 of the majority opinion identifying the original defendants in the present case.

[2] As support for its conclusion that the terms are synonymous, the majority points to the fact that one term is used in the title of § 54-258, while the other is used in the text of that provision. In so doing, however, the majority disregards the legislature's own direction, which we previously have recognized, that these titles were created by the revisors of the General Statutes, not the legislature, as informal descriptions of the contents of the statutory section. See *Small* v. *Going Forward, Inc.*, 281 Conn. 417, 425 n.5, 915 A.2d

298 (2007); *Clark* v. *Commissioner of Correction*, 281 Conn. 380, 389 n.14, 917 A.2d 1 (2007). The preface to the General Statutes specifically instructs that "[t]hese boldface catchlines [following the section number of every section of the General Statutes] should not be read or considered as statements of legislative intent since their sole purpose is to provide users with a brief description of the contents of the sections." General Statutes, preface, p. vii.

[3] I have discussed why these terms are likely not synonymous because, in another case, this difference may be dispositive. Indeed, one significant distinction may be that not all information collected by the department pursuant to General Statutes §§ 54-250 (9) and 54-257 is made available to the public on the Internet. Indeed, state or federal statute bars public disclosure of certain registry information. See, e.g., General Statutes § 54-258 (a) (5) ("a registrant's electronic mail address, instant message address or other similar Internet communication identifier shall not be a public record, except that the [department] may release such identifier for law enforcement or security purposes in accordance with regulations adopted by the department"); 42 U.S.C. § 16915a (c) (setting forth same restriction on disclosure of offender's Internet identifiers); 42 U.S.C. § 16918 (b) (mandating that each jurisdiction make all information in sex offender registry available to public but mandating following exemptions from public disclosure: identity of victim, social security number of offender, references to arrests of sex offender that did not result in conviction, and any other information exempted from disclosure by attorney general). A comparison of the information required to be provided to the department and the information actually provided to the public on the Internet registry also reveals that much of the information collected by the department is not publicly disseminated.

[4] Information relating to a sex offender's conviction consists entirely of the following information: crimes requiring registration; duration of registration; place of crime; arresting agency; local case number; date of release; current status vis-á-vis probation or parole; inmate number; court name, geographic area and location; conviction date; and docket number.

[5] Indeed, under the predecessor scheme to the current Megan's Law, the legislature specifically had directed the department to obtain the location of the court where the sex offender was convicted. See General Statutes (Rev. to 1997) § 54-102r (e), as amended by Public Acts 1997, No. 97-183, § 1 ("[t]he registration required by subsections [b] to [d], inclusive, of this section shall be in a form prescribed by the [department] and shall include the following information about the person being registered, where applicable: [1] [n]ame, including all aliases used, [2] address, [3] social security number, [4] inmate number, [5] crime for which convicted or found not guilty by reason of mental disease or defect, [6] date and place of conviction or finding of not guilty by reason of mental disease or defect, [7] probation termination date or sentence termination date or date of termination of commitment to the Psychiatric Security Review Board, as the case may be, and [8] a complete description of the person including photograph and fingerprints").

[6] No party to the present litigation has claimed that the department did not make a good faith effort to comply with Wood's request for the information pursuant to the act. Accordingly, I assume that the unredacted records submitted to the court include any and all materials in the department's possession that contain the requested information.

[7] Federal law mandates that each jurisdiction must have a sex offender registry and conditions the receipt of certain federal funds on compliance with the minimum standards set forth under federal law. See 42 U.S.C. § 14071 (g); see also 42 U.S.C. § 16918.

[8] This survey reveals that the following states specifically require by statute information relating to the court's location: Alaska; Idaho; Illinois; Indiana; Kansas; Louisiana; Maryland; Mississippi; Missouri; Nebraska; Nevada; New Jersey; New Mexico; Oklahoma, Tennessee; Virginia; Washington; Wisconsin; and Wyoming.