

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

David Cummings,

Complainant

against

Docket #FIC 2018-0124

Elizabeth Graham, Executive
Director, State of Connecticut,
Judicial Branch, Administrative
Services Division; and State of
Connecticut, Judicial Branch,
Administrative Services
Division,

Respondents

February 27, 2019

The above-captioned matter was heard as a contested case on February 8, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2018-0125; David Cummings v. Elizabeth Graham, Executive Director, State of Connecticut, Judicial Branch, Administrative Services Division; Docket #FIC 2018-0208; David Cummings v. Elizabeth Graham, Executive Director, State of Connecticut, Judicial Branch, Administrative Services Division; and Docket # FIC 2018-0303; David Cummings v. Elizabeth Graham, Executive Director, State of Connecticut, Judicial Branch, Administrative Services Division.

By email filed February 11, 2019, the complainant moved to add testimony and an exhibit to the record in this matter, pursuant to section 1-2j-28 of the Regulations of Connecticut State Agencies. Such motion is hereby denied, although such motion and attachments will be marked as Complainant's Exhibit F for identification purposes.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies with respect to their administrative functions, within the meaning of §1-200(1)(A), G.S.

2. It is found that, by letter dated December 12, 2017, the complainant requested that the respondents provide "...a date, time and place, to be allowed to inspect and or copy the following records ... during public hours...." Such records were described as:

- a. the findings and recommendations of the United States Attorney regarding an investigation of the Judicial Branch's compliance with the Americans With Disabilities Act (hereinafter "ADA");
- b. all formal settlements and agreements with the United States Department of Justice with the Judicial Branch Superior Court Operations Division and any written recommendations regarding the ADA which includes effective communication with individuals with disabilities;
- c. the policy and procedure for a qualified person request for continuance;
- d. "the policy and procedure when there a denial for request for continece (*sic*) made by HRM";
- e. the policies and procedures for the current year of 2017 for the Judicial Branch ADA and request for accommodations.

3. It is found that, by letter dated February 28, 2018, the complainant made another request to the respondents, incorporating the request described in paragraph 2, above, and also requesting "a date, time and place to be allowed to inspect and or copy the requested records during public business hours...." Such records were described as:

- a. all records related to the initiation of a review by the United States Attorney of the Judicial Branch's compliance with the Americans With Disabilities Act (hereinafter "ADA");
- b. the records received by the Judicial Branch regarding an investigation of the Judicial Branch's compliance with the Americans With Disabilities Act (hereinafter "ADA"), since September 3, 2013 including records received or delivered to the Judicial Branch regarding the compliance review described in paragraph 3.a, above;
- c. the findings and recommendations of the United States Attorney regarding an investigation of the Judicial Branch's compliance with the Americans With Disabilities Act (hereinafter "ADA"), since September 3, 2013 and all records that relate to whether the Judicial Branch complies with the ADA;

- d. the Judicial Branch's current ADA policies and implementing regulations;
- e. the policy and procedure for a qualified person request for continuance;
- f. "the policy and procedure when there a denial for request for continence (*sic*) made by HRM or any other state agency";
- g. all records subject appeals of any ADA request and denials by JD Branch and "all records of findings ruling subject grievance when there was a denial and rulings/decision overturned, reverses (*sic*) the denial for ada accommodations from time period of September 3, 2013 to present date";
- h. all formal settlements and agreements with the United States Department of Justice with the Judicial Branch Superior Court Operations Division and any written recommendations regarding the ADA which includes effective communication with individuals with disabilities from September 3, 2013;
- i. the policy and procedure for a qualified person under ADA request for continuance of court proceedings, and records relating to such requests decisions and all communications to Human Resources Management;
- j. Judicial Branch policies and procedures related to problems with ADA accommodations at the courthouse on the day of court such as David Cummings and the name and address of contact information;
- k. the name and address of all contact information as to the decision makers of ADA requests for the Judicial Branch;
- l. the current written agreement as to costs for CART services;
- m. all records as to costs billings and payments made and all communication which includes emails, notes, tape recordings as related to David Cummings and written request he has made;
- n. any complaints, incidents reports that have been made regarding David Cummings from August 2012 to the present;
- o. any investigation of David Cummings; and

- p. all records related to the April 3, 2017 letter from the Department of Justice to the respondents.

4. It is found that many of the specified requests described in paragraphs 2 and 3, above, are duplicative.

5. By letter dated and filed March 12, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to respond to the request described in paragraph 3, above, and by failing to provide “a date, time and place to inspect all requested records....” The complainant requested that the Commission impose a civil penalty against the respondent executive director.

6. 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.

7. 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....

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. It is found that, to the extent that the respondents maintain responsive records related to the administrative functions of the Judicial Branch, such records are public records, within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that, by email dated March 14, 2018, the respondents informed the complainant that they were searching for records responsive to the request described in paragraphs 2.b, 2.c, 2.d, 2.e, 3.d, 3.e, 3.f, 3.g, 3.h, 3.i, 3.j, 3.k, 3.l, 3.m, 3.n, 3.o and 3.p, above.

11. It is found that, by email dated March 22, 2018, the respondents provided the complainant with the websites where he could access records responsive to the requests described in paragraphs 2.e and 3.d, above. Since the respondents provided the complainant with access to the records described in paragraphs 2.e and 3.d, above, it is concluded that the respondents did not violate the FOI Act with respect to the requests for such records.

12. It is also found that in the March 22, 2018 email, described in paragraph 11, above, the respondents informed the complainant that records responsive to his requests described in paragraphs 2.c, 2.d, 3.e, 3.f, and 3.i, above, relating to continuance request procedures, were in the process of being formulated. Since such records did not exist at the time of the complainant's requests and the respondents' denial, it is concluded that the respondents did not violate the FOI Act with respect to the requests for such records.

13. It is also found that in the March 22, 2018 email, described in paragraph 11, above, the respondents provided the complainant with a website where he could access records responsive to the requests described in paragraph 3.k, above, relating to grievance procedures. Since the respondents provided the complainant with access to the records described in paragraph 3.k, above, it is concluded that the respondents did not violate the FOI Act with respect to the requests for such records.

14. It is also found that in the March 22, 2018 email, described in paragraph 11, above, the respondents informed the complainant that records regarding individual ADA requests are not subject to the FOI Act, but nevertheless offered the complainant a copy of a November 14, 2015 letter regarding an ADA grievance that the complainant had filed. While the respondents did not specifically cite an exemption for such records, which are described in paragraph 3.g, above, the Commission notes that the ADA contains confidentiality provisions for medical records of those seeking accommodations. Moreover, the Commission notes that the complainant did not specifically pursue this request for other individuals' ADA records at the hearing in this matter. Based on the facts and circumstances of this case, the Commission will not further address the request described in paragraph 3.g, above.

15. It is also found that in the March 22, 2018 email, described in paragraph 11, above, the respondents informed the complainant that there is no record responsive to his request described in paragraph 3.j, above, but nevertheless provided a response to his inquiry. Since such record did not exist at the time of the complainant's request and the respondents' denial, it is concluded that the respondents did not violate the FOI Act with respect to the request for the records described in paragraph 3.j, above.

16. It is also found that in the March 22, 2018 email, described in paragraph 11, above, the respondents informed the complainant that they had gathered approximately 90 pages of records responsive to the request described in paragraph 3.l, above, and approximately 400 pages of records responsive to the request described in paragraph 3.m,

above, and invited the complainant to contact the respondents to arrange a time for review of such records. It is further found that, in May 2018, the complainant spent time at the offices of the respondents reviewing such records. It is concluded that the respondents did not violate the FOI Act with respect to the requests for the records described in paragraphs 3.l and 3.m, above.

17. It is also found that the respondents do not maintain records responsive to the requests described in paragraphs 3.n and 3.o, above. Accordingly, it is concluded that the respondents did not violate the FOI Act with respect to the requests for such records.

18. With respect to the request described in paragraphs 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p, above, it is found that, by email dated March 14, 2018, the respondents denied the complainant's request for access to such records which relate to ADA compliance review and agreements with the United States Department of Justice. With respect to such records, the respondents contended that they do not relate to the administrative functions of the judicial branch, within the meaning of §1-200(1)(A), G.S. The respondents noted, that, nevertheless, they were aware that the complainant was in possession of the April 3, 2017 letter from the United States Department of Justice to the respondents regarding ADA Compliance Review of the Connecticut Judicial Branch. Indeed, the complainant submitted such letter as an attachment to the complaint herein.

19. At the hearing on this matter, the respondents presented no testimony with respect to the records described in paragraphs 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p, above. Rather, the respondents relied on the Supreme Court ruling in Clerk of the Superior Court, Geographical Area Number Seven v. FOIC, 278 Conn. 28, 42 (2006) ("Clerk of the Superior Court"), which declared the types of records within the court that relate to administrative functions of the Court. Specifically, the Court ruled:

We conclude, therefore, that administrative records are records pertaining to budget, personnel, facilities and physical operations of the courts and that records created in the course of carrying out the courts' adjudicatory function are categorically exempt from the provisions of the [Freedom of Information Act]. (emphasis added)

20. The records at issue in Clerk of the Superior Court were the clerk's so-called day book of cases currently pending in the court, which listed the defendant's name and address, date of birth, docket numbers, date of the next court hearing, the nature of the next hearing, whether the defendant is represented by counsel, and whether the defendant is currently incarcerated. Concerning these records, the Court said:

The keeping of records for the purpose of scheduling and tracking individual cases and parties is an activity undertaken by the courts for the primary purpose of facilitating their ability to carry out their core judicial function. If such records were treated as public records subject to the act, then no judicial records would be exempt.

Id. at 51.

21. Following Clerk of the Superior Court, the Commission has held substantially similar records at issue in the Clerk case to be adjudicatory, rather than administrative. See Docket #FIC 2010-350; Kacey Lewis v. Division of Public Defender Services (a list of all cases handled in the Waterbury JD and GA courts by public defenders, with docket numbers, charges and the name of the public defender assigned to each case); Docket #FIC 2007-313, Vince Valvo and the Connecticut Council on Freedom of Information v. Chief Court Administrator (docket sheets in level 2 sealed files).

22. Additionally, in Docket #FIC 2016-0079; Mark Sargent v. Melissa Farley, Executive Director, External Affairs Division, Judicial Branch, State of Connecticut; and Judicial Branch, State of Connecticut, the Commission concluded that the records requested therein, which related to the Judicial Branch's Guardian Ad Litem Program, were not records related to the Judicial Branch's administrative functions. Rather, such records were adjudicative in nature.

23. The Final Decision in Docket #2016-0079 was appealed and the Superior Court upheld the Commission's reasoning in HHB-CV-16-5018092; Mark Sargent v. Freedom of Information Commission (December 13, 2017). Respondents contended that such Superior Court decision supports their position that the records described in paragraphs 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p, above, do not relate to the administrative functions of the respondents. Specifically, respondents argued that the records at issue in such paragraphs do not relate to the personnel functions of the court, just as the records in the Sargent matter did not relate to the personnel functions of the court.

24. The Commission takes administrative notice of the United States Department of Justice website, specifically its "A Guide to Disability Rights Law", located at <https://www.ada.gov/cguide.htm>. The Guide informs that Title II of the ADA ensures that local and state governments give people with disabilities an equal opportunity to benefit from their programs and services, including following specific architectural standards.

25. It is found that the records described in paragraphs 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p, above, relate to the U.S. Department of Justice's review of the respondents' ADA compliance. It is found that such records do not relate to the budget or personnel functions of the respondents, within the meaning of Clerk of the Superior Court.

26. However, it is also concluded that the respondents did not prove that the records described in paragraphs 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p, above, do not relate to the facilities or physical operations of the respondents, within the meaning of Clerk of the Superior Court.

27. Therefore, based on the evidence adduced in this case, it is found that the records described in paragraphs 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p, above, relate to the facilities and physical operations of the court, and therefore to the administrative functions of the court, within the meaning of Clerk of the Superior Court.

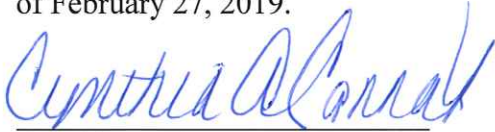
28. It is concluded that the respondents violated the FOI Act, by failing to provide the complainant with access to the records described in paragraphs 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p, above.

29. The Commission declines to consider the imposition of civil penalties in this matter.

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

1. Forthwith, the respondents shall provide the complainant with access to the records described in 2.a, 2.b, 3.a, 3.b, 3.h, and 3.p of the findings, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 27, 2019.



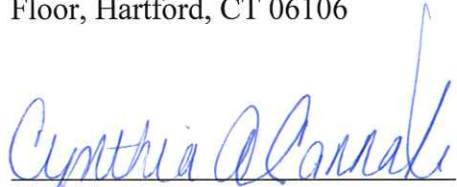
Cynthia A. Cannata
Acting Clerk of the Commission

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:

DAVID CUMMINGS, P.O. Box 84, Ellington, CT 06029

ELIZABETH GRAHAM, EXECUTIVE DIRECTOR, STATE OF CONNECTICUT, ADMINISTRATIVE SERVICES DIVISION, JUDICIAL BRANCH; AND STATE OF CONNECTICUT, ADMINISTRATIVE SERVICES DIVISION, JUDICIAL BRANCH, c/o Attorney Martin Libbin, Judicial Branch, 100 Washington Street, 3rd Floor, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission