

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

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

September 28, 2016

The above-captioned matter was heard as a contested case on June 10, 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 provide 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 requested records 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 the 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 over the requested records.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 28, 2016.

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:

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Westport, CT 06880

Executive Director, External Affairs
Division, Judicial Branch, State of
Connecticut; and Judicial Branch,
State of Connecticut
c/o Martin Libbin, Esq.
100 Washington Street
Hartford, CT 06106

Cynthia A. Cannata
Acting Clerk of the Commission