

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Mark Sargent,
Complainant(s)

against

Executive Director, External Affairs Division,
Judicial Branch, State of Connecticut; and
Judicial Branch, State of Connecticut,
Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2016-0077

August 17, 2016

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, September 14, 2016 at 2:00 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, September 28, 2016.**

Any brief, memorandum of law or request for additional time, as referenced in the August 9, 2016 Transmittal of Proposed Final Decision, must be received by the Commission on or before September 16, 2016.

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Mark Sargent
Attorney Martin Libbin

FIC# 2016-0077/ReschedTrans/wrbp/VDH//LFS/2016-08-17

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Mark Sargent,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0077

Executive Director, External Affairs Division,
Judicial Branch, State of Connecticut; and
Judicial Branch, State of Connecticut,
Respondent(s)

August 9, 2016

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, September 14, 2016**. 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 September 2, 2016**. 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 September 2, 2016**. **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 **fifteen (15) copies** be filed **ON OR BEFORE September 2, 2016**, 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: Mark Sargent
Attorney Martin Libbin

FIC# 2016-0077/Trans/wrbp/VDH//LFS/2016-08-019

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Mark Sargent,

Complainant

against

Docket #FIC 2016-0077

Executive Director, External Affairs
Division, Judicial Branch, State of
Connecticut; and Judicial Branch,
State of Connecticut,

Respondents

August 8, 2016

The above-captioned matter was heard as a contested case on May 19, 2016, 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, the matter was consolidated with Docket #FIC 2016-0078; Mark Sargent v. Melissa Farley, Executive Director, External Affairs Division, Judicial Branch, State of Connecticut; and Judicial Branch, State of Connecticut, and Docket #FIC 2016-0079; Mark Sargent v. Melissa Farley, Executive Director of External Affairs, State of Connecticut, Judicial Branch; Martin Libbin, Director, Legal Services, State of Connecticut, Judicial Branch; and State of Connecticut, Judicial Branch.

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

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

2. It is found that, by email dated January 14, 2016, the complainant requested that the respondents provide him with copies of the following records:

A. With respect to the GAL [that is, guardian ad litem] Subcommittee:

- i. Notice of meetings;
- ii. Agendas for meetings;
- iii. Minutes of meetings, together with a statement of those in attendance; and

- B. With respect to the Family Reengineering Committee:
 - i. Notices of meetings;
 - ii. Agendas for meetings;
 - iii. Minutes of meetings, together with a statement of those in attendance.

3. It is further found that, by letter dated January 25, 2016, the complainant requested that the respondents provided him with copies of records as follows:

. . . any and all documents that set forth, discuss or mention any aspect of the following topic: The Judicial Branch's policies and requirements which do or are intended to or have been issued in relation to the objective of protecting families (including parents and minor children) from sexual abuse by family court appointees, and any documents that relate thereto (including those created with respect to an allegation of or investigation into such abuse). This would include:

- A. Any policy of the Judicial Branch requiring background checks of actual or potential family court appointees;
- B. Any policy of the Judicial Branch identifying the reporting procedures for claims of sexual abuse by family court appointees;
- C. Any documents relating to any investigation of any allegation or abuse by a family court appointee;
- D. Any document relating to actual or potential liability of the Judicial Branch or any of its judges or other employees as a result of sexual abuse by a family court appointee, including any insurance policies which may apply in connection thereto; and
- E. Any documents discussing actual or potential policies with respect to any of the foregoing.

4. By letter dated and filed January 30, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with copies of the records described in paragraphs 2 and 3, above.

5. 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.

6. With regard to the request referenced in paragraph 2, above, the respondents contend that the allegations made by the complainant do not relate to their administrative functions, and that the Commission therefore lacks subject matter jurisdiction.

7. In Rules Committee of the Superior Court v. FOIC, 192 Conn. 234, 243 (1984), the Supreme Court construed the term “administrative functions” in §1-200(1), G.S., to exclude matters involved in the adjudication of cases, and to refer only to “matters relating to the internal management of the internal institutional machinery of the court system.”

8. In Clerk of the Superior Court v. FOIC, 278 Conn. 28, 53 (2006), our Supreme Court more broadly concluded that, for purposes of the FOI Act, “the judicial branch’s administrative functions consist of activities relating to its budget, personnel, facilities and physical operations and that records unrelated to those activities are exempt.”

9. Finally, in Michael Nowacki v. State of Connecticut, Judicial Branch, Family Commission, Docket #FIC 2010-699 (Aug. 24, 2011), the complainant therein alleged that the Judicial Branch’s Family Commission violated the FOI Act when it convened a meeting and considered, inter alia, the following topic: “[the] GAL protocol to bring matters to the court’s attention and the duration of the GAL’s appointment,” and when it failed to disclose related records. The Commission held, as follows: “It is concluded that neither the respondent’s October 6, 2010 meeting, nor the records sought by the complainant, pertain to an administrative function, and that the respondent was therefore not a public agency in its conduct of such a meeting or its decision whether to disclose such records.”

10. In this case, it is found that GAL Subcommittee is a subcommittee of the Judicial Branch’s Family Reengineering Committee. It is found that the Chief Justice of the Connecticut Supreme Court established the GAL Subcommittee “to study and recommend the minimum qualifications necessary to be eligible for appointment as a guardian ad litem and attorney for minor child in family matters, as well as a process by which guardians ad litem and attorneys for the minor child may be removed from the list of those deemed eligible for appointment in family matters.”

11. It is found that, in carrying out its mission, the GAL Subcommittee studied and considered the current practice book rules concerning GALs, and ultimately recommended that certain rules be amended and that a new rule be adopted. It is found that the GAL Subcommittee’s recommendations with regard to the practice book rules were presented to the Judicial Branch’s Rules Committee.

12. Moreover, it is found that the Final Report of the GAL Subcommittee made multiple other substantive recommendations concerning the appointment of, requirements for, review of, and removal of GALs.

13. It is concluded that the records responsive to the request in paragraph 2, above, do not pertain to an administrative function of the Judicial Branch, within the meaning of §1-200(1),

G.S., and that therefore such records are not public records, within the meaning of §1-200(5), G.S. Accordingly, it is further concluded that the Commission lacks jurisdiction to address the allegations in paragraph 4, above, with regard to the request described in paragraph 2, above.

14. The Commission notes that the respondents provided the complainant with many records pertaining to the request in paragraph 2, above, including the agendas and the minutes of the GAL Subcommittee and the Family Reengineering Committee, a document entitled, "Summary of Family Reengineering Proposals, Results of Meeting on July 16, 2014, Next Steps and Updates," as well as multiple documents entitled, "Family Reengineering Workgroup, Notes."

15. With regard to the request referenced in paragraph 3, above, it is found that the respondents do not maintain any responsive records. Accordingly, it is concluded that the respondents did not violate the FOI Act with respect to the request for such records.

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.



Valicia Dee Harmon
as Hearing Officer