

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Dr. Muthu Sankaran,

Complainant

against

Docket #FIC 2024-0014

Commissioner, State of Connecticut,
Department of Public Health;
and State of Connecticut,
Department of Public Health,

Respondents

November 20, 2024

The above-captioned matter was heard as a contested case on July 17, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

By motion dated April 26, 2024, the respondents moved to dismiss the appeal on the ground that it had not been timely filed, and on the ground that, because the underlying correspondence to the respondents posed a series of questions (rather than a request for public records), the appeal failed to state a claim upon which relief could be granted. By order dated May 6, 2024, the hearing officer ordered the complainant to address the claim that the appeal was not timely filed. By email dated May 8, 2024, the complainant filed a response, alleging that his appeal to the Commission was filed both electronically, which was received by the Commission on January 8, 2024, and by U.S. mail, which mailing was postmarked January 4, 2024, and received by the Commission on January 5, 2024. Because the respondents' final email to the complainant was dated December 6, 2023, see ¶ 4, below, and because the complainant's hardcopy appeal to the Commission was postmarked January 4, 2024, the respondents' motion to dismiss the appeal as untimely was denied. See Conn. Gen. Stat. §1-206(b)(1) ("Any person denied the right to inspect or copy records under section 1-210 ...may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial.... For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.").

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 October 30, 2023, the complainant sent the respondents the following correspondence:

[I am] [s]eeking answers to the following questions:

- 1) Whether Genesys Diagnostics, Inc. is licensed for, or whether its licensing procedure involved a commitment or representation to develop liquid biopsy procedures;
- 2) Whether Genesys Diagnostics, Inc. is licensed for or whether its licensing procedure involved a commitment or representation to develop cytogenic chromosomal analysis;
- 3) Whether Genesys Diagnostics, Inc. is licensed for, or whether its licensing procedure involved a commitment or representation to develop FISH (fluorescence in situ hybridization) probes; and
- 4) Whether Genesys Diagnostic, Inc. is licensed for, or whether its licensing procedure involved a commitment or representation to develop "Next Generation Sequencing" for genetic and chromosomal testing and analysis.

3. It is found that, by email dated October 30, 2023, the respondents acknowledged the complainant's correspondence.

4. It is found that, by email dated December 6, 2023, the respondents informed the complainant that:

...Licensing responsibilities for clinical laboratories are shared by the state and federal authorities. The information that you request is not available through the state's licensing documents. You may be able to obtain the requested information by contacting the Centers for Medicare and Medicaid Services (CMS) at bostonsogfoia@cms.hhs.gov.

5. By letter postmarked January 4, 2024 and filed January 5, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with certain records.

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 that:

[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, . . . (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. At the hearing, the respondents again raised the argument that, because the complainant posed a series of questions to the respondents, the appeal must be dismissed. The hearing officer entertained oral argument from the parties on this issue.

10. Construing the correspondence set forth in paragraph 2, above, in the light most favorable to the complainant, it is found that the complainant did not request a copy of, or the opportunity to inspect any record; but rather, requested answers to questions.

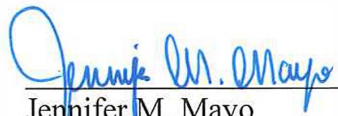
11. Nonetheless, it is found that the respondents conducted a search for records that might answer the questions set forth in paragraph 2, above. It is found that, while the respondents did not maintain any records that answered such questions, they provided the complainant with several documents that they believed might be helpful to him. It is found that such documents included licensing information for Genesys Diagnostics Inc. as well as the types and estimated quantities of tests carried out by a particular laboratory, and a fee schedule booklet. It is further found that the respondents referred the complainant to the federal agency that they believed might be able to further assist him.

12. It is concluded that the FOI Act does not require public agencies to answer questions, and that therefore, the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 November 20, 2024.



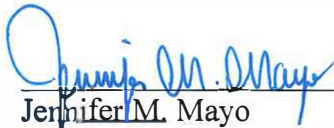
Jennifer M. Mayo
Acting Clerk of the Commission

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:

MUTHU SANKARAN, c/o Attorney Peter Luria, PO Box 779, Avon, CT 06001

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; AND STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH, c/o Attorney Lisa Kessler, Department of Public Health, 410 Capital Avenue, Hartford, CT 06134



Jennifer M. Mayo
Acting Clerk of the Commission