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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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Kacey Lewis,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-915

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

Respondent(s)

October 7, 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, October 28, 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 October 16, 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 October 16, 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 October 16, 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: Kacey Lewis
James Neil, Esq.
cc: Craig Washington

2015-10-07/FIC# 2014-915/Trans/wrbp/KKR/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Kacey Lewis,

Complainant

against

Docket #FIC 2014-915

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

Respondents

October 6, 2015

The above-captioned matter was heard as a contested case on October 1, 2015, 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.). The above-captioned matter was consolidated for purposes of hearing with Docket #FIC 2015-112, Kacey Lewis v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction.

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 24, 2014 (the "letter"), the complainant made a request to the respondents to review a policy of the respondent department, specifically Administrative Directive 6.2.
3. It is found that the complainant delivered the letter to his unit counselor on November 24, 2014.
4. It is found that, on December 10, 2014, the counselor returned the letter to the complainant by slipping it under the door to his cell. It is found that the counselor did not write any words on the letter in response thereto. It is found that she did not comply with, or deny the request, and or take any action to facilitate his request to view the record, described in paragraph 2, above.

5. It is found that, on December 11, 2014, the complainant was transferred to a different correctional institution.

6. By letter dated December 22, 2014, and filed with the Commission on December 23, 2014, 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. The complainant requested the imposition of a civil penalty against the respondents.

7. 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.

8. 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

9. It is found that the respondent department’s FOI Administrator, Counselor Supervisor Craig Washington, became aware of the request, described in paragraph 2, above, when he received a copy of the complaint from the Commission, on or around July 29, 2015. It is further found that, upon receipt of such complaint, Washington arranged for the complainant to view the record, described in paragraph 2, above. It is found that the complainant viewed such record on August 24, 2015.

10. The complainant contended that the respondents failed to comply with his request to view the record, described in paragraph 2, above, promptly, as required by the FOI Act.

11. It is found that the record, described in paragraph 2, above, is readily available in the library of each correctional institution, such that compliance with the request to view such record did not require a time consuming search, or a review for redactions.

12. In addition, the respondents offered no evidence regarding why the counselor failed to facilitate compliance with the complainant’s request, and instead, implied during cross

examination of the complainant, that the delay was due to the complainant's own failure to go to the library to view the record.

13. It is found that the respondents failed to promptly comply with the request, described in paragraph 2, above.

14. Accordingly, it is concluded that the respondents violated the promptness provisions in §1-210(a), G.S.

15. Based upon the facts and circumstances of this case, the Commission declines to consider the complainant's request for a civil penalty.

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 promptness requirement in §1-210(a), G.S.



Kathleen K. Ross
As Hearing Officer