

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joseph Soto,

Complainant

against

Docket #FIC 2016-0872

Executive Director, Greenwich Emergency
Medical Service, Inc., and Greenwich
Emergency Medical Service, Inc.,

Respondents

August 9, 2017

The above-captioned matter was heard as a contested case on March 24, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts 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. It is found that, on December 8, 2016, the complainants requested copies of records from the respondents pertaining to his employment and minutes of certain meetings of the respondents' personnel committee and the Board of Directors.

2. By letter filed December 19, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to acknowledge or comply with his request.

3. The respondents contended that they are not subject to the requirements of the FOI Act because Greenwich Emergency Medical Services is not a public agency as defined by §1-200(1), G.S., which 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.

4. The Commission takes administrative notice of its decisions in Susan Rubinowitz et al v. Greenwich Emergency Medical Service and Executive Director and Board of Directors, Greenwich Emergency Medical Service, Docket #FIC 1987-188 (February 24, 1988) (“Rubinowitz”); and Joseph Pisani v. Board of Directors, Greenwich Emergency Medical Service, Inc. and Greenwich Emergency Medical Service, Docket #FIC 1987-199 (February 24, 1988) (“Pisani”), in which Greenwich Emergency Medical Service (“GEMS”) claimed that it was not a public agency. In both cases, an evidentiary hearing was held on that issue, and the Commission concluded that GEMS was a public agency within the meaning of §1-200(1), G.S. The Commission’s findings of fact, in particular, support a conclusion that GEMS is the “functional equivalent of a public agency” within the meaning of §1-200(1)(B), G.S.

5. The Commission also takes administrative notice of its decision in Youdain v. GEMS and Town of Greenwich Director of Health, Docket #FIC 1989-270 (September 13, 1989), in which the Commission ordered GEMS to provide copies of public records. GEMS’s status as a public agency was not an issue in the case.

6. In addition, the Commission takes administrative notice of several final decisions in which the Commission specifically found that emergency medical service entities similar to the respondents are public agencies within the meaning of §1-200(1)(B), G.S: Rowen v. Bethlehem Ambulance Association, Docket #FIC 2008-098, Marcucio v. Board of Directors, Valley Emergency Medical Services, Inc., Docket #FIC 2004-245; Feins v. President and Chief Executive Officer, Granby Ambulance Association, Docket #FIC 2000-005; Pelton v. Seymour Ambulance Association, Docket #FIC 1993-113; Sylvestre v. Board of Directors, Griswold Ambulance Service, Docket #FIC 1992-292; Karp v. Chief, Newington Volunteer Ambulance, Docket #FIC 1991-53; and Bergin and Ellis v. Glastonbury Volunteer Ambulance Association, Inc., Docket #FIC 1991-059. See also Yantic Volunteer Fire Co. v. FOI Commission, 44 Conn.Supp. 230 (1995); affirmed 42 Conn.App. 519 (1996).

7. Nevertheless, GEMS now claims it is not a public agency within the meaning of §1-200(1), G.S., because of changes to GEMS and case law since the Commission decided Rubinowitz and Pisani, particularly Domestic Violence Services of Greater New Haven, Inc. v. Freedom of Information Commission, 47 Conn. App. 466 (1998) (“Domestic Violence Services”), and Envirotest Systems Corporation v. Freedom of Information Commission, et al, 59 Conn. App. 753 (2000), cert. denied. 254 Conn. 951 (2000) (“Envirotest”).

8. It is found that GEMS is not a department, institution, bureau, board, commission, authority or official of the Town of Greenwich, and is not a committee of or created by a public agency. It is found, therefore, that GEMS is not a public agency within the meaning of §1-200(1)(A), G.S.

9. With respect to whether GEMS is the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S., four factors must be considered: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government. See Board of Trustees of Woodstock Academy v. Freedom of Information Commission, 181 Conn. 544, 554 (1980). “All relevant factors are to be considered cumulatively, with no single factor being essential or conclusive.” Connecticut Humane Society v. Freedom of Information Commission, 281 Conn. 757, 761 (1991).

10. With respect to whether GEMS performs a governmental function, it is found that GEMS was created by the Representative Town Meeting of Greenwich (“RTM”) in 1986. It is found that the RTM voted to create GEMS as a non-profit corporation after a study by the town’s consultant “examined the existing Greenwich system and [developed] recommendations for its improvement to create a state of the art EMS service for the Town.” (Respondents’ Exhibit 1: *Memorandum, February 18, 1986, from Greenwich’s Director of Health and Chair of the Board of Health to Members of the RTM*). It is found that before the creation of GEMS, emergency medical services were provided by various town departments, including police and fire, and by volunteer ambulance services.¹ It is found that GEMS was created to “contain costs, maximize resources and coordinate services” because the town’s “citizens deserve the best possible emergency medical care.” (Respondents’ Exhibit 2, *Department of Health Special Information Packet for Representative Town Meeting, April 21, 1986*). It is found that GEMS is the sole provider of emergency services to the Town of Greenwich. It is found that the First Selectman of Greenwich and the Director of the Greenwich Department of Health serve as an ex-officio members of the Board of Directors. It is found that in 2009, the First Selectman declared that GEMS “is a vital public service.” It is found that within the parameters of the contract between the Town and GEMS, GEMS is responsible for implementing the Town’s promise of “a state of the art EMS service for the Town” in a manner that contains costs, maximizes resources and coordinates care. The Commission takes administrative notice of a proclamation by the First Selectman in 2009, which declared GEMS to be “a vital public service.” (http://www.greenwichct.org/upload/medialibrary/eb7/Proclamation_GEMS_Week_051709.pdf, accessed June 7, 2017).

11. It is found that GEMS performs a governmental function on behalf of the Town of Greenwich.

12. With respect to the level of government funding, it is found that GEMS received \$4.5 million from the General Fund of the Town of Greenwich in 2015-2016; \$4.6 million in 2016-2017, and \$4.7 million in 2017-2018. It is found that GEMS reviews its budget request with the First Selectman and with the Chair of the RTM, and once the budget request is approved, the RTM votes whether to provide the line-item contribution as part of its budget process. It is found that the Town of Greenwich provides approximately 62% of GEMS’s operating budget. It is found, in addition, that GEMS is subsidized by government in other ways, too, such as using

¹ The Respondents distinguish between the Basic Life Support services provided before the creation of GEMS, and the Advanced Life Support services that GEMS was created to provide. Nevertheless, it is found that the Town of Greenwich provided emergency medical services before it created GEMS.

the police department 911 for dispatch. It is found that the Town also makes various in-kind contributions to GEMS.

13. The respondents characterize the contributions from the town's General Fund as a "fee for service." It is found, however, that the current contract² between the Town and GEMS does not specify a fee for GEMS's services. By way of contrast, see Respondents' Exhibit 4, *EMS Coordinator Services Agreement between GEMS and Greenwich Hospital*, which states, "in consideration for the services provided by GEMS pursuant to this Agreement, the Hospital shall pay GEMS an annual amount of Ninety-One Thousand Dollars (\$91,000), payable in equal monthly installments." Moreover, it is found that the contract between GEMS and the Town of Greenwich states that the Town shall pay GEMS for the services provided under the agreement, but that "such payments ... are subject to appropriation by the [Town]." It is found that GEMS must make a yearly compensation "request," and that such request "is subject to review and approval by the [Town] during the Town budget process, which shall be conclusive and final as to the fixed payment for the ensuing fiscal year." It is found that even if the funding allocated by the Town is insufficient, GEMS must continue to "use best efforts to continue to provide the services required." (Respondents' Exhibit 3, *Amended and Restated Governing Agreement*, pages 20 and 21).

