

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jan Gawlik,

Complainant

against

Docket #FIC 2016-0317

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

Respondents

December 7, 2016

The above-captioned matter was heard as a contested case on August 19, 2016, at which time the complainant and the 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, 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 application dated March 30, 2016, the complainant requested from the respondents copies of Administrative Directives 6.10, 10.7 and 10.8, as well as "...under C.G.S. §4-172 the certified copies from DOC Heads or Dept Heads certification documents of [these administrative directives] that...were approved by the legislation/general assembly."
3. It is found that, by letter dated April 6, 2016, the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that they would provide copies of the administrative directives upon payment of the copying fee.
4. By letter dated April 12, 2016, and filed with the Commission on April 22, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the request, described in paragraph 2, above.
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... (3) receive a copy of such records in accordance with section 1-212.

7. It is found that, to the extent the respondents maintain the records, described in paragraph 2, above, such records are public records.

8. It is found that the complainant informed the respondents sometime after he filed his complaint with this Commission, that he did not need copies of the administrative directives, described in paragraph 2, above, and was seeking only the “certification documents.”

9. At the hearing in this matter, the complainant claimed that §§4-172 and 4-170(d), G.S., require the respondent department to obtain legislative approval of its administrative directives. It is found that the complainant was seeking, by his March 30, 2016 request, a written certification from the respondent department that the administrative directives, described in paragraph 2, above, are true and accurate copies of those approved by the General Assembly.

10. Section 4-172 G.S., pertains to the process by which state agency regulations that have been approved by the legislature’s regulation review committee are filed with the Secretary of the State’s office.¹ The statute requires that “the agency shall electronically file with the

¹Section 4-172, entitled “Submittal of certified electronic copies of regulations to Secretary of the State. Posting on eRegulations System. Effective date,” G.S., provides: (a) After approval of a regulation as required by sections 4-169 and 4-170, or after reversal of a decision of the standing legislative regulation review committee by the General Assembly pursuant to section 4-171, each agency shall submit to the office of the Secretary of the State a certified electronic copy of such regulation. Concomitantly, the agency shall electronically file with the electronic copy of the regulation a statement from the department head or a duly authorized deputy department head of such agency certifying that the electronic copy of the regulation is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170. Each regulation when so electronically submitted shall be in the form prescribed by the Secretary of the State for posting on the eRegulations System, and each section of the regulation shall include the appropriate regulation section number and a section heading. The Secretary of the State shall post each such regulation on the eRegulations System not later than ten calendar days after the agency submission of the regulation.

electronic copy of the regulation a statement from the department head or a duly authorized deputy department head of such agency certifying that the electronic copy of the regulation is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170....”

11. Section 4-170(d), G.S., sets forth the procedure to be followed in the event that the legislature’s regulations review committee disapproves a proposed regulation.

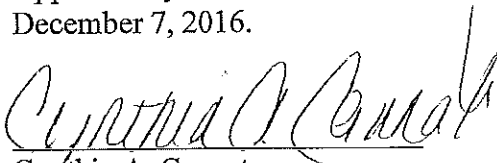
12. It is concluded that the requirements of §§4-172 and 4-170, G.S., apply only to state agency regulations, and that the respondent department’s administrative directives are not state agency regulations. It is found that the legislature does not approve the respondent department’s administrative directives; but rather, the respondent commissioner alone has authority on behalf of the respondent department to approve and adopt administrative directives. It is therefore found that the respondents do not maintain any record responsive to the complainant’s request for “certification documents.”

13. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act, as alleged by the complainant.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 7, 2016.


Cynthia A. Cannata
Acting Clerk of the Commission

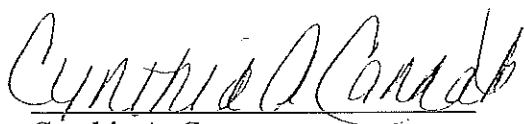
(b) Each regulation hereafter adopted is effective upon its posting on the eRegulations System by the Secretary of the State in accordance with this section, except that: (1) If a later date is required by statute or specified in the regulation, the later date is the effective date; (2) a regulation may not be effective before the effective date of the public act requiring or permitting the regulation; and (3) subject to applicable constitutional or statutory provisions, an emergency regulation becomes effective immediately upon electronic submission to the Secretary of the State, or at a stated date less than twenty days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency’s finding and a brief statement of the reasons therefor shall be submitted with the regulation. The agency shall take appropriate measures to make emergency regulations known to the persons who may be affected by them. (Emphasis added).

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Jan Gawlik # 138888
Cheshire Correctional Institution
900 Highland Avenue
Cheshire, CT 06410

Commissioner, State of Connecticut, Department of Correction;
and State of Connecticut, Department of Correction
c/o James Neil, Esq.
24 Wolcott Hill Road
Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission