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FREEDOM OF INFORMATION



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Anne Stevenson,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-216

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)

January 30, 2014

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, February 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 February 11, 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 February 11, 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 February 11, 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

1/30/14/FIC# 2013-216/Trans/wrbp/VRP//TAH

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ann Stevenson,

Complainants

against

Docket #FIC 2013-216

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

Respondents

January 30, 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.

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."

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

3. 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.

4. 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) 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.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 13, below.

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

12. With respect to the records requested in paragraph (5) of the complainant's request, it is found that the complainant is seeking records reflecting the participation and payment of the individuals and entities named in paragraph (1) of her request in the training of GALs. It is found, however, that the respondents do not pay anyone for the training of GALs, and that the respondents' role in such training programs is limited to the registration of individuals who attend such programs in order to be trained as GALs. With the exception of such registration, it is found that GAL training is conducted by the judicial branch, not the respondents.

13. It is therefore found that the respondents do not maintain records responsive to paragraph (5) of the complainant's request.

14. 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.¹ 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.

15. 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 names the payee and the payee’s address, the amount of the payment, a description of the goods and/or services provided, the date the service was provided, the date of the invoice, and the account to which the payment is to be charged. Form CO-17, or the invoices attached, may also contain, in addition to financial information, the name of the person to whom the service was provided (such as a person who attended an appointment with a psychologist), or the case name or docket number for which the service was provided.

16. 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.

17. It is found that the respondents’ financial unit uses, has custody of, and maintains CO-17s except for those that are retained within active pending client files.

18. 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.

¹ None of these individual attorneys are the individuals described in paragraphs 3(1) or 9, above.

19. 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).

20. 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.”

21. It is found that the records described in paragraphs 13-16, 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.

22. The respondents maintain that none of the requested records, including those described in paragraphs 13 through 16, 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.

23. 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.

24. It is found that the information recorded in Core-CT relates solely to the respondents’ budget.

25. Although the respondents’ contend that form CO-17 cannot be redacted to disclose only budgetary information, it is found, to the contrary, that the only arguably non-budgetary information contained on that form are the names of individuals other than the payee, such as clients of the respondents, to whom services have been provided, and the name or docket number of the court cases, which information could directly identify an individual client.

26. It is found that the complainant obtained copies of CO-17s from the judicial department in response to requests for public records under the sole custody and control of the courts.

27. It is found that the judicial department redacted the cases and docket numbers and other information that might lead to the identification of the individual client to whom the services were related, but not any of the budgetary information.

28. The limited redaction of information by the judicial department of CO-17s suggests that the judicial department considers the remaining budgetary information to be administrative, and not confidential.

29. The respondent speculates, however, that the complainant perhaps received the records from the judicial department in settlement of a claim (of which there is no evidence), and that the lack of redaction of budgetary information may have been a compromise offered to an individual.

30. It is found, however, that the judicial department released the CO-17s in response to a non-litigated request for records, either to the complainant or to a party in a case who passed the CO-17s on to the complainant.

31. Regardless of why only information specific to a client was redacted from the CO-17s released by the judicial department (See complainant's exhibit G), it is found that the information that has not been redacted is exclusively budgetary and administrative in nature, revealing for example:

- a. The name and address of the payee, such as a psychologist;
- b. the date the service was provided;
- c. the amount and date of the invoice;
- d. the invoice number;
- e. the vendor's (payee's) identification code (which may in some instances be a social security number, as to which see discussion below);
- f. a description of the goods and/or services provided by the vendor, such as "child protection mediation session led at SC-JM Bridgeport on 12/6/07" or, in connection with a custody evaluation: the dates and costs of appointments with unnamed individuals, charges for late cancellation and review of records, clinical interviews of unnamed individuals, psychologist testing of unnamed individuals, phone calls, emails, and review of documents;
- g. the state account charged (including numerical designations for the "fund," "department," "SID," "program," and "account") and the signature of the person acknowledging that the commodities were received or the services rendered; and
- h. the identification of the state entity for which the services were rendered (business unit name, business unit number, department name and address).

32. 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, no such information is contained on the records described in paragraphs 14-16, above.

33. 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, with the exception of personal or privileged information such as that described in paragraph 26, above, the vendor payment information contained in the CO-17s maintained by the respondents contains only information that is collected and recorded for the precise public purpose of accounting for the expenditure of public funds.

34. It is found that CO-17s maintained by the respondents, and used by the respondents to enter data into Core-CT, contain explicit 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 dates of the payments, the amounts of the payments, the specific budget funds from which those payments were allotted, and a brief summary description of the service or goods provided.

35. 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.

36. 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.

37. 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.”

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. The commentary to Rule 1.6 explains:

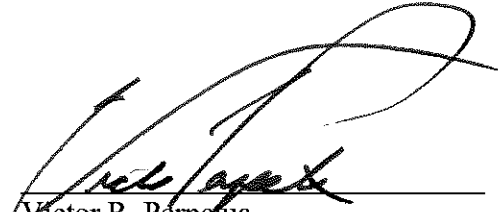
The principle of client-lawyer confidentiality is given effect by related bodies of law, the attorney-client privilege, the work product doctrine and the Rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings 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.]

45. 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.).

46. 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. 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.

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 copy of any forms CO-17 that are responsive to paragraphs (2) and (3) of the complainant's request, free of charge. In complying with this order, the respondents may redact from the records the identity of the client for whom the service was performed, and the social security number of any vendor.



Victor R. Perpetua
as Hearing Officer