14. It is found that the funding provided by the Town is not provided as a fee for service, in the manner of consideration for services rendered, unlike the money paid by government to the entities in Domestic Violence Services and in Envirotest, where the money received reflected the amount of business done with government pursuant to contract and an allotment of government funds. In Envirotest, all money collected by the private entity for performing emissions testing was deposited into a state fund. The entity then submitted a bill to the state and was paid for every emissions test performed. *Id.*, n.7.

15. It is found that the level of government funding of GEMS is substantial.

16. With respect to the extent of government involvement or regulation, the respondents claimed that GEMS does not act under "direct, pervasive or continuous regulatory control," by the government, and that government does not control the "day-to-day operations" of GEMS. *Id.*, 761.

17. The Commission takes administrative notice of §§19a-175 through 19a-195, G.S., which detail the state regulation of emergency medical services, including licensing, certification, and public hearings; financial requirements and insurance; requirements for training, equipment and personnel; sanctions for violations; inspection and registration of ambulances; communications systems; public education; volunteer personnel and paramedics; and regional councils.

² The respondents note that GEMS and the town first memorialized their relationship in a contract on November 16, 1989, which was one and a half years after the Commission found in Rubinowitz that GEMS was the equivalent of a public agency and less than two months after Youdain, in which GEMS' status as the functional equivalent of a public agency was not contested. See paragraphs 4 and 5, above.

18. It is found that GEMS is regulated by these statutes, as well as additional regulations, which the statutes authorize, of the state Department of Health and its Office of Emergency Medical Services.

19. In addition, it is found that, as set forth in the contract between GEMS and the Town of Greenwich, the town regulates GEMS's operations by regulating response times, the location of ambulance stations, and the number and type of personnel at each ambulance station, by conducting public education programs, by requiring back up ambulance units; and by specifying the services required as advanced life support or as basic life support. In addition, it is found that GEMS must comply with the directives of the Emergency Medical Services Medical Director appointed by Greenwich Hospital (approved by the Connecticut Department of Public Health as the sponsor hospital to GEMS.) GEMS is required to maintain communications with E-911 as well as any other replacement system instituted by the town. GEMS must maintain its equipment, and must perform pre-employment substance testing and random substance testing of employees. It is found that GEMS is required to make quarterly reports for financial accountability to the town. It is found that the Board of Directors appoints an Executive Director of GEMS, who is subject to performance review by the Board upon request of the town's Board of Health. It is found that the Chair of the town's Board of Health has the authority to meet with the Executive Director of GEMS to discuss the results of the performance review. In addition, the town requires GEMS to create and maintain records of emergency calls and complaints, and specifies more than a dozen types of information that must be collected on each call.

20. It is found that government involvement with or regulation of GEMS is substantial.

21. With respect to whether the entity was created by government, it is found that GEMS was created by government, as set forth in paragraph 10, above.

22. Taking all four of the relevant factors into consideration, and based upon the totality of all of the evidence presented in this case, it is concluded that GEMS is the functional equivalent of a public agency, within the meaning of §1-200(1)(B), G.S.

23. With respect to the complainant's request for copies of records, §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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

24. 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 (1) inspect such records promptly during regular office or business hours, ... or (3) receive a copy of such records in accordance with section 1-212.

25. 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.

26. It is found 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.

27. It is found that the respondents violated §§1-210(a), and 1-212(a), G.S., by failing to provide such records to the complainant.

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

1. If they have not already done so, the respondents forthwith shall provide the complainant with the records he requested, free of charge.

2. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a), and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 9, 2017.



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:

JOSEPH SOTO, 157 Southworth Street, Milford, CT 06461

EXECUTIVE DIRECTOR, GREENWICH EMERGENCY MEDICAL SERVICE, INC.; AND GREENWICH EMERGENCY MEDICAL SERVICE, INC., c/o Attorney Joshua J. Wyatt, McCarter & English LLP, City Place I, 185 Asylum Street, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission