

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Dr. Muthu Sankaran,

Complainant

against

Docket # FIC 2024-0089

Commissioner, State of Connecticut,
Department of Economic and Community
Development; and State of Connecticut,
Department of Economic and Community
Development,

Respondents

October 9, 2024

The above-captioned matter was heard as a contested case on July 10, 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 July 2, 2024, the respondents requested that the Commission impose a civil penalty against the complainant pursuant to §1-206(b)(2), G.S.¹ At the hearing, however, the respondents withdrew such request.

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 letter dated October 2, 2023, the complainant, through counsel, made the following request to the respondents:

I am attempting to obtain certain information about Genesys Diagnostics, Inc. [“GDI”]. Specifically, I am attempting to determine:

- (1) Whether [GDI] received funding from the [respondents] for the following purposes:

¹ Section 1-206(b)(2), G.S., provides in relevant part: “If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars.”

- (a) To develop liquid biopsy procedures;
 - (b) To develop cytogenic chromosomal analysis procedures;
 - (c) To develop fluorescence in situ hybridization (FISH) procedures;
 - (d) To develop “next generation sequencing procedures for genetic and chromosomal analysis;
- (2) Whether, as a condition of such funding, [GDI] was required to maintain clinical laboratories with specific space, equipment, and other requirements, and if so, what would happen to the financing if such facilities were not maintained.

Any information you can provide would be greatly appreciated, and will of course forestall any further actions such as FOIA requests, subpoenas, etc. (Emphasis added.)

3. It is found that by email dated October 19, 2023, the respondents’ Paralegal Specialist who was responsible for processing the complainant’s request replied to the letter described in paragraph 2, above, as follows:

I think your questions can be best answered by reviewing the Assistance Agreements (our terminology for the contractual agreements between DECD and [GDI]), which I am able to obtain electronically. However, the Agreements need to be reviewed to determine if there is any information within that is subject to exemption under the FOIA statutes. This may take a few days. In the event we are not able to produce those documents by Friday, October 27, I will let you know.

4. It is found that by email dated November 1, 2023, the respondents provided the complainant with “all of the documents we could locate in our files in an effort to allow you to find the information you mentioned in your letter.”

5. It is found that, notwithstanding the respondents’ November 1, 2023 email described in paragraph 4, above, the complainant, through counsel, emailed the respondents on November 16, 2023, requesting that they “advise re the status of my request for information concerning [GDI].”

6. It is found that by letter dated January 10, 2024, the complainant, through counsel, notified the respondents that “unless I receive a response to my request for information, I will

have no choice but to assume that it has been denied by your department, and I will therefore be required to file an appeal with the [FOI] Commission.”

7. It is found that by email dated January 11, 2024, the respondents provided the complainant with a second copy of the records described in paragraph 4, above. It is further found that the respondents notified the complainant that “[a]s far as the specific questions you had in your letter dated October 2, 2023, [we] have provided the above documents but the FOI Act does not require responding to questions”

8. By letter of complaint filed February 7, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying the request described in paragraph 2, above.²

9. 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.

10. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

11. 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.”

12. At the hearing in this matter, the respondents conceded that although the complainant’s request technically asked only for *information*, rather than specific records, the respondents treated the request as one seeking documents concerning the topics set forth in paragraph 2, above, and specifically offered to provide the complainant with the contract documents from the transactions between GDI and the respondents. The respondents claimed that they provided the complainant with all such records.

² After receiving the complaint, by email dated March 18, 2024, the respondents sent the complainant, for the third time, a copy of the records described in paragraph 4, above.

13. In light of the respondents' position described in paragraph 12, above, and assuming the complainant intended his request as one seeking records, it is concluded that the records described in paragraph 2, above, 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.³

14. At the hearing and in his post-hearing brief, the complainant's sole claim was that the respondents did not provide him with all responsive records because the documents he received do not mention whether any funding was provided for the specific procedures referenced in his request.

15. At the hearing, the respondents presented the testimony of the Paralegal Specialist identified in paragraph 3, above. Based on the testimony presented at the hearing, it is found that any information concerning the amount of funding that the respondents provide to a particular entity, and any conditions on such funding, typically would be found in the transaction documents. It is further found that the respondents' transaction documents typically do not contain details concerning the use of funds or conditions on such funds at the level of specificity described in the complainant's request.

16. It is found that after receiving the request, the Paralegal Specialist contacted the respondents' FOI Liaisons, their Librarian, and the Project Manager for the transactions with GDI, and requested that they provide her with all records concerning the funding that was provided to GDI.

17. It is further found that the FOI Liaisons and the Project Manager did not locate any responsive records. It is found that the Librarian provided the Paralegal Specialist with documents concerning funding that the respondents provided to GDI, including assistance agreements for two transactions, budget documents, and correspondence concerning the transactions.

18. It is found that in the emails described in paragraphs 4 and 7 and footnote 2, above, the respondents provided the complainant with all of the records described in paragraph 15, above.

19. Based on the foregoing, it is found that the respondents provided the complainant with all records they maintained that were responsive to the complainant's request. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S.⁴

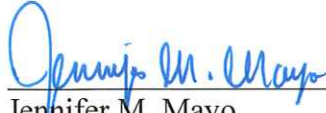
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

³ Cf. *Perkins v. FOI Commission*, 228 Conn. 158, 166 (1993) (where request "was consistently treated, by all the parties, as a request for records," Commission properly treated such request as one seeking public records).

⁴ To the extent the complainant claimed that the respondents were obligated to answer his question whether any funding was provided for the specific procedures identified in his request, it is well established that public agencies have "no ... duty to answer questions about or create documents that [they do] not maintain." *Albright-Lazzari v. Murphy*, 2011 WL 1886878, at *3 (Quotation marks omitted.) (Conn. Super. April 11, 2011).

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 9, 2024.



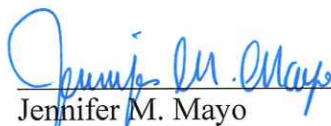
Jennifer M. Mayo
Acting Clerk of the Commission

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, Attorney and Counselor at Law, PO Box 779, Avon, CT 06001

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT; AND STATE OF CONNECTICUT, DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, c/o Assistant Attorney General John Langmaid and Assistant Attorney General Diaghilev Lubin-Farnell, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission