

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Eric Desmond,

Complainant

against

Docket #FIC 2017-0332

Chief Executive Officer, Yale New Haven  
Hospital; and Yale New Haven Hospital,

Respondents

December 13, 2017

The above-captioned matter was heard as a contested case on October 17, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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

1. It is found that, on May 10, 2017, the complainant made a multi-prong request for copies of records allegedly maintained by the respondents.
2. It is found that, on May 12, 2017, the respondents refused the complainant's request, based on their claim that Yale New Haven Hospital is not a public agency within the meaning of § 1-200(1), G.S.
3. By letter filed June 12, 2017, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records he requested.
4. Section 1-200(1), G.S., provides:

"Public agency" or "agency" means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee

thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, “judicial office” includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any “implementing agency”, as defined in section 32-222. (Emphasis added.)

5. The threshold issue in this matter is whether Yale New Haven Hospital (“YNHH”) is the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S.

6. With respect to whether an entity is the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S., four factors must be considered: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government. See Board of Trustees of Woodstock Academy v. Freedom of Information Commission, 181 Conn. 544, 554 (1980). “All relevant factors are to be considered cumulatively, with no single factor being essential or conclusive.” Connecticut Humane Society v. Freedom of Information Commission, 281 Conn. 757, 761 (1991).

7. It is found that “a State Hospital,” the predecessor of YNHH, was created by the Connecticut legislature in 1826 as a “body politic” for the purpose of “establishing and maintaining a general hospital in the city of New Haven.” It is found that the hospital was created as a charitable institution, and that “any subscriber, town, corporate society, or association of individuals, paying one hundred dollars, may at any time name one indigent person who shall have the benefits of the Hospital, free of expence [*sic*], six weeks during the year.” It is found that the legislature, in the same enactment, created the “general Hospital Society of Connecticut,” composed of subscribers who in most part purchased membership, but who were not necessarily public officials, and which was given the authority to govern the General Hospital. It is found that meetings of the Society were to be publicly noticed. It is also found that the Governor of Connecticut and two commissioners appointed by the General Assembly were assigned the duty to “superintend the general concerns of [said] Hospital ... and report to the legislature from time to time concerning the affairs of the Hospital.” It is found that the state donated \$5000 at some point between 1826 and 1833 to fund a hospital building. It appears that the legislature intended to create the “State Hospital” of New Haven as a public institution; however, in a case from 1931 considering whether the hospital was protected by sovereign immunity, the Connecticut Supreme Court held that “[the] act created a private corporation dedicated to the purpose of general and public charity.” Cohen v. General Hospital Soc. of Connecticut, 113 Conn. 188, 191 (1931).

8. By 1965, the “State Hospital” created in 1826 had become affiliated with the Yale School of Medicine, a private institution; as YNHH, the hospital is administered and operates today as a private nonprofit acute care teaching hospital.

9. With respect to whether YNHH performs a governmental function, it is found that 26 out of the 27 acute care hospitals in Connecticut are private nonprofit institutions. It is found

that in Connecticut, at least, the operation of an acute care hospital is not commonly a governmental function.

10. It is also found that YNHH is not required by government to provide acute hospital care. By contrast, the Woodstock Academy was designated by the town's board of education, in accordance with state statutes, to serve as the town's only free public secondary school, thus fulfilling a state constitutional mandate to provide a free public education to all children in Connecticut. Woodstock Academy, supra, 181 Conn. 546-547.

11. The complainant contended, specifically, that YNHH performs a governmental function with respect to an aspect of its administration of its workers' compensation benefits plan. It is found that YNHH, like many other large employers, is self-insured and has established a medical care plan<sup>1</sup> for providing workers' compensation benefits. It is found that if YNHH did not self-insure, it would be required to contract with a private insurance company for workers' compensation insurance. The complainant focused on the utilization review and dispute resolution process, which is performed by the medical plan and, if appealed, reviewed by the Workers' Compensation Commission on an abuse of discretion standard. The complainant contended that the initial fact-finding process in the utilization review and dispute resolution process is the performance of a governmental function because employers without medical care plans would go to the Commission for fact-finding in the first instance. The respondents appeared to assert correctly, however, that YNHH's utilization review as a self-insured employer is not a substitute for an otherwise governmental function (a de novo hearing before the Commission), but instead is a function that would be performed by a private insurer with a medical care plan. It is found, based on the foregoing, as well as on the testimony provided in the hearing in this matter, that the YNHH is not performing a governmental function when it undertakes a utilization review as part of its self-insured medical care plan for workers' compensation.

