



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Junior Jumpp,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-736

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

September 24, 2014

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 8, 2014**. 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 30, 2014**. 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 30, 2014**. **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 30, 2014**, 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


Wendy Paradis

Acting Clerk of the Commission

Notice to: Junior Jumpp
James Neil, Esq.

2014-09-24/FIC# 2013-736/Trans/wrbp/VRP//VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Junior Jumpp,

Complainant

against

Docket #FIC 2013-736

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

Respondents

September 22, 2014

The above-captioned matter was heard as a contested case on July 14, August 18 and September 2, 2014, at which times 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. It is found that on October 30, 2013, the complainant requested from the respondents copies of (a) the rosters of names of all Northern Correctional Institution ("Northern") staff members¹; (b) all documents that were "done" on the complainant from September 2, 2010 to the date of his request; (c) his master files and medical files; (d) any incident reports "done on my behalf;" and (e) all of his disciplinary report history and tickets.
3. By letter of complaint filed November 27, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the records he requested.
4. 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

¹ It is found that Northern has three different rosters, corresponding to the three daily shifts, for every day.

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

5. 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 ... receive a copy of such records in accordance with the provisions of section 1-212.

6. 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."

7. 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.

8. It is found that a representative of the respondents replied to the complainant's request, asked him for more specificity with respect to certain of his requests, and met with the complainant so that he could begin reviewing a portion of his master file.

9. It is found that the respondents maintain hundreds if not thousands of pages of records that are responsive to the complainant's request.

10. It is found that the respondents elected not to provide copies of records to the complainant free of charge, and told him that they did not consider him indigent and would provide copies of the records only upon receipt of payment.

11. Section 1-212(a)(1), G.S., provides in relevant part:

...The fee for any copy provided in accordance with the Freedom of Information Act:

By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page

12. Section 1-212(d)(1), G.S., requires a public agency to waive the fee for copies of records when "[t]he person requesting the records is an indigent individual."

13. The complainant contended that he was indigent at the time of his request, and therefore was entitled to a fee waiver.

14. The term “indigent individual” is not defined in the FOI Act. However, the Commission has previously reviewed the issue of indigence in the context of §1-212(d)(1), G.S., and made clear that: “the standard for establishing one's eligibility for a waiver or reduction of the fees charged for copies of public records, is wholly within the discretion of the custodial public agency, as long as the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.” Kulick v. West Hartford, contested case docket #FIC 1991-356 (October 14, 1992).

15. It is found that DOC’s Administrative Directive 3.10 (Fees, Reimbursements and Donations), provides, in relevant part:

An inmate shall be charged twenty-five cents for each page copied. The fee shall be waived if an inmate is indigent. For copies of records pursuant to the [FOI] Act, an inmate shall be considered indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety (90) days preceding the receipt by the Department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request).

16. The Commission has approved DOC’s standard of indigence insofar as it looks at the inmate’s trust account balance as of the date of the request, and looks back in time on the inmate’s trust account history; i.e., part (1) of Administrative Directive 3.10. See Bryant Rollins v. Freedom of Information Officer, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction; Docket #FIC 2010-030 (September 22, 2010).

17. It is found that DOC’s Administrative Directive 6.10 (Inmate Property) provides, in relevant part, that “[a]n inmate shall be considered indigent when he or she has less than five dollars (\$5.00) on account at admission or when the monetary balance in his or her inmate trust account, or in any other known account, has not equaled or exceeded five dollars (\$5.00) at any time during the preceding ninety (90) days.”

18. It is found that the complainant had a balance of \$50.00 in his trust account, a deposit made by his family, on October 17, 2013, 13 days before his request for records.

19. The complainant maintains that, although there was a balance of more than \$5.00 in his account at various times in the 30 days before and at the time of his request, that balance is not available to him, because he owes money first for federal court filing fees under the Prison Litigation Reform Act (“PLRA”), and second as restitution to the respondents for property damage he caused while incarcerated.

20. It is found that each time a deposit is made to the complainant's trust account, 20% of that deposit is frozen and ultimately paid toward his previous federal court filing fees, which federal courts do not require to be paid at the time of filing, but which fees were not waived.

21. It is also found that each time a deposit is made to the complainant's trust account, 100% of the remaining deposit is frozen and ultimately paid toward restitution owed by the complainant for property damage he caused while incarcerated.

22. It is found that, as a practical matter, the complainant did not have funds available to pay for copies until he repaid all of the restitution he owed, and that his available funds will also be reduced by 20% of each time deposit made to his account until he pays his federal court filing fees.

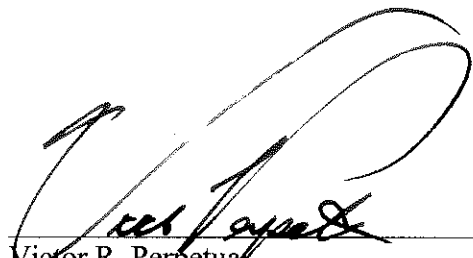
23. Nonetheless, it is also found that the complainant, by the express terms of the respondents' indigence policy, was not indigent at the time of his request.

24. It is also found that the respondents' policy is with regard to the effect of debts owed by the complainant on his eligibility for a fee waiver is objective, fair and reasonable, because the debts for restitution and federal court filing fees were caused by the complainant's own actions. While the respondents' standard is far more stringent than any other standard that has been reviewed by the Commission, the Commission notes that the complainant appears to have currently repaid the amount owed for restitution, and is now able to pay for copies if he chooses.

25. It is concluded, therefore, that the respondents did not violate the FOI Act by declining to waive copying fees for 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.



Victor R. Perpetua
as Hearing Officer