

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT  
18-20 Trinity Street Hartford, CT 06106  
Telephone: (860) 566-5682  
Toll-free (CT only): (866) 374-3617  
Fax: (860) 566-6474

Vincent Valvo and the  
Connecticut Council on  
Freedom of Information,

Complainant(s)

Notice of Meeting

against

Docket #FIC 2007-313

Chief Court Administrator,  
Office of the Chief Court Administrator,

December 21, 2007

Respondent(s)

Transmittal of Proposed Final Decision

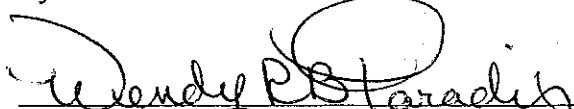
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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, January 9, 2008**. 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 January 2, 2008*. 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 ten (10) copies** be filed *on or before January 2, 2008*. **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 **eleven (11) copies** be filed *on or before January 2, 2008*, 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

  
Wendy R.B. Paradis, Acting Clerk of the Commission

Notice to:  
Daniel J. Klau, Esq.  
Martin R. Libbin, Esq.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Vincent Valvo and the Connecticut  
Council on Freedom of Information,

Complainants

against

Docket #FIC 2007-313

Chief Court Administrator, Office  
of the Chief Court Administrator,

Respondent

December 20, 2007

The above-captioned matter was heard as a contested case on September 28, 2007, at which time the complainants and the respondent 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, by letter dated May 3, 2007, the complainants requested from the respondent copies of docket sheets in all cases currently designated as "Level 2" [hereinafter "the requested records"].
2. It is also found that, by letter dated May 9, 2007, Judge William J. Lavery, then Chief Court Administrator of the Judicial Branch, responded to complainants' request letter, described in paragraph 1, above, claiming that the requested records "do not constitute records of an administrative function and, accordingly, are not subject to disclosure under the Freedom of Information Act." The respondent also claimed that such records constitute records of adjudicative matters, as evidenced, in part, by reference to them in Connecticut Practice Book §63.3.
3. It is found that, by the same letter described in paragraph 2, above, the respondent indicated that the complainants may have an opportunity to review many of the "Level 2" records sought by the complainants, since the Judicial Branch was beginning a comprehensive review of records within the scope of the complainants' request described in paragraph 1, above. It is also found that the respondent attached to such letter a copy of a press release announcing the impending review of "Level 2" cases by the Judicial Branch.

4. By letter of complaint dated May 22, 2007 and filed May 24, 2007, the complainants appealed to the Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act by denying their request for copies of the requested records.

5. The respondent contends that the Commission should dismiss the complainants' request described in paragraph 1, above, pursuant to §1-206(b)(4), G.S.

6. 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.”

7. However, it is concluded that §1-206(b)(4), G.S., is not applicable to the appeal in this matter, since the Commission has conducted an evidentiary hearing. Therefore, the Commission declines to dismiss the appeal in this matter on such ground.

8. The respondent also contends that it is improper to bring this appeal against the chief court administrator because, under Hartford Courant Company v. Pellegrino, 380 F.3d 83 (2<sup>nd</sup> Cir. 2004), the chief court administrator has no authority to overturn orders issued by other judges or to open statutorily sealed files.

9. However, it is found that the respondent denied the complainants' request described in paragraph 1, above. Therefore, it is concluded that the Chief Court Administrator was properly named as the respondent in this matter. See §1-21j-30, Regulations of Connecticut State Agencies (Commission empowered to designate parties in contested cases).

10. The complainants contend that the Commission must answer the threshold question of whether the respondent is a public agency over which the Commission has jurisdiction.

11. The respondent contends that §46b-11, G.S., operates to exempt the requested records from mandatory disclosure, citing to the Commission's final decision in Docket # FIC2003-035; Edward A. Peruta v. Chief Court Administrator, State of Connecticut, Judicial Department (September 24, 2003). The respondent further contends that the Commission may dismiss the complaint on the basis of such statute and precedent, rather than on jurisdictional grounds, since such a dismissal would lead to inevitable litigation.

12. However, it is axiomatic that, whenever the question of subject matter jurisdiction is raised, it must be addressed before proceeding further, and it would be improper for the Commission to consider application of an exemption without subject matter jurisdiction.

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

[a]ny person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission.

14. Section 1-210(a), G.S., provides:

[e]xcept 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.

15. Section 1-200(1), G.S., defines "public agency" to mean:

...(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; (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.

16. In Clerk of the Superior Court, Geographical Area Number Seven et al. v. Freedom of Information Commission, 278 Conn. 28, 42 (2006), the Supreme Court

concluded that the term “administrative functions” in §1-200(1)(A), G.S., consists of activities relating to the judicial branch’s budget, personnel, facilities and physical operations.

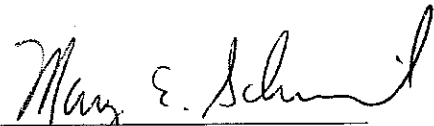
17. It is found that the requested records described in paragraph 1, above, are not records relating to budget, personnel, facilities and physical operations of the Judicial Branch, and that, thus, such records do not relate to the administrative functions of the respondent, based upon the Supreme Court’s conclusion in Clerk, supra.

18. It is concluded, therefore, that, with respect to the requested records, the respondent is not a public agency, within the meaning of §1-200(1), G.S.

19. Accordingly, it is concluded that, pursuant to §1-206(b)(1), G.S., the Commission lacks subject matter jurisdiction to address the allegation set forth in this matter.

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

1. The complaint is hereby dismissed for lack of subject matter jurisdiction.

  
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Mary E. Schwind  
as Hearing Officer