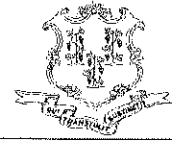


Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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David Taylor,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-008

Chief Public Defender, State of Connecticut, Office of the
Chief Public Defender; and State of Connecticut, Office of
the Chief Public Defender,
Respondent(s)

November 23, 2015

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, December 16, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE December 4, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE December 4, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE December 4, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: David Taylor; Assistant Attorney General Steven R. Strom;
Attorney Deborah DelPrete Sullivan; and Attorney Timothy R. Scannell

2015-11-23/FIC# 2015-008/Trans/wrbp/TCB/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

David Taylor,

Complainant

against

Docket #FIC 2015-008

Chief Public Defender, State of
Connecticut, Office of the Chief
Public Defender; and State of
Connecticut, Office of the Chief
Public Defender,

Respondents

November 23, 2015

The above-captioned matter was heard as a contested case on October 20, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts 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 Correction. See Anthony Sinchak v. FOIC et al, Superior Court, Judicial District of Hartford, Docket No. CV 03-0826293, (corrected order dated January 27, 2004, Sheldon, J.).

Attorney Anthony Wallace, the subject of the requested records, moved for, and was granted, permission to join as an intervenor in this matter.

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 December 8, 2014, the complainant made a request to the respondents for the following records:
 - a. "All reports, assessments, evaluations, recommendations and otherwise generated under section 8 of the Administrative Policy, subsection k, for Attorney

Wallace, per subsections (1) and (11), and in particular under subsection (8) and (9);”

- b. “Any other reports, assessments, evaluations, recommendations and otherwise generated pertaining to Anthony Wallace including but not limited to his appointment in, and handling of, habeas case Taylor v. Warden CV112-4004709:” and
- c. “Attorney Wallace’s application(s) and resume(s) for all contractual and/or non-contractual appointments as Assigned Counsel or Special Public Defender.”

3. It is found that by letter dated January 5, 2015, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for access to public records.

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

“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.

5. 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.

6. 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.”

7. It is found that the requested records, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that the subject of the requested records, Attorney Anthony Wallace, was assigned as Special Public Defender to represent the complainant in his habeas corpus petition.

9. It is found that after corresponding with the complainant by letters dated December 17, and December 30, 2014 and January 23 and February 11, 2015, the respondents provided the complainant with thirty-nine pages of records on February 25, 2015, which were records containing attorney-client privileged information pertaining to the complainant's habeas corpus petition. It is found that those records were not responsive to the complainant's request but were provided as a courtesy.

10. Based on the credible testimony of their witnesses, it is found that the respondents maintain no records responsive to the complainant's requests described in paragraph 2(a) and 2(b), above.

11. It is found that the respondents denied the complainant's request described in paragraph 2(c), above, contending, in part, that the records were exempt from disclosure pursuant to §18-101f, G.S.

12. Section 18-101f, G.S., provides as follows:

A personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services ... shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction ...

13. It is found that the complainant is an individual committed to the custody or supervision of the Commissioner of Correction.

14. At the hearing on this matter, the complainant contended that §18-101f, G.S., is not applicable because Attorney Wallace served as Special Public Defender pursuant to a contract with the respondents and is not an "employee" of the respondents within the meaning of that statute.

15. The respondents contend that Attorney Wallace is an "employee" within the meaning of §18-101f, G.S., and cite the definition of employee found in §4-141, G.S. which states that " 'state officers and employees' includes . . . attorneys appointed by the Public Defender Services Commission as public defenders, assistant public defenders or deputy assistant public defenders and attorneys appointed by the court as Division of Public Defender Services assigned counsel"

16. It is found that §4-141, G.S., is the definitional section of C.G.S. Chapter 53 Claims Against the State and is applicable only to the provisions found in that chapter.

17. Nonetheless, it is found that Special Public Defenders are “employees” of the respondents within the meaning §18-101f, G.S. See McDonough v. FOIC, Superior Court, Judicial District of New Britain, Docket No. HHBCV10-6006196 S, (October 4, 2011) (administrative appeal of Docket #FIC 2009-394 Thomas May v. Office of the Public Defenders appeal, regarding the disclosure of certain personnel records of a Special Public Defender, dismissed as moot upon enactment of P.A. 11-220 prohibiting disclosure of personnel records maintained by the Office of the Public Defender to persons in the custody of the Department of Correction).

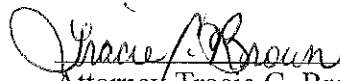
18. It is concluded that the records described in paragraph 2(c), above, are personnel files or similar files under §18-101f, G.S.

19. It is concluded that the respondents did not violate the FOI Act by denying the complainant’s request for access to the records described in paragraph 2(c), above.

20. Therefore, it is concluded that the respondents did not violate the disclosure provisions of the FOI Act as alleged by the complainant.

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.



Attorney Tracie C. Brown
as Hearing Officer