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Anne Stevenson,
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2013-216

March 11, 2014

Transmittal of Proposed Final Decision Dated March 11, 2014

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 dated March 11, 2014, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, March 26, 2014.** 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 March 17, 2014.* 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 March 17, 2014.* **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 March 17, 2014* 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: Ann Stevenson
Steven R. Strom, AAG

2014-03-11/FIC# 2013-216/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Second Report of
Hearing Officer

Ann Stevenson,

Complainant

against

Docket #FIC 2013-216

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

Respondents

March 11, 2014

The above-captioned matter was heard as a contested case on September 23, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. A proposed decision was issued on January 30, 2014 and considered at the Commission's February 26, 2014 meeting, at which time the hearing officer requested that the case be re-opened for the taking of additional evidence concerning the nature of the actual records in the possession of the respondents. The re-opened matter was then heard on March 10, 2014, at which time the complainant and the respondents again appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.[1]

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

1. Section 51-1a(a), G.S., provides in relevant part: "The Judicial Department of the state shall consist of ... the Public Defender Services Commission."

[1] At the March 10, 2014 hearing, the complainant sought to introduce additional documentary evidence, which has been marked for identification only as complainant's exhibit M. The hearing officer declined to enter such documents into evidence, because the documents were not necessary for the issuance of this decision, and were not relevant to the purpose for which the hearing had been re-opened on the hearing officer's motion, which was to ascertain factually what records the respondents had in their custody that were responsive to the complainant's request.

2. Section 1-200(a), G.S., provides in relevant part: ""Public agency" or "agency" ... 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."

3. It is concluded that the respondents are public agencies only with respect to their administrative functions within the meaning of §1-200(1), G.S.

4. By letter of complaint filed April 11, 2013, the complainant appealed to the Commission, alleging that the respondents failed to comply with her requests for certain public records. Generally, the complainant sought what she described as administrative records, such as invoices, payments, and contracts, all pertaining to guardian ad litem ("GAL") programs administered through the office of the respondent Chief Public Defender.[2]

5. It is found that, by letter dated January 3, 2013, the complainant requested, for the time period January 1, 2006 through the date of the request:

(1) Copies of any contracts for professional goods and/or services (and related requests for proposals or solicitations, corresponding bids) currently or previously in effect between the State entity for professional services and the following persons or entities:

CT Resource Group, LLC
133 Scovill St., Ste. 211
Waterbury, CT 06706

Connecticut Collaborative Divorce Group

Dr. Sidney Horowitz

Dr. Kenneth S. Robson

Bonnie C. Robson

Dr. Howard Kreiger

Noah Eisenhandler

Maureen Murphy

Mary Piscatelli Brigham

[2] Although the complaint indicates that the complainant was seeking records pertaining to GAL services, the actual request made to the respondents, as described in paragraph 5 of the findings, below, was not limited to records pertaining to GAL services. As it turns out, the only records responsive to the complainant's request pertain to criminal or juvenile delinquency matters, and none pertain to GAL matters. However, the complainant did not withdraw her request or complaint, and this decision is based on the records she requested, not the records she originally thought the respondents had.

(2) Any invoices, billing statements, reimbursement requests, or records pertaining to any payments submitted to the State by the persons or entities referenced in section (1) of this request.

(3) Copies of any payments or reimbursements, benefits, compensation, or gratuities and authorizations for such payments, that the State has made to the persons or entities referenced in section (1) of this request. Please include the name of the source of the funds, the name of the grant or program upon which the payments were based, the name of the account and the account number from which the funds were drawn.

(4) Copies of any statements of financial interest, financial disclosures, conflicts of interest disclosure statements, etc. for persons or entities referenced in request (1) of this letter.

(5) A list of the names and dates for any speeches, program affiliations, seminars, conferences, teaching engagements, trainings, or other public speaking engagements which the persons or entities referenced in request (1) of this letter conducted and/or attended, and any reimbursements requests or compensation associated therewith.

6. It is found that the complainant later repeated her request to the respondents, most recently on March 15, 2013.

7. It is found that, by email dated March 25, 2013, the respondents most recently denied the entirety of complainant's request, except for certain training records that were provided, and as to which the complainant raised no issue at the hearing on this matter.

