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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Ira Alston,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0186

Scott Semple, Commissioner, State of Connecticut,  
Department of Correction; and State of Connecticut,  
Department of Correction,  
Respondent(s)

October 6, 2016

## 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, November 16, 2016**. 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 November 4, 2016**. 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 November 4, 2016**. **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 **fifteen (15) copies** be filed **ON OR BEFORE November 4, 2016**, 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: Ira Alston  
Attorney James Neil  
cc: Craig Washington

FIC# 2016-0186/Trans/wrbp/TCB//VDH/2016-10-06

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ira Alston,

Complainant

against

Docket #FIC 2016-0186

Scott Semple, Commissioner, State of  
Connecticut, Department of Correction;  
and State of Connecticut, Department  
of Correction,

Respondents

August 29, 2016

The above-captioned matter was heard as a contested case on July 25, 2016 at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC2016-0270; Ira Alston v. Scott Semple, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction.

The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that by letter dated February 4, 2016, the complainant submitted a request to the respondents for the following:
  - a. Ira Alston RT 35, RT 50, RT 77 and RT 76; and

- b. the signed incoming privileged correspondence log sheet from November 23, 2009 through December 3, 2009.

3. It is found that the respondents provided a written response informing the complainant that he is only permitted to receive RT 50 and RT 77, and that the incoming privileged correspondence log sheet from November 23, 2009 through December 3, 2009, had been destroyed because such records are only maintained for five years.

4. By letter dated February 16, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by denying part of his February 4, 2016 records request. The complainant requested the imposition of a civil penalty against the named respondent.

5. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. 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 . . . (3) receive a copy of such records in accordance with 1-212.

7. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. At the hearing on this matter, the complainant explained that the only records at issue are RT 35 and RT 76 and contended that he should have been provided with those records pursuant to the disclosure provisions of the FOI Act.

10. With respect to the complainant's request for RT 35; the respondents claimed at the hearing on this matter that said record is exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides, in relevant part, that:

“[n]othing in the Freedom of Information Act shall be construed to require disclosure of...[r]ecords, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction....”

11. The respondents' witness, Counselor Supervisor Aldi, is the Security Risk Group Coordinator for the respondent Department, has worked at the respondent Department since 1995, and has held his current position since September 2006. He credibly testified at the hearing in this matter, and it is found, that RT 35 is an investigative tool and is part of the respondents' intelligence gathering, used to track the various aliases used by inmates who are known members of security risk groups (more commonly known as gangs). Counselor Supervisor Aldi also testified credibly, and it is found, that if an inmate obtained his R' 35, he would know which alias or aliases are known by the respondent department and would likely begin to use a different alias, thereby making it more difficult for the respondent Department to track his illicit activities within the prison, which in turn would compromise safety and security.<sup>1</sup>

12. This Commission takes administrative notice of its decision in Docket #FIC2015-189; Ira Alston v. Scott Semple, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction in which this Commission found:

...that the respondent Department has identified approximately 400 security risk group members, or more informally, gang members. The complainant [Ira Alston] is one of the members of the security risk group.

...that the “documentation leading up to the determination of the existence of The Bloods as a security risk group” constitutes thousands of pages, which Counselor Supervisor Aldi personally reviewed. The Bloods were identified as a security risk group in October 2002, after the

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<sup>1</sup> The complainant object to the testimony of Counselor Supervisor Aldi and requested a continuance in order to return to his called to obtain records that he could use to refute Counselor Supervisor Aldi's *expertise*. The hearing officer overruled the objection and denied the request for continuance. See Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, judicial district of New Britain at New Britain, Docket No. CV106006278 (April 5, 2012) [The court ruled that to satisfy their burden under the statute, the DOC need only give “reasonable reasons...drawn from observations about inmates in general, as opposed to a specific inmate making the request.”]

collection of records during the two previous years. It is further found that these thousands of pages detail the detection methods and intelligence techniques that the respondent Department continues to use to identify security risk groups and their activities.

...that the security risk group management manual is approximately sixty pages and details security procedures for performing and documenting investigations. Disclosure of this manual would jeopardize the gathering of intelligence by the respondent Department and encourage security risk group members to attempt communication and organization methods that circumvent the procedures of the respondent Department.

13. It is found that, likewise, the disclosure of the RT 35 would jeopardize the intelligence the respondent Department has on specific members of security risk groups and encourage security risk group members to attempt communication and organization methods that circumvent the procedures of the respondent Department.

14. The Commission has had a substantial line of cases holding that records concerning security risk groups are exempt from mandatory disclosure. FIC # 2013-541, Edwards v. Department of Correction; FIC # 2010-284, Dorlette v. Department of Correction; FIC # 2010-093, Barletta v. Department of Correction; and FIC # 2010-047, Calderon v. Department of Correction. These cases, especially Barletta, set forth in considerable detail the reasons that gang related records are not subject to disclosure. Dorlette specifically concerned materials related to The Bloods.

15. It is concluded that the Commissioner of Correction has reasonable grounds to believe that disclosure of the RT 35 may result in a safety risk within the meaning of §1-210(b)(18), G.S.<sup>2</sup>

16. With respect to the complainant's request for the RT 76, the respondents provided testimony from two credible witnesses. It is found that there is no RT 76 and that the requested record does not exist.

17. It is concluded, therefore, that the respondents did not violate the FOI Act when they not provide the RT 35 and RT 76 requested by the complainant.

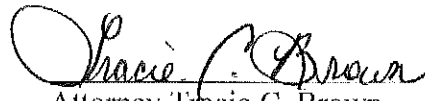
18. Based on the findings and conclusions above, there is no basis on which to consider the complainant's request for the imposition of a civil penalty.

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<sup>2</sup> "The FOIC's role [when making a determination of reasonableness] is to determine whether the [commissioner's] reasons were pretextual and not bona fide, or irrational." Commissioner, Department of Correction v. FOI Commission, Superior Court, Judicial District of New Britain, Docket No. CV074015438 and CV084016766 (November 3, 2008) (2008 Conn. Super. 2724) \*13.

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.

  
Attorney Tracie C. Brown  
as Hearing Officer