

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Linda Dalessio,

Complainant

against

Docket # FIC 2022-0602

Secretary of the State, State of Connecticut,
Office of the Secretary of the State; and
State of Connecticut, Office of the Secretary
of the State,

Respondents

September 27, 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 2022-0494, Linda Dalessio v. Secretary of the State, State of Connecticut, Office of the Secretary of the State; and State of Connecticut, Office of the Secretary of the State, (hereinafter “Docket # FIC 2022-0494”).

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 21, 2022, the complainant requested that the respondents provide her with the following records concerning the certification of Connecticut voting systems, including the Diebold AccuVote OS system, Marksense tabulators, Central Tally System, and the GEMS¹ database, for the November 3, 2020 election²:
 - a. all ITA³ testing reports completed before or after the 2020 election;

¹ GEMS is an acronym for Global Election Management System.

² At the hearing in this matter, the complainant clarified that the September 21, 2022 email request contained a typographical error whereby the complainant inadvertently referred to the date of the election as November 3, 2022, instead of November 3, 2020.

³ ITA is an acronym for Independent Testing Agency.

- b. all ITA progress reports completed before or after the 2020 election;
- c. all communication between the Contractor and the ITA completed before or after the 2020 election and the SOTS⁴ office;
- d. qualification number issued by the EAC⁵ 1.2. Independent Testing Agency for Connecticut's voting system; and
- e. any additional special tests or examinations to assure compliance with the EAC commission voting standards required by the SOTS.

(hereinafter "requested records").

3. It is found that by email dated September 27, 2022, the respondents acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant that they needed additional time to fully respond, and that once they determined whether they maintained responsive records they would follow up and disclose them to her.

4. It is found that, by emails dated December 1, 2022, and December 7, 2022, the respondents informed the complainant that they did not maintain any records responsive to her request, described in paragraph 2, above.

5. By email dated December 14, 2022, and filed with the Freedom of Information (FOI) Commission (Commission) on December 16, 2022, the complainant appealed, alleging that the respondents violated the FOI Act by failing to provide her with a copy of the requested records, described in paragraph 2, above.

6. 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.

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

⁴ SOTS is an acronym for Secretary of the State.

⁵ EAC is an acronym for Election Assistance Commission. According to its website, the EAC is an independent bipartisan commission, established by the Help America Vote Act of 2002, which Act was passed by the U.S. Congress following the 2000 election.

[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.

8. 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.”

9. 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.

10. At the hearing in this matter, the parties agreed, and it is found, that the records at issue in this case (Docket # FIC 2022-0602), and Docket #FIC 2022-0494, are identical, and are the requested records, as described in paragraph 2 above.⁶

11. With regard to the requested records, described in paragraph 2, above, it is found that, by emails dated December 1, 2022, and December 7, 2022, the respondents informed the complainant that they did not maintain any responsive records.

12. At the hearing in this matter, the complainant contended that the requested records, described in paragraph 2, above, should exist, because federal law, specifically the Help America Vote Act (“HAVA”)⁷, and the EAC guidelines, require that the respondents maintain such records for the voting system, (i.e., the tabulators, election management system, and central tally system), used in Connecticut elections.

13. The respondents disagree with the complainant’s interpretation of what the federal law (i.e., HAVA) and the EAC guidelines require.

14. At the hearing in this matter, the respondents testified, and it is found, that the respondents do not maintain any records, responsive to the complainant’s request, described in paragraph 2, above. The respondents also testified, and it is found, that Connecticut uses AccuVote OS machines for elections, which were certified by the EAC prior to their purchase. The respondents further testified, and it is found, that the machines are tested for accuracy prior to use in elections.

⁶ At the hearing in this matter, the complainant clarified that she filed the complaint in this matter (FIC Docket # 2022-0602), after receiving the December 1, and December 7, 2022 email communications from the respondents, described in paragraph 11, of the findings. The complainant further clarified, that prior to her receipt of such December 1, and December 7, 2022 email communications, she filed an earlier complaint with the Commission, which was assigned Docket # FIC 2022-0494.

⁷ The HAVA creates mandatory minimum standards for states to follow in the administration of elections, and provides funding to assist states meet these standards and replace voting systems.

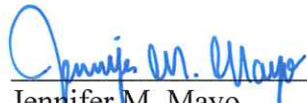
15. It is found that the respondents' testimony that they do not maintain the requested records is credible.

16. 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 27, 2023.



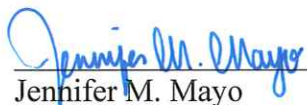
Jennifer M. Mayo
Acting Clerk of the Commission

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

SECRETARY OF THE STATE, STATE OF CONNECTICUT, OFFICE OF SECRETARY OF THE STATE; AND STATE OF CONNECTICUT, OFFICE OF SECRETARY OF THE STATE, c/o Assistant Attorney General Alma Nunley, Office of the Attorney General, 165 Capitol Ave., Hartford, CT 06016



Jennifer M. Mayo
Acting Clerk of the Commission