

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Linda Dalessio,

Complainant

against

Docket # FIC 2022-0436

Chief of Staff and General Counsel, State of Connecticut, Office of the Secretary of the State; and State of Connecticut, Office of the Secretary of the State,

Respondents

September 13, 2023

The above-captioned matter was heard as a contested case on June 23, 2023, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket # FIC 2022-0584, Linda Dalessio v. Chief of Staff and General Counsel, State of Connecticut, Office of the Secretary of the State; and State of Connecticut, Office of the Secretary of the State, (hereinafter “Docket # FIC 2022-0584”).

After consideration of the entire record, the following facts are found, and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that by email dated September 1, 2022, the complainant requested that the respondent Chief of Staff and General Counsel provide her with a copy, on a CD¹, of the following “cast vote records”, by town, and configured by GEMS² software, for the November 3rd, 2020 federal election:
 1. Ballot text report
 2. Ballot return parameters
 3. Ballot and card editor report
 4. AV Server Console log report for precinct and memory cards

¹ CD is an acronym for compact disc, which is a portable storage medium for data in digital form.

² GEMS is an acronym for Global Election Management System.

5. Log report for queuing vote centers
6. Central count vote centers log report and queue report that includes port tab reports
7. Running central count log report
8. Regional results console queue and log
9. Log report and queue for resetting memory cards
10. Database back-up log and queue report
11. Voter registration import data report log and queue
12. Under 11.1 Printing the Election Summary report: Records of votes cast specific to each polling location, including date, time type (absentee or in person). AccuVote-OS options include report and firmware versions, ballot return parameters, ballot text report and straight party and write-in tally rules
13. Election results report polling and absentee
14. Election summary report polling and absentee
15. Statement of votes cast polling and absentee
16. Memory Cards cast report for each town which will show report by precinct, district, counter group, turnout percentages
17. Ballot images from the Central Tally System workstations, prior to upload into GEMS
18. Central Tally System and GEMS Logic and Accuracy report testing prior to and after the November 3, 2020 election

(hereinafter “requested records”).

3. It is found that by email dated September 9, 2022, the respondents (through their counsel) denied the request and informed the complainant that there were no responsive records because Connecticut does not “generate”, and therefore, does not maintain cast vote records.

4. By email dated and filed September 21, 2022 with the Freedom of Information (FOI) Commission (Commission), the complainant appealed, alleging that the respondents violated the FOI Act by failing to provide her with a copy of the requested records.

5. Section 1-200(5), G.S., provides:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public

agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours... or (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., in relevant part, further provides: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is concluded that the requested records, to the extent they exist and are maintained by the respondents, are “public records” within the meaning of §§ 1-200(5) and 1-210(a), G.S.

9. With regard to the requested records, described in paragraph 2 above, the complainant contends that the records should exist for the November 3, 2020 federal election, because the respondents should be able to generate such records utilizing the GEMS software.

10. At the hearing in this matter, the respondents testified, and it is found, that the requested records are the type that would be generated by utilizing GEMS software; however, the respondents do not have or use GEMS software.

11. It is found that the respondents do not have or maintain the requested records, described in paragraph 2, above.

12. It is also found that the state of Connecticut utilizes paper ballots and tabulator tape and not a GEMS system for audits.³

13. It is found that the respondents have repeatedly informed the complainant that they do not have or maintain the “cast vote records” she requested, however, the complainant insists that they should have such records because federal law requires them to do so. The respondents disagree with the complainant’s interpretation of what the federal law requires.

14. It is found that the respondents’ testimony that they do not maintain the requested records is credible.

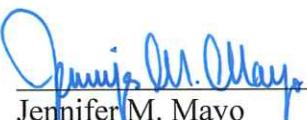
³ The respondents testified that the UCONN Center for Voting Technology (VoTer Center) has a copy of the GEMS software which the VoTer Center uses to perform post elections’ auditing and accuracy testing.

15. Consequently, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., when they failed to provide the complainant with the requested records, described in paragraph 2, above.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 13, 2023.



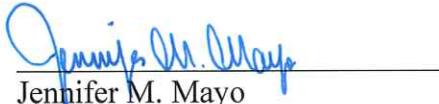
Jennifer M. Mayo
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

LINDA DALESSIO, 123 Bayview Circle, Wolcott, CT 06716

**CHIEF OF STAFF AND GENERAL COUNSEL, STATE OF CONNECTICUT,
OFFICE OF THE SECRETARY OF THE STATE; AND STATE OF CONNECTICUT,
OFFICE OF THE SECRETARY OF THE STATE**, c/o Assistant Attorney General Alma R. Nunley, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission