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CLERK OF THE SUPERIOR COURT, GEOGRAPHICAL AREA NUMBER SEVEN ET AL. *v.* FREEDOM OF INFORMATION COMMISSION
(SC 17273)

Sullivan, C. J., and Borden, Norcott, Katz, Palmer, Zarella and Lavery, Js.*

Argued February 10, 2005—officially released May 2, 2006

Victor R. Perpetua, appellate attorney, with whom, on the brief was *Mitchell W. Pearlman*, general counsel, for the appellant (defendant).

Martin R. Libbin, deputy director of legal services, for the appellees (plaintiffs).

Opinion

SULLIVAN, C. J. The principal issue in this appeal is whether certain records created and retained by the plaintiffs, the clerk of the Superior Court, geographical area number seven (clerk), and the state judicial branch (judicial branch), are related to the judicial branch's administrative functions and, therefore, are subject to disclosure under the Freedom of Information Act (act), General Statutes § 1-200 et seq. The defendant, the freedom of information commission (commission), appeals from the judgment of the trial court sustaining the plaintiffs' appeal from the commission's decision that the records were subject to the provisions of the act. The commission claims on appeal that, inter alia, the trial court improperly concluded that, because the records did not relate exclusively to an administrative function, they were exempt from disclosure under General Statutes §§ 1-200 (1) (A),[1] 1-210 (a)[2] and 1-200 (5).[3] We affirm the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. On January 28, 2001, Russell Collins, an attorney with the law firm of Russell Collins, LLC, submitted a letter to the clerk requesting permission on behalf of his firm to inspect the court's " '[p]ending book' "[4] and " 'daybooks' "[5] for the period from January 2, 2002, to January 29, 2002, any ledgers identifying cases currently pending before the court and any other records that would allow identification of pending cases in " 'pre-arraignment' " status.[6] On January 30, Martin R. Libbin, an attorney employed by and representing the judicial branch, denied the request on the ground that the requested records did not involve an administrative function of the judicial branch within the meaning of § 1-200 (1) (A) and, therefore, were not subject to the act. Libbin advised Collins, however, that General Statutes § 51-5b (b)[7] "allows persons seeking access to information contained in the [judicial branch's] combined criminal and motor vehicle informational system to request custom reports" and provided Collins with contact information for obtaining such reports.

On February 5, 2002, Collins submitted another letter to the clerk in which he requested daybooks for the period from January 30, 2002, to February 6, 2002, and "any nonexempt information maintained within any computer storage system that reflects in regard to each Defendant in any criminal case or action where: it is alleged that such Defendant committed a criminal offense . . . and such case or action was first filed against such Defendant during the time period from January 15, 2002 to February 6, 2002; and such case or action is currently pending in the [court]; any of the following;

"a. the Defendant's name;

''b. the Defendant's address;

''c. the Defendant's date of birth;

''d. the Docket numbers of the criminal charges filed against the Defendant;

''e. the date of the next Court hearing in the Defendant's case;

''f. the nature, or type, of the next Court hearing in the Defendant's case;

''g. whether such Defendant is represented by counsel;

''h. whether the Defendant has a jail code, etc., or is otherwise currently incarcerated.''

Libbin again denied the request on the ground that the requested information was not administrative in nature. Collins then filed a complaint with the commission claiming that the plaintiffs had violated the act by denying his requests. After a hearing on the complaint, the commission found that the pending book[8] and the daybook[9] contained some information that was exempt from the act, namely, information concerning juveniles, sealed records and erased records. Redacting the exempt information would involve ''a time consuming and burdensome process of checking each file in the [judicial branch's criminal/motor vehicle computer system]'' (computer system). The computer system was ''centrally operated by the [judicial branch], but . . . available locally to the [clerk],'' and was continually updated to indicate whether the cases involved juveniles or had been sealed or erased.

Although the commission concluded that the pending book and daybook were not disclosable, it concluded that the information in the computer system itself was subject to the act. Relying on this court's decision in *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, 209 Conn. 204, 550 A.2d 663 (1988), the commission concluded that the computer system records ''serve both 'administrative functions' and 'adjudicative functions,' '' and that ''any records relating to the performance of [administrative functions] must be [made] available pursuant to [§ 1-210], unless doing so would in some manner interfere with the performance of judicial functions. [Id., 208] . . . .'' (Internal quotation marks omitted.) The commission further concluded that, although ''new administrative procedures may be required to guarantee the timely entry of new data concerning exempt records into the [computer system] . . . pending case information . . . can be provided from computerized court records . . . without interfering with the performance of judicial functions.''[10] Accordingly, it concluded that the computer system records were administrative records subject to the act and ordered the judicial branch periodically to allow Collins to inspect the records. The

commission stayed the order for ninety days in order to allow the judicial branch ''to implement such procedures as it considers appropriate concerning the periods for public inspection and the timely entry of new data by its staff into [the computer system].''

The plaintiffs appealed from the commission's decision to the trial court, which sustained the appeal. The court noted that the commission had found that compliance with Collins' request to review the pending book and the daybook would be '' 'time consuming and burdensome' '' but that access to the computer system could be provided '' 'without interfering with the performance of judicial functions.' . . . Based on this finding of the hearing officer, the [commission] ordered the judicial branch to 'periodically allow [Collins] to inspect the requested records of the [computer system].' . . . This order is foreign to the language of § 1-210 (1) (A) which restricts disclosure only to administrative matters because the order does not allow the judicial branch to screen what records deal with a judicial function and which deal with administrative functions.'' Accordingly, the court concluded that the commission had ''extended its reach beyond that contemplated by the legislature as expressed in § 1-210 (1) (A)'' and sustained the plaintiffs' appeal. The commission appealed from the trial court's judgment to the Appellate Court and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

The commission claims on appeal that the trial court improperly concluded that (1) the information in the computer system is not solely administrative but involves the adjudication of cases and, therefore, is exempt from the act, (2) the difficulty of providing access to the pending book and daybooks affected the administrative nature of the information contained in the computer system, and (3) permitting periodic access to the computer system records would require the judicial branch to screen each record to determine whether it involved a judicial function or an administrative function. We conclude that the judicial branch's administrative functions, as that phrase is used in § 1-200 (1) (A), consist of activities relating to its budget, personnel, facilities and physical operations. Because the information in the computer system did not relate to these activities, we conclude that the trial court properly determined that the computer records did not constitute public records within the meaning of §§ 1-200 (5) and 1-210 (a) and, therefore, were not subject to the act.

As a preliminary matter, we set forth our standard of review. ''Ordinarily, we give great deference to the construction given a statute by the agency charged with its enforcement. . . . [T]he construction and interpretation of a statute is a question of law for the courts where the administrative decision is not entitled to spe-

cial deference, particularly where . . . the statute has not previously been subjected to judicial scrutiny or time-tested agency interpretations." (Citations omitted; internal quotation marks omitted.) *State Medical Society* v. *Board of Examiners in Podiatry*, 208 Conn. 709, 718, 546 A.2d 830 (1988). Although this court previously has construed the provisions of the act as they apply to the judicial branch; see, e.g., *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 210–11; we have not addressed the application of the act to the specific types of judicial records at issue in the present case. Accordingly, our standard of review is de novo. *State Medical Society* v. *Board of Examiners in Podiatry*, supra, 716–20.

We begin our analysis with the language of the relevant statutes. Section 1-210 (a) provides that all public records are subject to the act. Section 1-200 (5) provides in relevant part: " '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* . . . ." (Emphasis added.) Section 1-200 (1) (A) defines " '[p]ublic agency' " to include "any judicial office, official, or body or committee thereof but *only with respect to its or their administrative functions* . . . ." (Emphasis added.) Thus, the act applies only to records prepared by a subdivision of the judicial branch in the course of carrying out its administrative functions.

This court previously construed the scope of the phrase " 'administrative functions' " as used in § 1-200 (1) (A), formerly codified at General Statutes § 1-18a (a), in *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, 192 Conn. 234, 239, 472 A.2d 9 (1984). In that case, the defendant, Raphael Podolsky, had requested notice of and access to all meetings of the plaintiff rules committee of the Superior Court pursuant to the act. Id., 235. When the request was denied, Podolsky filed a complaint with the commission, which ordered the plaintiff to provide him with notice of and access to the meetings. Id., 235–36. The plaintiff appealed to the trial court, which sustained the appeal. Id., 236. The court determined that the plaintiff was subject to the open meetings provisions of the act; see General Statutes § 1-225, formerly codified at General Statutes § 1-21; but that the application of the provisions to the judicial branch violated the state constitutional separation of powers doctrine. *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 238. Podolsky then appealed to this court. Id., 237.

This court affirmed the judgment of the trial court on the alternate ground that, as a matter of statutory interpretation, the open meetings provisions of the act did not apply to the plaintiff. Id., 239. Chief Justice Peters, writing for the court, began her analysis by

considering the meaning of the phrase '' 'administrative functions.' '' Id. She stated that ''[t]he term 'administrative' has no generally accepted plain meaning, but is commonly used to refer to a wide range of activities extending from the day to day management of an organization or an estate's internal housekeeping functions to the conduct of the entire official business of the government.'' Id. She also stated that, in construing the scope of § 1-200 (1) (A), ''we must take account of our duty, when presented with a constitutional challenge to a validly enacted statute, to construe the statute, if possible, to comport with the constitution's requirements. . . . This general principle of construction is of particular importance in the context of the present litigation, which involves extraordinarily sensitive issues surrounding the delicate balance among the coordinate branches of our state government.'' (Citations omitted.) Id., 240. She further noted that, when the act was first enacted in 1975, it did not apply to constitutional courts. Id. The legislative history of the act indicated that ''[t]he reason these courts were not included is that there is a grave constitutional problem in legislative rule-making for constitutional courts.'' (Internal quotation marks omitted.) Id., 241. Turning to the legislative history of the 1977 amendment to the act, which made it applicable to constitutional courts, Chief Justice Peters stated that ''[t]here is no indication in the recorded history that the legislature perceived this amendment as having any particular constitutional significance, and certainly no evidence that it was intended to stimulate a confrontation with the Judicial Department by extending the act's open meeting provision to a significant portion of the judiciary's business. *The legislative history, then, supports a restrictive reading of the term 'administrative.'* '' (Emphasis added.) Id., 242; see also *State* v. *Snook*, 210 Conn. 244, 251, 555 A.2d 390 (''[t]his court should try, whenever possible, to construe statutes to avoid a constitutional infirmity'' [internal quotation marks omitted]), cert. denied, 492 U.S. 924, 109 S. Ct. 3258, 106 L. Ed. 2d 603 (1989). Chief Justice Peters concluded that, because the plaintiff ''plays no role in the management of the internal institutional machinery of the court system'' but, instead, ''sets the parameters of the adjudicative process that regulates the interactions between individual litigants and the courts . . . [it] does not perform 'administrative functions' within the meaning of [§ 1-200 (1) (A)] and is not subject to the provisions of the [act].'' *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 246.

Thus, we have recognized that the legislature intended for the scope of the act as applied to the courts to be much more limited than its scope as applied to state agencies. Not only did the legislature intend for the act to be limited to records prepared by a subdivision of the judicial branch *only* in the course of carrying out

an administrative function, but it also intended for the phrase ''administrative functions'' to be construed narrowly. Thus, there is a twofold restriction on the scope of the act as applied to the judicial branch.

New York case law is instructive on the scope of the term ''administrative'' as applied to judicial records in this context. In *Quirk* v. *Evans*, 116 Misc. 2d 554, 555, 455 N.Y.S.2d 918 (1982), the petitioners sought certain information from the New York office of court administration (office), pursuant to that state's freedom of information law. The office claimed that it was exempt from the law because the law specifically exempted ''the courts of the state, including any municipal or district court . . . .'' (Internal quotation marks omitted.) Id., 556–57. The court rejected that argument, concluding that ''[t]he [l]egislature, in enacting [the freedom of information law] intended the phrase 'courts of the state' to have its commonly understood meaning—tribunals adjudicating rights and status—and not the strained meaning advanced by [the] respondent . . . .'' Id., 557. It noted that the office's functions were ''largely concerned with the staffing and physical operation of the courts, as opposed to the adjudicatory functions of the [courts] . . . .''[11] Id. It concluded, therefore, that the office was ''an agency, not a court, and it is therefore subject to the [f]reedom of [i]nformation [l]aw.'' Id., 559; see also *Babigian* v. *Evans*, 104 Misc. 2d 140, 142, 427 N.Y.S.2d 688 (1980) (office of court administration is not court and is not exempt from complying with request for personnel information pursuant to freedom of information law).

