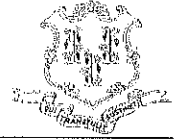


Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Gary Cooke,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-108

Wayne Carver, Chief, State of Connecticut,  
Office of the Chief Medical Examiner; and State  
of Connecticut, Office of the Chief Medical  
Examiner,

Respondent(s)

November 9, 2012

### 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 12, 2012**. 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 November 30, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE November 30, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE November 30, 2012**, 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: Gary Cooke  
Patrick B. Kwanashie, AAG  
cc: Kristine Barone

11/9/12/FIC# 2012-108/Trans/wrbp/LFS/VDH

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Gary Cooke,

Complainant

against

Docket #FIC 2012-108

Wayne Carver, Chief, State of  
Connecticut, Office of the Chief Medical  
Examiner; and State of Connecticut,  
Office of the Chief Medical Examiner,

Respondents

October 2, 2012

The above-captioned matter was heard as a contested case on September 25, 2012, 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 Correction. 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.).

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 on January 29, 2012, the complainant requested a copy of x-ray films of two autopsy subjects, and the disciplinary and performance history in the personnel records of Dr. Malka Shah, redacted of personal information.
3. By letter of complaint filed February 20, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with a copy of the records he requested.

4. Section 1-200(5), G.S., defines "public records" as follows:

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, ... 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:

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 ... receive a copy of such records in accordance with the provisions of section 1-212.

6. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

7. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. With respect to the x-ray films, it is found that the respondents customarily make copies of the original films by electronically scanning the films into digital format. It is found that the machine that the respondents used to make a copy of an x-ray film before they had the ability to scan the films into digital format has not been used in many years and may not work anymore.

9. It is found that the Department of Correction informed the respondents that the complainant would not be able to have a plastic x-ray film due to concerns about using the film as a weapon and burning the plastic to create noxious fumes.

10. It is found that the respondents offered to provide such digital "photographs" of the x-rays to the complainant at the cost set forth in §19a-401-12(g) of the Regulations of the Commission on Medicolegal Investigation. It is found that the respondents previously provided such copies in 2008.

11. It is found that before the hearing in this matter, the complainant insisted on receiving copies of the x-ray films, not digital copies. At the hearing in this matter, the respondents explained that the digital copies are scans of the films and are the customarily accepted standard for copies of x-rays. It is found that the complainant hung up the phone and terminated his participation in the hearing before it could be determined whether he would accept copies in lieu of the plastic films.

12. It is found that the respondents did not deny the complainant's request for copies of the x-rays; therefore, the respondents did not violate the FOI Act with respect to such portion of the complainant's request for copies of records.

13. With respect to the complainant's request for personnel records, described in paragraph 2, above, it is found that in 2011, the respondents transferred custody of their employees' personnel records to the Department of Administrative Services ("DAS") as required by an agency consolidation statute enacted by the legislature.

14. It is found that on May 29, 2012, DAS provided to the complainant all the records it maintained in the personnel file of Dr. Shah. It is found that such records consist of performance evaluations from 1995-2000. It is found that evaluations were not performed on Dr. Shah prior to that time and were not performed after 2000. It is found that, were there any disciplinary history, it would be in the personnel file. It is found, however, that Dr. Shah had no history of misconduct or discipline.

15. It is found that DAS provided to the complainant all the records it maintains on behalf of the respondents concerning the disciplinary and performance history of Dr. Shah.

16. It is concluded that the respondents did not violate 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 dismissed.

  
\_\_\_\_\_  
Lisa Fein Siegel  
as Hearing Officer