8. It is found that the respondent Division of Public Defender Services provides counsel to any indigent person charged with the commission of a crime that carries a risk of incarceration. In addition, as of July 2011, the Division provides representation and GAL services to indigent children and parents in child welfare, family, and child support matters.

9. It is found that the respondents contract with individual independent attorneys for representation of indigent clients in various matters, including habeus corpus petitions, Part A and Part B criminal matters, child protection, juvenile delinquency, and GAL representation in family court and juvenile delinquency proceedings.

10. It is found that none of the individuals or entities described in paragraph (1) of the complainant's request are attorneys with whom the respondents entered into such contracts for the provision of legal services. It is further found that the respondents do not have any other type of contract for professional services with any of the individuals or entities described in paragraph (1) of the complainant's request.

11. With respect to the records requested in paragraphs (2) and (3) of the complainant's request, it is found that the respondents maintain records relating to the payment of the named individuals or entities for the provision of professional services, such as expert witness or psychological evaluations, authorized by the respondents after being requested by the individual attorneys under contract with the respondents. Such records are discussed beginning in paragraph 15, below.

12. With respect to the records requested in paragraph (4) of the complainant's request, it is found that the respondents maintain no such records.

13. With respect to the records requested in paragraph (5) of the complainant's request, it is found that the respondents provided the complainant with records responsive to her request for "a list of names and dates for any speeches, program affiliations, seminars, conferences, teaching engagements, trainings, or other public speaking engagements which the persons or entities referenced in request (1) of this letter conducted and/or attended." The complainant is also seeking records reflecting reimbursement requests and compensation of the individuals and entities named in paragraph (1) of her request in connection with the training of GALs. It is found, however, that the respondents do not pay anyone for the training of GALs.[3]

14. It is therefore found that the respondents do not maintain records responsive to the portion of paragraph (5) of the complainant's request seeking records of reimbursement or compensation.

15. It is found that the respondents do maintain at least two forms of records that are responsive to paragraphs (2) and (3) of the complainant's request. The first, called "Authorization to Incur Expenses," form PD101, is submitted to the respondents by individual attorneys under contract to the respondents.[4] This form contains the date of the request, the name of the accused, the court in which proceedings are pending, the docket number of the case, and the charges against the accused. It describes what the expense has been requested for, and explains why the service is necessary. It identifies the service provider and his or her hourly rate, whether there may be future costs for services from the same source, such as testifying at trial, and describes what if anything the accused will pay for the cost of the service. The form also contains the name, telephone number and email of the attorney for the accused, the names of the persons authorizing the expense, and any special conditions and comments in connection with the authorization. Attached to the authorization is an addendum which provides a summary of the case, a description of the expert, what the expert will be doing to assist in defense, and why the expert is necessary.

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[3] In her February 21, 2014 response to the first Report of Hearing Officer, the complainant attached documents, not offered as evidence at the September 23, 2013 hearing, for the purpose of showing the degree of involvement by the respondents in GAL training. These documents have been marked for identification only as complainant's Exhibit L, and were not entered into evidence because the complainant requested only records of reimbursement requests by or compensation to particular individuals or entities for conducting GAL training, and the respondents have no such records. Therefore, it is unnecessary for the Commission to determine the extent of the respondents' involvement in GAL training. For the same reason, it is unnecessary for the Commission to determine specific funding arrangements concerning GAL training, evidence of which the complainant offered in the package of documents identified as Exhibit M (see footnote 1).

[4] None of these individual attorneys are the individuals described in paragraph 5(1), above.

16. It is concluded that, to the extent that the Authorization to Incur Expenses contains information specific to the case being litigated, such as a summary of the case, why an expert's services are necessary, and what the expert will be doing to assist in the defense, the record is not of an administrative function.

17. It is also found that to the extent that the Authorization to Incur Expenses contains administrative information, that information is duplicated in Form CO-17, described in paragraph 18, below. Consequently, no further findings, conclusions or orders are made in this decision regarding the Authorization to Incur Expenses

18. It is found that the second form of the respondents' records that is responsive to paragraphs (2) and (3) of the complainant's request is Form CO-17, "Vendor Invoice for Goods and Services Rendered to the State of Connecticut," and the supporting vendor-generated invoices that may be attached. Form CO-17 contains the following fields of information (1) business unit name, not used by the respondents; (2) business unit number, not used by the respondents; (3) the number on the vendor's separately attached invoice, if any; (4) the invoice amount, filled in by the vendor; (5) the document date, usually not used by the respondents; (6) the invoice date, filled in by the vendor; (7) the accounting date, not used by the respondents; (8) the report type, not used by the respondents; (9) the vendor's Federal Employment Identification Number ("FEIN") or Social Security Number ("SSN"), filled in by the vendor; (10) the vendor's name and address, filled in by the vendor; (11) the voucher number; filled in by the respondents' financial unit; (12) the voucher date, filled in by the respondents' financial unit; (13) vendor comments, if any, filled in by the vendor; (14) a full description of the goods or services provided, filled in by the vendor (which may include a description of the specific case being litigated), including the account to which the expenditure is to be charged; (15) the quantity of goods or services provided, filled in by the vendor; (16) the units of goods or services provided, filled in by the vendor; (17) the unit price of the goods or services provided, filled in by the vendor; (18) the dollar amount of goods or services provided, filled in by the vendor; (19) through (31) are fields not used by the respondents; (32) the department name and address; (33) and (34) are fields that are not used by the respondents; (35) the signature of an attorney indicating that the services were in fact rendered; (36) the receiving report number, which is not used; (37) the date of receipt of the goods or services, which is filled in by the vendor; and fields (38) through (41) which contain shipping information not pertinent to this case.

19. It is found that form CO-17 is processed through the respondents' financial unit, which enters the information into Core-CT. The Commission takes administrative notice of the fact that Core-CT is the State of Connecticut's payroll system that the state's human resources and payroll departments use to maintain all employee data in order to generate an employee's biweekly paycheck. It is also the system for maintaining vendor data in order to generate payments to vendors who provide goods and services to the state.

20. It is found that when the data from form CO-17 is entered into Core-CT, the information contained in field 14, the description of goods or services, is substantially shortened to such phrases as "psychological evaluation," "mediation," "racial disparity" (a type of death penalty case), "attorney costs" (costs associated with paying an attorney as an

expert witness), "drug and alcohol testing," "DNA testing," "testing and analysis of materials," "forensic consultant," "medical doctor," "lab service testing," or "witness compensation."

21. It is found that the respondents' financial unit uses, has custody of, and maintains CO-17s, and that copies of the CO-17s are also retained within active pending client files.

22. 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.

23. 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. (Emphasis supplied).

24. 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."

25. It is found that the records described in paragraphs 18 through 21, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S., to the extent that they are records of an administrative function of the respondents.

26. The respondents maintain that none of the requested records, including those described in paragraphs 18 through 21, above, are records of an administrative function within the meaning of §1-200(1), G.S., and that therefore the Commission lacks subject matter jurisdiction over the complaint.

27. In Clerk of the Superior Court v. FOIC, 278 Conn. 28 (2006), our Supreme Court concluded that, at least with respect to the judicial branch, the phrase "administrative functions" consist of activities relating to its budget.

28. It is found that the information recorded in Core-CT relates to the respondents' budget.

29. It is also found that some of the information contained on form CO-17 could be used to determine what types of services, such as a medical or psychological evaluation, were used in a particular case for a particular client, and thus are not purely administrative. For example, Form CO-17 contains in field 14 a full description of the services provided, which could also include the client's name or the case name. (However, field 14 is not entered into Core-CT, as described in paragraph 20, above.)

30. It is also found that some of the information contained on form CO-17 that is entered into Core-CT, such as field 35 (the attorney approving the expenditure), and field 32 (the location of the court at which the particular case for which an expert was engaged was pending) could, together with information contained in field 37 (the date of receipt of services), or field 3 (the number used by the vendor on its separately attached invoice) lead in some cases to the identification of a particular type of service provided to a client in an individual case, information which does not solely relate to the respondents' budget.

31. It is therefore concluded that the information described in paragraph 30, above, are not records of an administrative function of the respondents.

32. It is concluded that the following information fields contained on form CO-17 and entered into Core-CT are records of an administrative function of the respondents, because they relate to the respondents' budget and would not lead to the disclosure of information about a particular case or client: (4) the invoice amount (5) the document date (6) the invoice date; (10) the vendor's name and address; (11) the voucher number (12) the voucher date (14) the abbreviated description of the goods or services that is actually entered into Core-CT, such as "psychological evaluation," together with the account to which the expenditure is to be charged; (15) the quantity of goods or services provided, (16) the units of goods or services provided; and (17) the unit price of the goods or services provided; and (18) the dollar amount of goods or services provided.

33. The respondents speculate that in some cases, where a unique service (such as DNA testing) was provided by a vendor, and which pertained to an unusual case (such as a death penalty case), even the abbreviated description of the service recorded in Core-CT could be matched to a particular case and used by a prosecutor to undermine the respondents' defense of a client.

34. It is found, however, that the respondents provided no evidence or argument that the records responsive to the complainant's request involved unique services or unusual cases, and that it is unnecessary to decide whether such a case identification could be made in a hypothetical situation.

35. The Commission observes that it is additionally guided by disclosures made to the complainant by the Judicial Department of similar information contained in judicial records. See, e.g., Exhibits "G" and "J." Although the Commission draws no inference as to whether the Judicial Department considered such disclosures to be of records of its

administrative function, or whether the Judicial Department made such disclosures pursuant to the FOI Act, the Commission nonetheless observes that the disclosures ordered in this case are consistent with those made by the judicial department.

36. The respondents maintain that the CO-17s may sometimes contain information that might be privileged or otherwise confidential, such as the identity of a juvenile, or a strategic position in pending litigation, or attorney work product, such as thoughts and impressions of trial strategy. However, the respondents presented no argument, other than conclusory representations, that any such specific information is contained in the records described in paragraph 32, above.

37. The Commission notes that our Supreme Court has specifically enumerated budgetary records as those that are administrative. Clerk. Both payroll and vendor payment are implemented through the Core-CT system, and the vendor payment information recorded in Core-CT contains only information that is collected and recorded for the precise public purpose of accounting for the expenditure of public funds.

38. It is found that data recorded in Core-CT from CO-17s reflect exact amounts of public funds expended on contractors such as experts, psychologists, and investigators, retained by individual public defenders, all as authorized by the respondents, the persons to whom those funds were paid, the date and number of the voucher, the dates of the payments, the amounts of the payments, the specific budget funds from which those payments were allotted, and a very abbreviated description of the service or goods provided.

39. It is concluded that information transferred from the CO-17s into Core-CT is administrative, and that therefore required to be disclosed pursuant to Clerk unless otherwise exempt from disclosure.

40. The respondents additionally contend that, even if the requested records reflect an administrative function, that the records are exempt from disclosure pursuant to §52-146u, G.S., which provides:

> (a) As used in this section:
>
> (1) "Person" means an indigent defendant, as defined in section 51-297;
>
> (2) "Confidential communications" means all oral and written communications transmitted in confidence between a public defender and a person the public defender has been appointed to provide legal representation to relating to legal advice sought by the person and all records prepared by the public defender in furtherance of the rendition of such legal advice; and
>
> (3) "Public Defender" means the Chief Public Defender, Deputy Chief Public Defender, public defenders,

> assistant public defenders, deputy assistant public defenders, Division of Public Defender Services assigned counsel and the employees of the Division of Public Defender Services.
>
> (b) In any civil or criminal case or proceeding or in any legislative or administrative proceeding, all confidential communications shall be privileged and a public defender shall not disclose any such communications unless the person who is represented by the public defender provides informed consent, as defined in the Rules of Professional Conduct, to waive the privilege and allow such disclosure.

41. Specifically, the respondents maintain that the confidentiality provisions of §52-146u are broader than those afforded by the attorney-client privilege, because §52-146u by its terms extends to "all records prepared by the public defender in furtherance of the rendition of such legal advice."

42. It is found that information entered into Core-CT is not an oral or written communication transmitted in confidence between a public defender and a person the public defender has been appointed to provide legal representation to relating to legal advice sought by the person.