In *Harvey* v. *Hynes*, 174 Misc. 2d 174, 175, 665 N.Y.S.2d 1000 (1997), the respondent, the district attorney, sought to reargue a court order granting the petitioner's request for the grand jury testimony of all witnesses who had testified against him in a criminal case. The court previously had ordered the release of the testimony, reasoning that, because the information already had been disclosed to the petitioner, there was no basis for keeping the testimony secret. Id. The respondent sought to reargue the matter, claiming that the information should not be released because it constituted ''court records.'' Id. The court stated that ''[w]hile such a ground does not implicate the confidentiality concerns of third parties, it does implicate the court's control over its own records.

''New York has long recognized that courts have inherent authority over their own records . . . . By explicitly exempting the judiciary from [the freedom of information law's] coverage . . . the [l]egislature has assured that courts will continue to control their own records. Although such an exemption may not be constitutionally mandated . . . it is evidently premised on legislative respect for the independence of the judiciary as a separate coequal branch of government . . . .

This exclusion of courts from [the freedom of information law's] coverage serves a public policy of ensuring the independence of the judiciary. . . . [T]his policy merits protection just as the confidentiality rights of third parties." (Citations omitted.) Id., 179–80. The court concluded that, because the grand jury minutes were court records, they were exempt. Id.; see also *Daily News Publishing Co.* v. *Office of Court Administration*, 186 Misc. 2d 424, 425–27, 718 N.Y.S.2d 800 (2000) (information stored in criminal records information management system database is court record and is not subject to freedom of information law); *Daily News Publishing Co.* v. *Office of Court Administration*, supra, 426 (administrative records pertain to budget, personnel or facilities); *Daily News Publishing Co.* v. *Office of Court Administration*, supra, 427 ("[t]he judiciary, and only the judiciary, has the power to determine when, and under what conditions, [court records] may be made available").

In the present case, we conclude that, in limiting the act's application to the administrative function of the courts, our legislature intended to codify the principle that courts, not executive agencies, should have control over court records. The New York legislature, like the federal government and many other states,[12] exempted the courts entirely from the state's freedom of information law out of "respect for the independence of the judiciary as a separate coequal branch of government . . . ." *Harvey* v. *Hynes*, supra, 174 Misc. 2d 180. New York courts subsequently recognized, however, that the courts' purely administrative functions and offices, i.e., functions and offices "largely concerned with the staffing and physical operation of the courts, as opposed to [their] adjudicatory functions"; *Quirk* v. *Evans*, supra, 116 Misc. 2d 557; could not be considered judicial functions or offices for freedom of information law purposes. Our legislature simply made that determination in the first instance. Accordingly, we conclude that New York case law provides persuasive guidance as to the scope of our freedom of information statute. 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 act.

We emphasize that, in the present case, this determination does not mean that Collins has no right to the information that he requested from the plaintiffs. He may have such a right under the first amendment. See *Nixon* v. *Warner Communications, Inc.*, 435 U.S. 589, 597–99, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978) (public has general right to inspect and copy public records but courts may exercise supervisory powers to deny access in appropriate cases); *Hartford Courant Co.* v. *Pellegrino*, 380 F.3d 83, 96 (2d Cir. 2004) (docket sheets

are presumptively open to public and public and press have qualified first amendment right to inspect them); *State* v. *Ross*, 208 Conn. 156, 158, 543 A.2d 284 (1988) (public and press have right of access to court records); *State* v. *Ross*, supra, 159 (noting first amendment interest of public and press in ''full access to all aspects of criminal proceedings''); see also Practice Book § 42-49A (a) (''[e]xcept as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public''). It is important to note, however, that the act goes far beyond merely codifying this first amendment right. The act imposes short time deadlines for considering requests for records; see General Statutes § 1-206 (a);[13] provides for appeals to the commission; see General Statutes § 1-206 (b) (1); and provides for the imposition of ''a civil penalty of not less than twenty dollars nor more than one thousand dollars'' against an official who denies any right created by the act without reasonable grounds. General Statutes § 1-206 (b) (2). We find it highly unlikely that the legislature, which expressly recognized the precarious constitutionality of the act as applied to the judiciary, could have intended these provisions to apply to records created by judicial officers carrying out essentially judicial functions.

In support of its claim to the contrary, the commission relies on this court's dicta in *Rules Committee of the Superior Court* suggesting that the accounting, personnel, scheduling and record keeping activities of the judicial branch might be administrative functions; see *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 246; and that ''jury dockets listing the names of litigants and counsel, the judge to whom each case was assigned and the time and place each case was to be called'' might be administrative records subject to the act. Id., 242 n.10. The commission argues that these statements establish that all judicial records relating to the tracking, scheduling and docketing of cases are administrative. We disagree.

First, it is apparent that our decision in *Rules Committee of the Superior Court* was internally inconsistent. As the commission points out, we concluded in that case that the phrase '' 'administrative functions' '' referred to the ''internal institutional machinery'' of the court; id., 243; and suggested in dicta that these functions might include the court's record keeping function. Id., 242 n.10. That suggestion was inconsistent, however, with the basic holding of that case that the phrase '' 'administrative function,' '' which was devoid of ''generally accepted plain meaning''; id., 239; must be given a *restrictive* meaning in order to avoid a constitutional confrontation between the legislature and the judiciary; id., 242; and with our rejection of the broad view that administrative functions include ''the conduct of the entire official business of the [judicial branch].'' Id., 239.

Moreover, the suggestion rests on the faulty logic that, because administrative duties may include keeping records, all record keeping activities necessarily are administrative as that term is used in the act.

Second, it is now apparent to us that the phrase ''internal institutional machinery''; id., 243; is as devoid of ''generally accepted plain meaning'' as the phrase '' 'administrative functions,' '' and, like that phrase, could refer ''to a wide range of activities extending from the day to day management of an organization or an estate's internal housekeeping functions to the conduct of the entire official business of the government.'' Id., 239. Indeed, it is difficult to imagine how any activity, administrative or otherwise, of any governmental entity could be conducted if not through the entity's internal institutional machinery.[14] Accordingly, we do not believe that this phrase, in and of itself, provides any real guidance as to whether a function is administrative.

Third, the testimony before the judiciary committee that we cited in *Rules Committee of the Superior Court*[15] in support of our suggestion that record keeping is an administrative function, was given by a commission representative two years *after* the enactment of the act. We recognize that ''testimony before legislative committees may be considered in determining the particular problem or issue that the legislature sought to address by the legislation . . . and, therefore . . . helps to identify the purpose or purposes for which the legislature used the language in question.'' (Internal quotation marks omitted.) *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 314, 819 A.2d 260 (2003). We do not believe, however, that testimony given two years *after* a statute was enacted can shed light on those questions. The testimony by the commission's representative merely constituted his interpretation of the statute. As we have indicated, an agency's interpretation of a statute is not entitled to any special deference when ''the statute has not previously been subjected to judicial scrutiny or time-tested agency interpretations.'' (Internal quotation marks omitted.) *State Medical Society* v. *Board of Examiners in Podiatry*, supra, 208 Conn. 718. Accordingly, we conclude that the representative's testimony provides no persuasive guidance on the scope of the act.

Fourth, the conclusion that not all record keeping is administrative in nature within the meaning of the § 1-200 (1) (A) is supported by the language of the relevant statutory provisions. Reading § 1-200 (1) (A) and (5) together, the act effectively provides that '' '[p]ublic 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 [any judicial office, official, or body or committee thereof *but only with respect to its or their administrative functions*].''[16] (Emphasis added.) See General Statutes § 1-

200 (1) and (5). It makes little sense to interpret this provision to mean that the phrase " '[p]ublic records or files' " means any recorded data relating to the conduct of the public's business retained by any judicial office, official, or body or committee thereof in the course of keeping records. Rather, this language clearly indicates that the legislature intended to draw a vertical line between inherently judicial activities, such as adjudicating cases, and inherently administrative activities, such as preparing budgets, and did not intend to draw a horizontal line between the aspects of inherently judicial activities that may have some administrative character, such as keeping records, and the aspects of inherently judicial activities that are purely nonadministrative, whatever those might be. See footnote 14 of this opinion. A conclusion to the contrary would negate the legislature's intent to treat the judicial branch differently from administrative agencies under the act and to circumscribe narrowly the act's applicability to court records.

Finally, our conclusion that record keeping is not an inherently administrative function within the meaning of the act is bolstered by a review of the genealogy of the act and other statutes governing the disclosure of public records. Before the legislature enacted the act in 1975, General Statutes (Rev. to 1975) § 1-19 provided in relevant part: "Except as otherwise provided by any federal or state statute or regulation, all records made, maintained or kept on file by any executive, administrative, legislative or *judicial body*, agency, commission or official of the state, or any political subdivision thereof, whether or not such records are required by any law or by any rule or regulation, shall be public records and every resident of the state shall have the right to inspect or copy such records at such reasonable time as may be determined by the custodian thereof. . . ." (Emphasis added.) When the legislature enacted the freedom of information act in 1975, it exempted the constitutional courts and the nonadministrative functions of the Court of Common Pleas in recognition of the fact that subjecting the courts to the powers of an executive agency would be of dubious constitutionality. See *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 240–41. The legislature also provided, however, that "[n]othing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be . . . deemed in any manner to affect the status of judicial records as they existed prior to October 1, 1975 . . . ." General Statutes (Rev. to 1977) § 1-19b (3); see also General Statutes § 1-213 (b) (1) ("[n]othing in the Freedom of Information Act shall be deemed in any manner to . . . [a]ffect the status of judicial records as they existed prior to October 1, 1975"). We cannot perceive why the legislature would have taken pains to express its view that nothing in the act should affect the status of judicial records after the

effective date of the act if it intended that such records would be subject to the act.

The commission also relies on our decision in *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 208, in support of its position that the scheduling and docketing of cases is an administrative function. In that case, the defendant commission ordered the plaintiffs, the bar examining committee (committee) and its director, to provide the defendant, William J. Corvo, with copies of certain records pertaining to the bar examination given in July, 1983.[17] Id., 205. The committee appealed to the Superior Court, which sustained the appeal on the ground that the committee does not perform '' 'administrative functions' '' within the meaning of the act. Id. The commission then appealed from the judgment of the trial court to this court. Id., 206.

On appeal, we agreed with the committee that ''its principal function of determining whether an applicant is qualified for admission to the bar is quite analogous to adjudication.'' Id., 209. We also stated, however, that ''[w]e have recognized that certain duties performed by judicial officers, such as accounting, personnel scheduling and record keeping, some of which are detailed in General Statutes § 51-5a, are administrative tasks. [*Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn.] 244–46. It follows that any records relating to the performance of such duties must be made available pursuant to [General Statutes] § 1-19 [now codified at § 1-210 (a)], unless doing so would in some manner interfere with the performance of judicial functions.'' *Connecticut Bar Examining Committee* v. *Freedom of Information Commission*, supra, 209 Conn. 208. We concluded, therefore, that ''[i]t is not at all clear . . . that all of the records generated in [the committee's] adjudicative process are wholly unrelated to the internal management of the court system or that all of them must be withheld from public view to avoid interference with that process.'' Id., 209–10. Rather, ''[s]ome aspects of [the] adjudicative process . . . may properly be classified as administrative.'' Id., 210.

We then held that the process of ''establishing the criteria to be used for [the determination of whether an applicant is qualified for admission to the bar] . . . selecting the questions for the examination and deciding upon its scope . . . grading the examinations, and . . . establishing procedures designed to reduce the effect of subjectivity on the part of the examiners,'' and the application of those standards to particular candidates, were analogous to adjudication and, therefore, records relating to those activities were exempt from the act. Id., 209–10. We also held that ''the promulgation of those criteria, like the publication of the rules of practice,'' and ''the compilation of scores on the

examinations in a manner similar to the preservation of records of judicial proceedings in the clerk's office,'' were administrative functions and, therefore, were subject to the act. Id., 210. Because the trial court had not considered whether providing public access to the records subject to the act would impede significantly the committee's performance of its judicial function, we remanded the case to that court for a hearing on that issue. Id., 211.

The commission argues that our decision in *Connecticut Bar Examining Committee* supports its position that judicial records that are both adjudicative and administrative are subject to the act. We concluded in that case, however, that ''[t]he application of the standards for admission to a particular candidate . . . is a function . . . that must be regarded as essentially judicial''; id., 210; and, therefore, that records pertaining to that function were exempt. Id., 210–11. It seems clear, therefore, that a request for the names, addresses, dates of birth and status of the pending applications of all applicants to the bar for a particular period would not be covered by the act. If the application of bar admission criteria to an individual applicant is not an administrative function then, a fortiori, the adjudication of individual criminal cases is not an administrative function and records created for the purpose of carrying out that function are not subject to the act. Such records are not like records promulgating the criteria for admission to the bar or the rules of practice, or compiling the results of the bar examination, which are created for the very purpose of sharing information with the public at large. Rather, 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.

To the extent that *Connecticut Bar Examining Committee* held that the act applies to judicial functions that are both administrative and adjudicative, the case relied exclusively on our dicta in *Rules Committee of the Superior Court* in support of that proposition; see id., 210; and is subject to criticism for the same reasons. Moreover, *Connecticut Bar Examining Committee* highlights the inherent unworkability of the rule suggested by our dicta in the earlier case. For example, we concluded in *Connecticut Bar Examining Committee* that the application of the bar admission criteria to particular candidates was an adjudicative function and was exempt from the act, while the compilation of scores on the examination ''in a manner similar to the preservation of records of judicial proceedings in the clerk's office''; id.; was an administrative function. The scoring of examinations, however, *is* the application of bar admission criteria to particular candidates. The

opinion does not attempt to explain at what point in the process the recording of scores ceases to be an adjudicative function and becomes an administrative function. To the extent that the opinion merely held that compiling a list of scores for the purpose of publication is an administrative function; see id. (noting ''obvious distinction between . . . determining whether applicants have satisfied the requirements for admission to the practice of law and . . . announcing the results of its deliberations'' to general public); it is far from clear whether the clerk's office engages in any analogous activity with respect to judicial proceedings. In any event, applying the act to this function would appear to be redundant. Finally, as we have suggested, a conclusion that judicial records that have both an administrative and an adjudicative function are subject to the act would effectively mean that *all* judicial records are subject to the act, a conclusion that cannot be reconciled with the legislative desire to restrict the application of the act to the judiciary. Accordingly, we conclude that this court's decision in *Connecticut Bar Examining Committee* does not support the commission's position.

It is essential for the independence of the judicial branch that the courts have control over court records and that the other branches of government not interfere with that control. The right to control includes the right to determine, consistent with the first amendment right to access, the time, place, manner and format in which court records are maintained and disclosed. These basic principles were recognized by the legislature when it limited the application of the act to the courts' administrative function and by this court when we recognized that the term administrative as used in the act must be given a ''restrictive reading'' in order to advance the legislature's desire to preserve the delicate balance of power between the separate branches. *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 242. In light of that legislative intent and our duty to construe statutes to avoid potential constitutional infirmity, we conclude that, for the purposes of the 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.

The computer records at issue in the present case do not relate to any of these activities. Accordingly, we conclude that the records were not subject to the act.

The judgment is affirmed.

In this opinion PALMER, ZARELLA and LAVERY, Js., concurred.

* The listing of justices reflects their seniority status on this court as of the date of argument.

This case originally was argued before a panel of this court consisting of Chief Justice Sullivan and Justices Borden, Norcott, Katz and Zarella. Thereafter, the court, pursuant to Practice Book § 70-7 (b), sua sponte,

ordered that the case be considered en banc. Accordingly, Justice Palmer and Chief Judge Lavery of the Appellate Court were added to the panel. They have read the record, briefs and transcript of the oral argument.

[1] General Statutes § 1-200 (1) provides in relevant part: " 'Public agency' or 'agency' means:

"(A) Any executive, administrative or legislative office of the state or any political subdivision of the state . . . and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions . . . ."

[2] General Statutes § 1-210 (a) provides: "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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein. Each such agency shall make, keep and maintain a record of the proceedings of its meetings."

[3] General Statutes § 1-200 (5) 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."

[4] Collins cited Practice Book § 7-1, which provides in relevant part: "The clerk shall keep a record of all pending cases, including applications and petitions made to the court, together with a record of each paper filed and order made or judgment rendered therein, with the date of such filing, making or rendition. . . . ."

[5] Collins cited Practice Book § 7-4, which provides in relevant part: "The clerk shall keep daybooks in which to enter each case on the date upon which the matter is filed on a docket of the court location. Each entry shall state the first named plaintiff and the first named defendant, unless otherwise prohibited by statute or ordered by the judicial authority, the date of filing and the number assigned to the case. . . ."

[6] Geographical area number seven of the Superior Court handles only criminal and motor vehicle matters.

[7] General Statutes § 51-5b (b) provides: "Any person or public agency seeking on line or dial up access to any data processing system operated and administered by the Office of the Chief Court Administrator, or seeking information stored in such data processing system in a format other than as provided by the Office of the Chief Court Administrator, may be required to pay to the Office of the Chief Court Administrator an amount, as established in a fee schedule determined by the Office of the Chief Court Administrator, for deposit by the Office of the Chief Court Administrator in a fund established in subsection (a) of this section. Such fee schedule may include reasonable charges for personal services, fringe benefits, supplies and any other expenses related to maintaining, improving and providing such data processing services including, but not limited to, program modifications, training expenses, central processor user time and the rental and maintenance of equipment."

[8] The commission described the pending book as "a computer printout of all cases pending at a given court location, delivered from the statewide Judicial Information Systems office once or twice a week . . . ."

[9] The commission described the daybook as "a paper log of all cases received by a given court, created by the clerks of that court and based, for criminal matters, upon the receipt of a uniform arrest report . . . ."

[10] The commission found that "new administrative procedures may be

required to guarantee the timely entry of new data concerning exempt records into the [computer system] in order that its records can be available for public inspection at certain periodic intervals to be determined by the [judicial branch].'' It also found that ''such new administrative procedures would be reasonable, and therefore that the records requested can 'reasonably' be made available from the [computer system] for at least periodic inspection, as envisioned by [General Statutes] § 1-211 . . . .''

General Statutes § 1-211 (a) provides in relevant part: ''Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, if the agency can reasonably make such copy or have such copy made. . . .''

[11] The court also noted that the office ''conducts statistical studies of trial court workloads; conducts seminars and informational conferences for both judicial and nonjudicial employees; handles assignments of staffing and projection of staffing needs of nonjudicial personnel; evaluates the administrative impact of [l]egislation on the courts; provides budgetary assistance and projections; and, finally, is the repository of certain records kept in the course of judicial and related proceedings in the [s]tate.'' *Quirk* v. *Evans*, supra, 116 Misc. 2d 557.

[12] See 37A Am. Jur. 2d 42, Freedom of Information Acts § 14 (1994) (''[t]he federal and many state freedom of information acts do not apply to court records'').

[13] General Statutes § 1-206 (a) provides: ''Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.''

[14] For example, the preparation of trial transcripts reasonably could be characterized as part of the judicial branch's internal institutional machinery for tracking cases. Likewise, the preparation of records of motions and rulings and even records pertaining to the assignment of the writing of appellate opinions to individual judges would be subject to the act. It would also appear that the preparation of records pertaining to the scheduling and tracking of rules committee meetings and the business conducted at them, such as meeting notices, agendas, minutes and draft rules, would be subject to the act, a result that hardly seems consistent with this court's decision in *Rules Committee of the Superior Court*.

[15] We noted in *Rules Committee of the Superior Court* that ''[t]he limited scope of the act's intended application to the judiciary is evidenced by the remarks of the [commission's] representative, who testified before the Judiciary Committee in support of the 1977 amendment that, in the one case presented to the [commission] in its first two years of operation involving the Judicial Department, the [commission] had ordered the release of jury dockets listing the names of litigants and counsel, the judge to whom each case was assigned and the time and place each case was to be called. The [commission] representative further testified, 'I think that's a good example of what an . . . [administrative record] of the court is.' Judiciary Committee Proc., Pt. 2, 1977 Sess., p. 548.'' *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 242 n.10.

[16] We did not consider the language of § 1-200 (1) and (5) in *Rules Committee of the Superior Court* because that case involved the act's open meeting provisions, not its public records provisions. It is also important to note that the record keeping that we characterized as an administrative function in that case was performed by the office of the chief court administrator. See *Rules Committee of the Superior Court* v. *Freedom of Information Commission*, supra, 192 Conn. 244–46 (citing statutes describing duties of office of chief court administrator and characterizing office's record keeping duties as administrative tasks). It may be that records pertaining to individual cases kept by that office for the purpose of allocating personnel or preparing budgets could be considered administrative records. It does not follow, however, that records kept by the clerk of the Superior Court for the purpose of facilitating the adjudication of cases are administrative records.

[17] The records included ''a list of the persons who read, scored or graded

the essay answers; a list of all independent readers used by the committee for such examination; a list of readers, graders or scorers for each of the twelve essay questions; the criteria used to determine the competency of the committee's examiners, readers and scorers; the review procedure used to determine the competency of examiners; the standard deviation of both Part A and Part B scores; the average of Part A and Part B scores; guidelines as to conditions under which the bar examination answers may be graded; names of individuals who select examiners for the bar examination; names of the monitors of the examination; the criteria for determining that the number 264 qualifies an individual to practice law in the state of Connecticut; the purpose and meaning of that number as established in any rules or guidelines which the bar examining committee may have promulgated; and the criteria for using the numbers 254 and 274 as numbers which automatically require a rereading of essay answers by an independent reader." *Connecticut Bar Examining Committee* v. *Freedom of Information Committee*, supra, 209 Conn. 207.