12. It is also found that even if YNHH's workers' compensation utilization review and dispute resolution process is a governmental function, it is a very small part of YNHH's workers' compensation program and an even smaller part of YNHH's operations as a whole.

13. With respect to the extent of government involvement or regulation, it is found that YNHH is subject to a significant amount of government regulatory control by the state Department of Public Health and as a participant in federal Medicare and Medicaid programs. It is found that YNHH and its employees must meet certain professional standards. Nevertheless, it is also found that YNHH's employees are not government employees, and neither YNHH's actual delivery of medical care nor its teaching activities are directed by government. It is found that government does not exert "direct, pervasive or continuous regulatory control" over YNHH's core operations, nor does government have "day-to-day involvement" in YNHH's ongoing activities. Domestic Violence Services of Greater New Haven, Inc. v. FOI Comm'n, 47 Conn.App. 466, 477 (1998). By contrast, in Woodstock Academy, the state board of education

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<sup>1</sup> Section 31-279 (c)(1), G.S., provides: Any employer or any insurer acting on behalf of an employer, may establish a plan, subject to the approval of the chairman of the Workers' Compensation Commission under subsection (d) of this section, for the provision of medical care that the employer provides for treatment of any injury or illness under this chapter[.]

examined and certified the Academy's operations, as required by statute, and its teachers received government pensions. Woodstock Academy, supra, 181 Conn. 548.

14. With respect to the level of government funding, it is found that case law has established that the prong is not met where the government money is received as consideration for services. Envirotest Systems Corporation v. FOI Comm'n, 59 Conn.App. 753 (2000), cert. denied, 254 Conn. 951 (2000); Domestic Violence Services v. FOI Comm'n, supra, 47 Conn.App. 475-476. It is found that YNHH's 2016 budget is approximately \$2.66 billion, of which \$2.5 billion comes from patient revenues. It is found that approximately 40% of the patient revenues is provided by Medicare and Medicaid for patient care. It is found that direct government funding amounts to less than 1% of YNHH's operating budget. It is found that "the amount of government money that [YNHH] receives reflects the amount of business it does with government." Domestic Violence Services v. FOI Comm'n, supra, 47 Conn.App. 475.

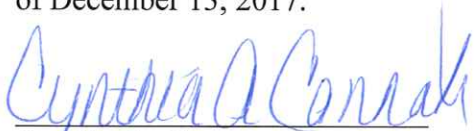
15. Taking all four of the relevant factors into consideration, and based upon the totality of all of the evidence presented in this case, it is concluded that YNHH is not the "functional equivalent" of a public agency, within the meaning of §1-200(1)(B), G.S.

16. It is concluded that the respondents did not violate the FOI Act, as alleged.

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 December 13, 2017.



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.

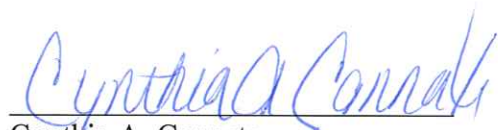
THE PARTIES TO THIS CONTESTED CASE ARE:

TO COMPLAINANT(S)

**ERIC DESMOND**, 404 Sharon Drive, Cheshire, CT 06410

TO RESPONDENT(S)

**CHIEF EXECUTIVE OFFICER, YALE NEW HAVEN HOSPITAL; AND YALE NEW HAVEN HOSPITAL**, c/o Attorneys Aaron S. Bayer, and Attorney Robyn E. Gallagher, Wiggin and Dana LLP, 20 Church Street, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission