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Kacey Lewis,
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2015-885

September 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, September 28, 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 September 16, 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 September 16, 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 September 16, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Kacey Lewis
Attorney James Neil
cc: Craig Washington

FIC# 2015-885/Trans/wrbp/VRP//VDH/2016-09-06

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Kacey Lewis,

Complainant

against

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

Respondents

Report of Hearing Officer

Docket #FIC 2015-885

September 2, 2016

The above-captioned matter was heard as a contested case on August 8, 2016, at which time the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint. 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. By letter of complaint filed December 24, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his December 15, 2015 request to review and inspect certain records.

3. It is found that the complainant made a December 15, 2015 request to the respondents to review and inspect the following records:

> Document identifiable as "Inmate Locater Card" Specifically, card that custody staff in the "Restrictive Housing Unit" ["RHU"] at Cheshire [Correctional Institution] posted on the outside of the cell I was confined in between November 30, 2015 through December 15, 2015, illustrating and or indicating the reasons for said confinement in RHU.

4. It is found that the respondents answered on December 18, 2015, saying:

> This will acknowledge receipt of your request pursuant to the Freedom of Information Act. I can not honor this request. Inmate

locator cards are exempt from disclosure (Connecticut General Statutes §1-210(b)(18).

5. It is found that the Inmate Locater Card is a document that follows the inmate through the correctional institutions where he is housed, containing his name, picture, the name of each housing unit and cell he has lived in, and certain other minimal information.

6. It is found that the card or document the complainant alleged was posted on the outside of the complainant's cell during his confinement to restrictive housing was not in fact his Inmate Locater Card, but rather a sign containing only his name, picture, and in boldface, the reason for his confinement in restrictive housing as "sexual misconduct." It appears that the posting of the reason for the complainant's confinement, and the respondents' denial of that posting, is the crux of the complainant's complaint

7. The respondents' witness, who was the correctional officer who had responded to the complainant's request, but not the officer responsible for posting a card on the complainant's restrictive housing cell, testified that the card posted on his cell did not contain the notation of the reason for the complainant's confinement in restrictive housing.

8. It is found, however, that the respondent's witness did not actually view the card posted on the complainant's restrictive housing cell.

9. It is also found that the complainant himself, and at least two other individuals who spoke to the complainant, viewed the card posted on his restrictive housing cell and saw the notation about the reason for his confinement in restrictive housing.

10. To the extent that the respondent's witness testified that cards posted on inmate's restrictive housing cells contain only the inmate's name and photograph, her testimony is found not to be credible. She did not view the actual posted card. Additionally, her testimony about the content of the card was inconsistent (testifying at one point that the card was a photocopy of the Inmate Locater Card, which contains more than simply the inmate's name and photograph; and later testifying that the card was a computer-generated document created by a correction officer). Additionally her testimony about her claimed confusion about what the complainant was requesting is belied both by the specificity of his request, and the inconsistency of her statements about her purported confusion. She testified that she knew by the time of her December 18, 2015 response (see paragraph 4, above) that the Inmate Locater Card and the card posted on the complainant's cell were different, yet her December 18, 2015 response makes no mention of this knowledge, which was directly relevant to her response.

11. Moreover, it is found that the best evidence of the contents of the card would have been the card itself, or at least the testimony of a witness who had seen the card. The respondents' failure to offer such testimony, which was entirely within their control, supports an inference that their assertion is not true that the card did not display the reason for the complainant's confinement in restrictive housing.

12. However, it is also found that the respondents destroyed the card after the complainant was removed from restrictive housing.

13. While the respondents' witness testified that no administrative directive was required to authorize the destruction of the card, the respondents failed to produce any evidence that the requested card was destroyed before it was requested by the complainant, or any argument that immediate destruction of the card is permitted under the applicable records retention schedules.

14. Section 1-200(5), G.S., defines "public records" as follows:

> 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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

15. Section 1-210(a), G.S., provides, in relevant part:

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

16. It is concluded that card displaying the reason for the complainant's confinement to restrictive housing was a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

17. It is also found that the respondents did not provide the complainant with a copy of the card.

18. It is concluded, therefore, that the respondents violated §1-210(a), G.S., as alleged.

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

1. Henceforth the respondents shall strictly comply with the provisions of §1-210(a), G.S.

2. The respondents shall consult with the Connecticut Office of the Public Records Administrator concerning the retention of a card displaying the reason for an inmate's confinement in restrictive housing

Victor R. Perpetua
as Hearing Officer

FIC2015-885/HOR/VRP/09012016