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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 2015-221

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

Respondent(s)

January 13, 2016

### 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, February 10, 2016**. 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 January 29, 2016**. 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 January 29, 2016**. **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 January 29, 2016**, 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

Commissioner, State of Connecticut, Department of Correction; and State of Connecticut,  
Department of Correction, c/o FOI Liaison

cc: James Neil, Esq.

2016-01-13/FIC# 2015-221/Trans/wrbp/CAL/VDH

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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 2015-221

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

Respondents

December 28, 2015

The above-captioned matter was heard as a contested case on December 4, 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.).

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 application dated February 20, 2015, the complainant made a request to the respondents for copies of the MacDougall-Walker outgoing privilege correspondence log sheet for November and December 2014, specifically showing the complainant sending legal mail to the U.S. District Court and the Office of Attorney General (the "requested record").
3. It is found that, by letter dated February 24, 2015, the respondents stated that the requested record was available to be forwarded to the complainant upon payment of the copying fee in the amount of twenty-five cents.
4. It is found that, by memo dated February 28, 2015, the complainant argued that §1-212(c), G.S., only permits public agencies to require prepayment of copying fees if the copying charge is estimated to be ten dollars or more. The complainant also stated that, if his request for the record without paying twenty-five cents was not granted, he would appeal to the Commission. By letter dated March 2, 2015, the respondents further acknowledged his record request, stating that the copying fee would only be waived if the complainant was indigent.

5. By letter of complaint dated March 18, 2015 and filed on March 23, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act by “demanding that the complainant submit a check in the amount of \$.25 in order to obtain a copy of the requested document.”

6. 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.

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 1-212.

8. Section 1-212(a), G.S., provides in relevant parts that:

(a) Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record. . . The fee for any copy provided. . . [b]y an executive. . . office of the state, a state agency or a department. . . shall not exceed twenty-five cents per page. . . .

...

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more. . . .

9. It is found that the respondents maintain the records described in paragraph 2, above, and that such records are public records which must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. Based on the testimony of Counselor Washington at the hearing, it is found that a withdrawal can only be made from an inmate’s account based upon the approval and with the consent of the inmate.

11. At the hearing, the complainant objected to the introduction of two exhibits by the respondents based upon the fact that the exhibits had not been submitted to the Commission or the complainant prior to the hearing, in violation of the order at paragraph 6 of the Commission's Notice of Hearing and Order to Show Cause, dated November 13, 2015. Based on the authority vested in the hearing officer by Regulations of Connecticut State Agencies, Section 1-21j-8(b)(2), the hearing officer overruled the objection and admitted both exhibits: a May 2, 2015 written statement by the complainant and a May 8, 2015 letter from Counselor Hess of the respondent Department to the complainant.

12. It is further found, based on the written statement by the complainant dated May 2, 2015, that on April 6, 2015, twenty-five cents was withdrawn from the complainant's inmate account.

13. It is also found that, by letter dated May 8, 2015, Counselor Hess of the respondent Department transmitted the requested record to the complainant by internal mail, marked "Legal Mail". Counselor Hess was working at the MacDougall-Walker Correctional Institution where the record was maintained and the mail was transmitted to the Northern Correctional Institution where the complainant was resident.

14. The complainant testified that he did not receive Counselor Hess's May 8, 2015 letter, and of course, the letter may not have been delivered by the staff at the Northern Correctional Institution.

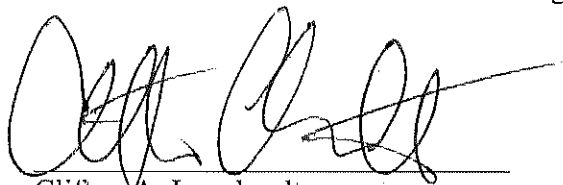
15. It is found that on the day before the hearing, December 3, 2015, the respondents attempted another delivery of the requested record, in connection with a proposed withdrawal of the complaint, but that the complainant declined to take possession of the requested record. The complainant testified at the hearing that he no longer had a need or use for the requested record.

16. The complaint itself was based solely and exclusively on the requirement of a twenty-five cent payment to receive the requested record. Moreover, the March 18, 2015 complaint implemented the complainant's February 28, 2015 statement that, if his request for the record without paying twenty-five cents was not granted, he would appeal to the Commission. The subsequent payment of twenty-five cents, therefore, eliminates the case and controversy set forth in the complaint.

17. It is concluded, based upon the complainant's April 6, 2015 payment of twenty-five cents, a payment that could not be made without the complainant's express authorization, that this case is moot.

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.

A handwritten signature in black ink, appearing to read 'Clifton A. Leonhardt', written over a horizontal line.

Clifton A. Leonhardt  
as Hearing Officer

FIC2015-221/HOR/CAI/12282015