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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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Andres Sosa,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-691

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

September 10, 2013

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, October 9, 2013**. 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 27, 2013**. 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 27, 2013**. **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 **fourteen (14) copies** be filed **ON OR BEFORE September 27, 2013**, 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: Andres Sosa
James Neil, Esq.
cc: Kristine Barone

9/10/13/FIC# 2012-691/Trans/wrbp/PSP/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Andres Sosa,

Complainant,

Docket # FIC 2012-691

against

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

Respondents

September 4, 2013

The above-captioned matter was heard as a contested case on August 30, 2013, at which time the complainant and 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), G.S.
2. It is found that, by letter dated November 21, 2012, the complainant made a request to the respondents for the following:

[a] A COPY OF THE D.O.C. (MACDOUGALL) ASSIGNMENT
JOB VACANCY LIST[;]

[b] A COPY OF THE INST ALPHA LIST FOR INMATES
CLASSIFICATION JOB ASSIGNMENT BY RACE [; and]

[c] A COPY OF THE INST JOB DURATION PERIOD JOB
ASSIGNMENT AS TO HOW LONG ANY INMATE SHALL BE
ASSIGNED TO THE SAME JOB AS TO NOT TO BECAME [sic]
FAMILIAR WITH STAFF E.G. FIVE – (5) YEAR’S [sic] IF SO.

3. It is found that, by letter dated November 19, 2012, the Freedom of Information Liaison at MacDougall-Walker Correction Institution acknowledged, on behalf of the respondents, the complainant's request and informed him that he would start working on the request as soon as possible and that the complainant would hear from him in the near future.

4. It is found that, by letter dated November 30, 2012, the FOI Liaison informed the complainant that no records existed that were responsive to requests 2[b] and 2[c], described above. The respondents also informed the complainant that records responsive to request 2[a], described above, were exempt from disclosure.

5. By letter dated December 6, 2012, and filed on December 11, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records, described in paragraph 2, above. The complainant also requested the imposition of civil penalties against the respondents.

6. Section 1-200(5), G.S., defines "public records or files" as:

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 section 1-218, 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 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 section 1-212.

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

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

10. With respect to the records described in paragraphs 2[b] and 2[c], above, the respondents testified, and it is found, that they do not exist.

11. With respect to the record described in paragraph 2[a], above, the respondents claim that such record is exempt from disclosure pursuant to §1-210(b)(18), G.S.

12. Section 1-210(b)(18), G.S., exempts from mandatory disclosure:

Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Division facilities of the Connecticut Valley Hospital, the Commissioner of Mental Health and Addiction Services, 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 or Whiting Forensic Division facilities. Such records shall include, but are not limited to:

- (A) Security manuals, including emergency plans contained or referred to in such security manuals;
- (B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;
- (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;
- (F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and
- (H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers....

13. At the hearing, the respondents testified that the record described in paragraph 2[a], above, contains classification codes for the different types of jobs available to inmates, pay listings associated with the various job classifications and logs and assignments of inmates. The respondents testified that if job classification codes and pay listings are disclosed, then inmates may be subject to extortion and their safety could be threatened. In addition, if inmate job assignments, including the number and positioning of inmates, are disclosed, then security and safety in various areas in the facility could be vulnerable. The respondents testified that they are

particularly concerned with the disclosure of such information at MacDougall-Walker Correction Institution because it is a level 4 high security facility where a third of the inmate population is sentenced to life imprisonment.

14. The complainant argues that there is no safety and security issue with disclosure of information pertaining to inmate job assignments. He testified that, in 2007, a Department of Correction officer, who is now retired, provided him with a similar document. The respondents do not dispute that the complainant has a copy of a 2007 job vacancy list. However, except for the complainant's testimony regarding who provided him with the 2007 list, the respondents are unaware as to who and/or why the complainant would have been provided such document.

15. It is found that the information contained in the records described in paragraphs 2[a] and 13, above, is permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S. See Docket #FIC 2008-507; Robin Elliott v. Commissioner, State of Connecticut, Department of Correction; Warden, State of Connecticut, Department of Correction, Corrigan-Radgowski Correctional Institution; and State of Connecticut, Department of Correction (records at issue containing inmate names and/or numbers, information regarding the location and relocation of inmates and staff, and emergency logs revealing the location of security personnel were found to be exempt from disclosure pursuant to §1-210(b)(18), G.S.); Docket #FIC 2010-061; Robin Elliott v. Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (information regarding the location and relocation of inmates and staff, and emergency logs revealing the location of security personnel were found to be exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.).

16. It is therefore concluded that the respondents did not violate the FOI Act as alleged by the complainant in his complaint.

17. Based on the facts and circumstances of this case, there is no need to consider the imposition of a civil penalty.

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.


Paula Sobral Pearlman
as Hearing Officer