43. Also, it is found that the information entered into Core-CT is, with the exception of the signature of the attorney who received the services rendered, not a record *prepared* by the public defender in furtherance of the rendition of legal advice, but a record prepared by a vendor in order to be paid, or prepared by the respondents' financial unit in order to process that payment.

44. Additionally, it is found that information entered into Core-CT is a purely administrative budgetary record, and is not a record prepared by the public defender in furtherance of the rendition of legal advice sought by a person the public defender has been appointed to provide legal representation to. Rather, it is found that the information entered into Core-CT is a record maintained by the respondents to account for the expenditure of public funds.

45. It is concluded that, even if the confidentiality provisions of §52-146u, G.S., are broader than the protections afforded by the attorney-client privilege, they are not so broad as to encompass the basic administrative payment information contained in billing records for state funds expended on private contractors selling goods or services to the state. It is found that records compiled and retained for administrative purposes are not "records prepared by the public defender in furtherance of the rendition of ... legal advice" and therefore are not exempt from disclosure pursuant to §52-146u, G.S.

46. The respondents next claim that disclosure of the requested records is barred by §1.6 of the Rules of Professional Responsibility, which provides in relevant part:

> (a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d).
>
> . . .
>
> (c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary to:
>
> . . .
>
> (4) Comply with other law or a court order.

47. This argument fails on a number of grounds. First, the Rules of Professional Responsibility are not a state statute that provides for nondisclosure within the meaning of §1-210(a), G.S.

48. Second, even if Rule 1.6 applied, subsection (c)(4) permits disclosure to "comply with other law," and the FOI Act is such a law.

49. The commentary to Rule 1.6 explains:

> The principle of client-lawyer confidentiality is given effect by related bodies of law, the attorney-client privilege, the work product doctrine and the Rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The Rule of client-lawyer confidentiality applies in situations *other than those where evidence is sought from the lawyer through compulsion of law*. The confidentiality Rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information *except as authorized or required by the Rules of Professional Conduct or other law.* [Emphasis added.]

50. It is clear from the commentary quoted above that different rules of client-lawyer confidentiality apply in different settings, and are governed by different standards in their separate arenas of application. Unlike the common law evidentiary privilege, Rule 1.6, an ethics prohibition, broadly extends to all information relating to the representation of a client, whether or not communicated in confidence and, apparently, whether or not in the context of seeking legal advice. However, the applicable rule in an evidentiary proceeding is the attorney-client privilege, and this is the confidentiality rule recognized by §1-210(b)(10), G.S., and thus applicable in FOI proceedings, which provides that disclosure is not required of "communications privileged by the attorney-client relationship." See also, Maxwell v. Freedom of Info. Com'n, 260 Conn. 143, 794 A.2d 535

(Conn. 2002) (the legislature constitutionally delegated to the FOI Commission, the authority to determine the applicability of the attorney-client privilege for purposes of §1-210(b)(10), G.S.).

51. Finally, the respondents assert that the clients of public defenders have a constitutionally-protected right of privacy in their files, particularly with respect to the Sixth Amendment guarantee of the right to counsel, supporting an expectation of privacy regarding a client's legitimate communications with his or her attorney. The respondents have not, however, explained how such constitutional protections are offended by the application of Connecticut's FOI Act in this case. Further, to the extent that the respondents are mounting a constitutional challenge to Connecticut's FOI Act, the Commission lacks jurisdiction to entertain such a claim.

52. It is therefore concluded that the respondents violated the FOI Act by failing to provide non-exempt administrative records to the complainant.

53. As to remedy, §1-206(b)(2), G.S., provides in relevant part:

> In any appeal to the Freedom of Information Commission ... the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. The commission may ... require the production or copying of any public record.

54. While the complainant did not request a printout of public records from Core-CT, the Commission believes, under the facts and circumstances of this case, that it is more appropriate to order the respondents to produce a printout of responsive data pertaining to administrative functions than to order the respondents to redact information from CO-17s that is not administrative.

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

1. The respondents shall forthwith provide the complainant with a printout, from Core-CT, of the data fields described in paragraph 32 of the findings, above, that pertain to the specific individuals or entities described in the complainant's request.

Victor R. Perpetua
as Hearing Officer