

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ian Cooke,

Complainant

against

Docket #FIC 2023-0565

Commissioner, State of Connecticut,
Department of Administrative Services;
and State of Connecticut, Department of
Administrative Services,

Respondents

October 23, 2024

The above-captioned matter was heard as a contested case on April 29, 2024 at which time the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Corrections. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.)

On September 13, 2024, the Hearing Officer ordered the respondents to submit additional evidence via affidavit and documentary evidence (if applicable), in part, detailing their ability to access and retrieve information stored by the Bureau of Information Technology Solutions (“BITS”). On September 20, 2024, the respondents submitted a response objecting to the order, in part, arguing that such information was not relevant to the above-captioned matter. The Hearing Officer overruled such objection and on the same date ordered the respondents to comply with the order by the close of business on September 23, 2024. The respondents complied with the reissued order and provided an affidavit of Jasmine Bartholomew, dated September 23, 2024, entered into evidence as Respondents’ Exhibit 2 (after-filed).¹

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.

¹ As part of the September 13 order that was reissued on September 20, 2024, the complainant was provided an opportunity to object to any information contained in the respondents’ affidavit, by no later than the close of business on September 27, 2024. The Commission did not receive any objection from the complainant.

2. It is found that by letter dated October 12, 2023, the complainant submitted a records request to the respondents seeking emails for various state employees of either the Rocky Hill State's Attorney's Office, the New London State's Attorney's Office, or the Department of Emergency Services and Public Protection.² Specifically, the complainant sought the following emails of the state employees identified in his October 12 request:

- a. between January 1, 2021, through the date of the request containing the following keywords – cooke, 5400, 8265, 8472, 1544, “yang” & “contamination” (only those emails where both terms appear), and “yang” & “QAR” (only those emails where both terms appear); and
- b. between January 1, 2017, through the date of the request containing the following keywords – cooke, 17-228, 17 228, 100317.

3. It is found that on October 25, 2023, the respondents responded to the complainant's October 12 request and indicated that as “none of the employees listed in [the October 12] request are Department of Administrative Services employees, our agency has no responsive records. Since [the respondents have] no responsive records, we are now considering this matter closed.”

4. By letter of complaint received and filed on November 8, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his October 12 request described in paragraph 2, above.

5. 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.

6. 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.

² Hereinafter, the October 12 request.

7. 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.”

8. It is concluded that the requested records described in paragraph 2, above, to the extent that such records exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that BITS is a division of the respondent Department of Administrative Services (“DAS”) which offers state executive branch agencies several information technology (“IT”) based services, including, but not limited to, data storage and retrieval.

10. It is further found that the data storage and retrieval services offered by BITS are optional for state executive branch agencies and that not all such agencies utilize such services.

11. The respondents contend that because the individuals referenced in the complainant’s October 12 request are not employees of the respondent DAS, any records that are stored by BITS for another executive branch agency as part of the services they provide are not “maintained” by the respondents.

12. In Town of Avon v. Sastre, 2022 WL 6421446, at *4 (Sep. 20, 2022), *aff’d*, 224 Conn. App. 15 (October 19, 2023), the Court interpreted the phrase “‘maintained or kept on file’ in §1-210(a) as meaning within the possession, custody or control of the public agency.”

13. In Docket #FIC 2022-0550, Ian Cooke v. Commissioner, State of Connecticut Department of Emergency Services and Public Protection et al. (Nov. 15, 2023) (“Cooke I”), the Commission considered the converse of the question presented herein – whether the Department of Emergency Services and Public Protection (“DESPP”) “maintained” their own employees’ personnel files despite the fact that such files were stored by DAS pursuant to a Memorandum of Understanding which stated that DAS would provide Human Resources services for DESPP.

14. Applying Town of Avon v. Sastre to the facts in Cooke I, the Commission found that DESPP “maintained” their employees’ personnel files within the meaning of §1-210(a), G.S. Specifically, the Commission found that DESPP exercised control over the records and was: (i) able to access such records; (ii) decide what information to redact from such records; and (iii) provide copies of such records directly to the complainant.

15. With respect to the requested records in this case, it is found that although BITS may store some of the records, it does so as part of its data storage and retrieval services that it offers to certain state agencies.

16. It is found that although BITS is a division of DAS, the respondents themselves are not able to access records stored by BITS as part of such data storage and retrieval services.

17. It is found that the respondents are not able to request, review or access records of another public agency because “all records are kept in a silo exclusive to that particular agency.” Moreover, it is found that only designated and authorized agency personnel may request that BITS access and retrieve stored records in responding to FOI requests or matters related to its own agency.

18. It is found that when a public agency utilizing BITS’ services receives a request for records, authorized personnel from such agency may submit a service-ticket requesting that BITS search for, and retrieve such records on their behalf.

19. It is found that only authorized personnel for a respective agency may submit service-tickets for the search and retrieval of only those records BITS stores on behalf of that agency.

20. It is found that neither the respondents themselves (i.e., the DAS Commissioner and DAS as an agency), nor BITS (as a division of the respondents), are permitted to access or review records BITS stores on behalf of other executive branch agencies without a service-ticket from an authorized user of such an agency.

21. It is further found that the respondents do not have the requisite familiarity with the records stored by BITS such that they are able to decide what information to redact from such records.

22. Finally, it is found that based upon the manner in which BITS and the service-ticket system operates, the respondents are not able to provide copies of such records directly to the individual requestor. Rather, it is found that BITS provides the records to authorized personnel from the agency submitting the service-ticket, who then reviews such records, makes a determination as to applicable exemptions, and provides such records to an individual requestor.


23. Based on the foregoing, it is found that the respondents do not “maintain” the requested records sought by the complainant in his October 12 request, within the meaning of §1-210(a), G.S.

24. It is concluded, therefore, that the respondents were not required to comply with the complainant’s October 12 request for emails of individuals not employed by the respondents.

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 October 23, 2024.



Molly Steffes
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:

IAN COOKE, #340812, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES, c/o Attorney Ernestine Weaver, State of CT Department of Administrative Services, 450 Columbus Blvd, Suite 1501, Hartford, CT 06103



Molly Steffes
Acting Clerk of the Commission