

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Cummings,

Complainant

Against

Docket # FIC 2018-0208

Elizabeth Graham, Executive  
Director, Administrative Services  
State of Connecticut, Judicial  
Branch; and State of Connecticut,  
Judicial Branch,

Respondents

April 24, 2019

The above-captioned matter was heard as a contested case on March 22, 2019, at which time the complainant and the respondents appeared, presented testimony, exhibits and argument on the complaint. For the purposes of hearing, this matter was consolidated with Docket # FIC 2018-0303; David Cummings v. Elizabeth Graham, Executive Director, State of Connecticut, Judicial Branch; and State of Connecticut, Judicial Branch. It should be noted that this matter was originally scheduled to be heard on August 23, 2018, but was subsequently continued or postponed a total of five times.

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

1. The respondents are public agencies with respect to their administrative functions within the meaning of §1-200(1), G.S.
2. It is found that on March 29, 2018, the complainant sent by first class mail and email a letter requesting, “a date, time and place to be allowed to inspect and/or copy” certain records. The complainant defines records, “to include memos, pictures, emails, notes, tape recordings, videos, photographs, computer stored data, records sent to and received from anyone and prepared or obtained from anyone regarding the subject items listed individually in the following paragraphs.”
3. The complainant’s letter then enumerated thirteen paragraphs describing the subject matter of the records he was seeking. Those paragraphs follow:
  - a. December 15, 2018 the Superior Court Judge issued an order which identified David Cummings and ADA accommodations including costs in a court order dated December 15, 2017 and issued by Judge

Cole-Chu in docket WWM-CV-15-5006223-S, Cummings, David, W v. Rivers, Benjamin Et Al.

- b. “The motion to continue the December 18, 2017, pre-trial conference is granted. The plaintiff’s request for ADA accommodation had [sic] been granted, for the second time, for this conference: the court had reserved a transcription ‘cart’ to be brought to court to provide the plaintiff with a live, ‘real time’ transcript of words spoken in a court session or conference or other. The court has been informed that it costs the state of Connecticut hundreds of dollars just to ‘book’ - to arrange for the availability - of this ‘cart’ service even if the reservation is cancelled, as again done today due to the continuance here granted. (The cost for the actual use of the ‘cart’ machine is over \$2500.) Therefore, the parties are hereby notified that motions to continue court proceedings for which transcription ‘cart’ services have been requested and arranged (or have been arranged by the court sua sponte will generally be denied unless made at least seven court days (not calendar days) before the conference or event.”
- c. The contracts the Judicial Branch or authorized person has with vendor Nizankwicz & Miller et al for cart services for the time period of 2005 thru 2018.
- d. The cost for CART services or claimed real time reporting subject David Cummings as referenced in a 12/15/17 court order, which includes itemized billing.
- e. All communication sent to and or received from anyone regarding David Cummings CART services in Cummings v. Rivers, et al.
- f. The records that describe and identify CART services received from the CART vendor Nizankwicz & Miller et al. and sent to anyone.
- g. The records that describe and identify real time reporting received from the vendor Nizankwicz & Miller et al. and sent to anyone.
- h. The Judicial Branch policy and procedure that does or does not authorize the court to publicly disclose David Cummings or anyone’s ADA accommodations and information as to costs et al., and information related in a public file.
- i. “All records sent to and or received from Superior Court in Willimantic which thereafter closed and case were transferred, Putnam Superior Court regarding David Cummings (ADA) accommodations, and requests for continuance and change of venue motions including costs.”

- j. All records for CART services that pertain to David Cummings ADA accommodations, and any related correspondence sent to and received from anyone on this subject which includes all costs.
- k. The name and address of the person and persons that have communicated with the administrative judge in Willimantic, Putnam and also Judge Cole-Chu subject David Cummings ADA accommodations and costs, et al.
- l. All records to support the court order (“the cost for the actual use of the CART machine is over \$2500.”) and any communications sent to and or received from anyone, regarding this subject to support this publicly disclosed information contained in a court order.
- m. The 2017 and 2018 contracts the Judicial Branch has for CART services which includes records as to costs, billing and the policy for time frame for cancellation of CART service without any fee being charged.

4. It is found that the respondents timely acknowledged the request and engaged in a series of email exchanges with the complainant in attempts to arrange dates and times for the complainant to inspect the requested records. The complainant provided a number of dates to the respondents in which he would be available to inspect the records at the respondents’ office.

5. On April 26, 2018, the complainant filed this complaint with the Freedom of Information (“FOI”) Commission, alleging that the respondents failed to comply with his March 29, 2018 request for a date, time and place to inspect and/or copy the requested records. As part of his complaint, the complainant requested the imposition of civil penalties against the respondents pursuant to §1-206(b)(2) G.S.

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

"Public 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, printed, photostated, photographed or recorded by any other method.

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

Except 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides in relevant part that “[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 found that, to the extent that the respondents maintain responsive records related to the administrative functions of the Judicial Branch, such records are public records, within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. On May 8, 2018, after the filing of the complaint in this matter, the complainant wrote the first of three follow up letters reiterating his request for dates and times to inspect the requested records. On May 9, 2018, the respondents informed the complainant that he could inspect the requested records on May 15, 2018.

11. Further, it is found that on May 23, 2018, the complainant wrote to the respondents stating that the records he was allowed to view on May 15, 2018, were incomplete. The complainant did not explain what records were missing or otherwise explain how he determined that the records were incomplete. In his letter, the complainant requested another opportunity to inspect records.

12. It is found that the respondents provided an opportunity for the complainant to inspect the requested records. Additionally, it is found that, at hearing, the respondents provided the complainant with copies of multiple records responsive to his request. It is of note that the complainant offered as evidence a number of records provided to him by the respondents that were responsive to his request.

13. However, it is found that the complainant disagrees that he received all of the records responsive to his request. The complainant testified at length that it was his opinion that many records that should have been contained within the records sought were not there. Such records include certain certifications held by employees of organizations contracted by the Judicial Branch as well as criminal background checks of the employees of organizations contracted by the Judicial Branch. It is found that such background checks and certificates were not requested by the complainant in the complainant’s March 29, 2018 letter, described in paragraphs 2 and 3, above.

14. It is found that the respondents provided the complainant with access to, or copies of, records responsive the request described in paragraph 3, above, to the extent that such records exist, with the exception of records which do not relate to the administrative functions of the respondents.

15. With respect to the records requested in item 3(h), it is found that no such records exist.

16. With respect to the records requested in item 3(l), it is found that such records, to the extent that they exist, are not records related to the administrative functions of the court, since they derive from the judge's records related to a civil matter before her, and as such, are not subject to release in accordance with the FOI Act.

17. At hearing, the complainant argued that the requested records should have been scanned and put on compact disc for his convenience. However, such issue was not fairly raised in the complaint to the Commission, and therefore is not addressed in this report.

18. Based on all of the foregoing, it is concluded that the respondents have complied with the complainant's request and therefore did not violate the disclosure provisions of §§1-210 and 1-212, G.S., in this matter.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 24, 2019.

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Cynthia A. Cannata  
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:

**DAVID CUMMINGS**, P.O. Box 84, Ellington, CT 06029

**ELIZABETH GRAHAM, EXECUTIVE DIRECTOR, ADMINISTRATIVE SERVICES, STATE OF CONNECTICUT, JUDICIAL BRANCH; AND STATE OF CONNECTICUT, JUDICIAL BRANCH**, c/o Attorney Martin R. Libbin, Connecticut Judicial Branch, 100 Washington Street, 3rd Floor, Hartford, CT 06106

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Cynthia A. Cannata  
Acting Clerk of the Commission