

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Alfred Mayo,

Complainant

against

Docket #FIC 2018-0740

Chief Public Defender,
State of Connecticut, Division
of Public Defender Services; and
State of Connecticut, Division of
Public Defender Services,

Respondents

July 24, 2019

The above-captioned matter was heard as a contested case on April 15, 2019, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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., only with respect to their administrative functions.

2. It is found that, by letter dated November 26, 2018, the complainant made a request to Michael Isko, an attorney employed by the respondent division of public defender services as a public defender, for “all information regard to case # H15N-CR-15-0279194-S and H15N-CR-15-0280338-S.”

3. It is found that, on November 26, 2018, Attorney Isko forwarded the request, described in paragraph 2, above, to the division’s legal director for response.

4. It is found that, by letter dated November 26, 2018, the legal director acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant that her office would ascertain whether any responsive records exist and whether any such records are public records.

5. It is found that, by letter dated November 30, 2018, the respondents denied the request on several grounds, including that the requested records do not pertain to the respondents’ administrative functions.

6. By letter dated December 20, 2018 and filed December 21, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the requested records.

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

‘Public agency’ or ‘agency’ means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, “judicial office” includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any “implementing agency”, as defined in section 32-222. (Emphasis added).

8. 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, printed, photostated, photographed or recorded by any other method.

9. 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.

10. 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.”

11. It is found that the complainant was arrested for disorderly conduct in July 2015, and in October 2015, applied to the respondent division for representation by a public defender. It is found that Attorney Isko was assigned to represent the complainant, and that he represented the complainant for approximately three months. At some point, the complainant became dissatisfied with such representation, filed a grievance against Attorney Isko, and requested permission from the court to represent himself. At various times while his criminal cases were pending, he represented himself, or was represented by two other attorneys who were not employees of the respondent division, but rather provided legal services to criminal defendants pursuant to a contract with the respondent division.

12. It is found that the records responsive to the request, described in paragraph 2, above, are the respondents’ case files pertaining to the division’s representation of the complainant in two separate criminal cases. Typically included in the cases files are: time sheets submitted by the contract attorneys, attorneys’ notes regarding the case, notes of investigators, notes documenting conversations with physicians, pleadings, and police records. It is found that attorneys who are employed by the respondent division do not submit time sheets.

13. At the hearing in this matter, the complainant stated that he wished to withdraw his complaint as it pertains to case file H15N-CR-15-0280338-S; therefore the allegation in the complaint pertaining to such file shall not be further considered herein.

14. It is found that the contract attorneys’ time sheets pertain to an administrative function of the respondent division, and it is therefore found that such records are public records, pursuant to §§1-200(1) and (5), G.S. It is further found that the respondents provided all time sheets they maintain that are responsive to the complainant’s request.

15. Accordingly, it is found that the respondents did not violate the FOI Act with respect to the attorneys’ time sheets.

16. With regard to the remainder of the responsive records, it is found that such records do not pertain to the respondents’ administrative functions. It is therefore found that the respondents are not “public agencies” with respect to such records, and that such records are not “public records.”

17. Accordingly, it is concluded that the Commission lacks jurisdiction to adjudicate the complaint with respect to the remainder of the records contained in the complainant’s case file.

18. It is found that, nonetheless, because the respondents acknowledged that the complainant is entitled to a copy of his own file in his capacity as a client, on December 6, 2018, and again on April 4, 2018, the respondents provided the complainant with a copy of his case file in H15N-CR-15-0279194-S.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 24, 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:

ALFRED MAYO, 228 Bond Street, New Britain, CT 06053

CHIEF PUBLIC DEFENDER, STATE OF CONNECTICUT, DIVISION OF PUBLIC DEFENDER SERVICES; AND STATE OF CONNECTICUT, DIVISION OF PUBLIC DEFENDER SERVICES, c/o Attorney Deborah Del Prete Sullivan, Division of Public Defender Services, 30 Trinity Street, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission