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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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Scott Swain,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0005

Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; State of Connecticut, Department of Emergency Services and Public Protection; Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction,
Respondent(s)

September 1, 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, 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
Acting Clerk of the Commission

Notice to: Scott Swain
Assistant Attorney General Terrence M. O'Neill
Attorney James Neil cc: Craig Washington

FIC# 2016-0005/Trans/wrbp/LFS/VDH/2016-09-01

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Scott Swain,

Complainant

against

Docket #FIC 2016-0005

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; State of Connecticut,
Department of Emergency Services and
Public Protection; Commissioner, State of
Connecticut, Department of Correction; and
State of Connecticut, Department of
Correction,

Respondents

July 28, 2016

The above-captioned matter was heard as a contested case on June 24, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts 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)(A), G.S.
2. It is found that in July 2015, the complainant requested records containing forensic science laboratory results in two cases pertaining to his conviction.
3. It is found that on July 10, 2015, the respondents acknowledged the complainant's request.
4. It is found that on December 28, 2015, the complainant, having heard nothing further from the respondents, renewed his request to the respondents.

5. By letter filed January 5, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the requested records.

6. 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.

7. 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.

8. 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.”

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

10. Section 1-210(c), G.S., provides in relevant part:

Whenever a public agency receives a request from any person confined in a correctional institution or ... for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction ... in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility ...

11. It is found that on May 27, 2016, the respondent Department of Emergency Services and Public Protection (“DESPP”) sent a copy of the requested records to the Commissioner of

the Department of Correction (“DOC”) in the manner prescribed by the Commissioner, pursuant to §1-210(c), G.S.

12. It is found that prior to sending the records to DOC, DESPP redacted the records pursuant to five exemptions to disclosure.

13. It is found that upon receipt of the records from DESPP, DOC reviewed the records, as permitted by §1-210(c), G.S., and ultimately determined that no additional redactions were necessary.

14. It is found that DOC provided the requested records, as redacted by DESPP, to the complainant on June 12, 2016.

15. At the hearing in this matter, the witness for DESPP testified about the redactions, describing the type of information that DESPP redacted and identifying the statutory grounds for the redactions.

16. At the conclusion of the hearing, the complainant indicated that the only redactions he still challenged were of the name of a certain nurse and the DNA test results of a convicted offender in South Carolina. The complainant also challenged the timeliness of DESPP’s compliance with his request, as well as the legibility of several of the copies pages.

17. Following the hearing in this matter, the respondents submitted the records still at issue for in camera inspection. Such records shall be referenced as IC-2016-0005-1 through IC-2016-0005-7.

18. The respondents claim that §54-102j, G.S., prohibits the disclosure of records containing DNA database information.

19. Section 54-102j, G.S., provides:

(a) It shall be the duty of the Division of Scientific Services within the Department of Emergency Services and Public Protection to receive blood or other biological samples and to analyze, classify and file the results of DNA identification characteristics profiles of blood or other biological samples submitted pursuant to section 54-102g and to make such information available as provided in this section ... The results of an analysis and comparison of the identification characteristics from two or more blood or other biological samples shall be made available directly to federal, state and local law enforcement officers upon request made in furtherance of an official investigation of any criminal offense. ... The name of the person making the request and the purpose for which the information is requested shall be maintained on file with the division.

20. It is concluded that §54-102j, G.S., permits disclosure of DNA database results only to federal state and local law enforcement officers upon request made in furtherance of an official investigation of any criminal offense.

21. It is concluded that §54-102j, G.S., does not permit disclosure to the complainant of any records from the DNA database pertaining to a convicted offender in South Carolina.

22. With respect to the name of the nurse, the respondents claim that such information is exempt pursuant to §1-210(b)(2), G.S, which permits an agency to withhold a "personnel, medical or similar file where disclosure would constitute an invasion of personal privacy."

23. It is found that the respondents submitted no evidence in support of, and thus failed to prove, their claim that disclosure of the nurse's name would constitute an invasion of personal privacy of the subject of the medical record in which the nurse's name appears.

24. With respect to the timeliness of DESPP's compliance, it is found that ten months elapsed between the date that DESPP received the complainant's request and the date that DESPP provided responsive records to DOC for review. It is found that DESPP did not explain why it took such a long time for them to comply with the complainant's request.

25. It is found that under the circumstances of this case, DESPP did not provide the records in a timely manner.

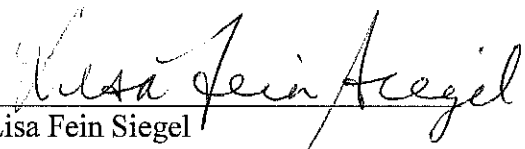
26. With respect to the legibility of certain records, DESPP and DOC offered at the hearing in this matter to re-copy the records for the complainant in an effort to make them easier to read.

27. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by redacting the nurse's name from the requested records and failing to promptly provide the requested records to the complainant.

28. It is concluded that DOC did not violate the FOI Act.

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

1. The complaint is dismissed as to DOC respondents only.
2. DESPP shall forthwith provide a copy of the record with the nurse's name, as referenced in paragraph 16 in the findings of fact.
3. DESPP shall forthwith re-copy the records as discussed at the hearing in this matter and provide such to the complainant, if they have not done so already.
4. DESPP shall henceforth strictly comply with §§1-210(a) and 1-212(a), G.S.



Lisa Fein Siegel
as Hearing Officer