

Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Umar Shahid,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-283

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

Respondent(s)

February 5, 2013

### 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 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, February 27, 2013**. At that time and place you will be allowed to offer oral argument concerning this proposed 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 February 15, 2013**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE February 15, 2013**. **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 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 February 15, 2013**, 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: Umar Shahid  
Deborah Del Prete Sullivan, Esq.  
Steven R. Strom, Esq.

2013-02-05/FIC# 2012-283/Trans/wrbp/CAL/VDH

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Umar Shahid,

Complainant

against

Docket # FIC 2012-283

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

Respondents

January 31, 2013

A hearing was scheduled in the above-captioned matter for January 18, 2012. By motion dated January 10, 2013, the respondents moved to dismiss the matter for lack of subject matter jurisdiction and lack of justiciability. On his own motion, the hearing officer postponed the hearing and allowed the complainant to file a brief in opposition to the motion to dismiss by January 25, 2013. However, the complainant made no filing.

1. Section 1-206(b)(4), G.S., provides that:

[n]otwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that the agency has not violated the Freedom of Information Act.

2. The notice of appeal, dated May 18, 2012 and filed with the Freedom of Information Commission ("Commission") on May 23, 2012, alleges that the respondents violated the Freedom of Information Act ("FOIA") by denying the complainant's May 1, 2012 request for: 1) "all cases your office assigned to special defender Attorney Adam Laben in year of 2010 provide copys [sic] of form (Pd-012b)"; and 2) "all cases your office assigned to special defender Attorney W.T. Koch III in year of 2011 provide copies of form (Pd-012b)" (together, the "requested records").

3. It is concluded that, pursuant to §51-293(a)(1), G.S., as amended by P.A. 11-51, Sec. 5 (eff. July 1, 2011), the attorneys previously known as “special assistant public defender[s]” are now referred to as “Division of Public Defender Services assigned counsel”. Such attorneys are directed and supervised by the Chief Public Defender, within the Division of Public Defender Services. Section 51-291(8), G.S., as amended by P.A. 11-51, Sec. 2 (eff. July 1, 2011); P.A. 11-51, Sec. 12(3) (eff. July 1, 2011). The Division of Public Defender Services, and the Office of Chief Public Defender which administers Division services to the indigent, is “an autonomous body within the Judicial Department”. Section 51-289(j), as amended by P.A. 11-51, Sec. 1(l) (eff. July 1, 2011); Section 51-1a(a), G.S. As an autonomous body within the Judicial Department, the Division of Public Defender Services is a public agency for purposes of the FOIA, “but only with respect to its [...] administrative functions”. Section 1-200(1)(A), as amended by P.A. 11-220, Sec. 1(l)(A) (eff. October 1, 2011).

4. Moreover, the Supreme Court has stated:

We conclude, therefore, that administrative records are records pertaining to budget, personnel, facilities and physical operations of the courts and that records created in the course of carrying out the courts’ adjudicatory function are categorically exempt from the provisions of the [Freedom of Information Act]. (emphasis added)

Clerk of the Superior Court, Geographical Area Number Seven v. FOIC, 278 Conn. 28, 42 (2006) (“Clerk of the Superior Court”).

The records at issue in Clerk of the Superior Court were the clerk’s so-called day book of cases currently pending in the court, which listed the defendant’s name and address, date of birth, docket numbers, date of the next court hearing, the nature of the next hearing, whether the defendant is represented by counsel, and whether the defendant is currently incarcerated. Concerning these records, the Court said:

The keeping of records for the purpose of scheduling and tracking individual cases and parties is an activity undertaken by the courts for the primary purpose of facilitating their ability to carry out their core judicial function. If such records were treated as public records subject to the act, then no judicial records would be exempt.

Id. at 51.

5. Following Clerk of the Superior Court, the Commission has held substantially similar records to be not administrative, but rather adjudicatory. Docket #FIC 2010-350, Kacey Lewis v. Division of Public Defender Services (“Kacey Lewis”) (a list of all cases handled in the Waterbury JD and GA courts by public defenders, with docket numbers, charges and the name of the public defender assigned to each case); Docket #FIC 2007-313, Valvo v. Chief Court Administrator (“Valvo”) (docket sheets in level 2 sealed files).

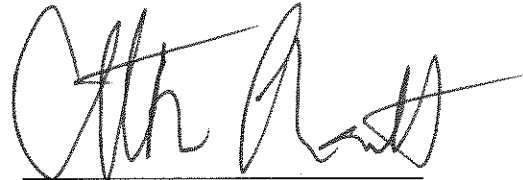
6. It is concluded that records of lists of cases assigned to specified public defender attorneys, with related information, are substantially similar to the "day book" of cases in Clerk of the Superior Court, the docket sheets in Valvo, and the list of cases and assigned counsel sought in Kacey Lewis. Therefore, the requested records herein are records created in the course of carrying out the adjudicatory function and are exempt from the FOIA.

7. After consideration of the notice of appeal and construing all allegations most favorably to the complainant, it is concluded that the requested records are not subject to the jurisdiction of the Commission.

8. Counsel for the respondents submitted a detailed eighteen page brief, plus attachments, addressing a wide range of subjects including the Rules of Professional Conduct and various constitutional rights. The Commission acknowledges the scope of this legal effort, but need not consider all of these arguments in order to adjudicate the case.

Pursuant to §1-206(b)(4), G.S., the following order by the Commission is hereby recommended:

1. The actions of the respondents are hereby confirmed and the complaint is dismissed without a hearing.



Clifton A. Leonhardt  
as Hearing Officer