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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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Ira Alston,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-796

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

July 20, 2015

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, August 12, 2015**. 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 July 31, 2015**. 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 July 31, 2015**. **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 July 31, 2015**, 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: Ira Alston
Scott Semple, Commissioner, State of Connecticut, Department of Correction and State of
Connecticut, Department of Correction
cc: James Neil, Esq. and Craig Washington

2015-07-20/FIC# 2014-796/Trans/wrbp/VRP/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ira Alston,

Complainant

against

Docket #FIC 2014-796

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

Respondents

June 25, 2015

The above-captioned matter was heard as a contested case on May 28, 2015, 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 November 5, 2014, the complainant appealed to the Commission, alleging that the respondents had violated the Freedom of Information ("FOI") Act by denying his request for copies of certain records and for a fee waiver, and asking for the imposition of a civil penalty.
3. It is found that the complainant made an October 5, 2014 request to the respondents' FOI liaison for:

... all legible copies of any unit directives, policies, rules and/or memos issued by warden Scott Erfe regarding inmate strip searches here at Corrigan-Radgowski Correctional Center....
4. It is found that the respondents' FOI liaison responded on October 7, 2014 by advising the complainant that directives are available through his unit counselor, at a cost of \$0.25 per page.
5. It is found that the complainant did not take the respondents' October 7, 2014 advice.

6. It is found that twelve pages of so-called “unit directives” are the only records responsive to the complainant’s request.

7. 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.

8. 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.

9. 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.”

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

11. It is found that the complainant sees his unit counselor daily, and that the respondents did not violate the FOI Act by advising him to obtain the records from his unit counselor.

12. Section 1-212(d)(1), G.S., provides: “The public agency shall waive any fee provided for in this section when ... [t]he person requesting the records is an indigent individual....”

13. It is found that the inmate is not indigent for purposes of the respondents’ indigence standard.

14. The complainant maintains that the respondents’ indigence policy is inconsistent with the FOI Act, and that the FOI Act requires the respondents to waive the fee if the cost is less than ten dollars.

15. It appears that the complainant is confusing §1-212(d)(1), G.S., which pertains to indigence, with §1-212(c), G.S., which permits an agency to require prepayment for copies costing \$10.00 or more.

16. In any event, the Commission has previously approved the portion of the respondents’ indigence standard requiring that an inmate have less than five dollars (\$5.00) in his

inmate account at all times during the 90 days preceding the receipt of a records. *See*, Docket #FIC 2009-137, *Rollins v. Department of Correction*.

17. It is therefore concluded that the respondents did not violate the FOI Act by requiring payment for the copies requested 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.



Victor R. Perpetua
as Hearing Officer