

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kacey Lewis,

Complainant

against

Docket #FIC 2015-885

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

Respondents

September 28, 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 Locator 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 Locator 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 Locator 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 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 inmates 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 Locator 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 Locator 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

Approved by Order of the Freedom of Information Commission at its regular meeting of September 28, 2016.

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Cynthia A. Cannata  
Acting Clerk of the Commission

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:

Kacey Lewis #165480  
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

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Cynthia A. Cannata  
Acting Clerk of the Commission