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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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Zackery Franklin,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-586

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

May 12, 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, June 8, 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 May 27, 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 May 27, 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 May 27, 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: Zackery Franklin  
Attorney James Neil  
cc: Craig Washington

2016-05-12/FIC# 2015-586/Trans/wrbp/VRP//VDH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Zackery Franklin,

Complainant

against

Docket #FIC 2015-586

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

Respondents

May 12, 2016

The above-captioned matter was heard as a contested case on March 31, 2015, at which time the complainant and the 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. By letter of complaint filed September 8, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with a copy of the record he requested on August 14, 2015. The complainant requested the imposition of a civil penalty.
3. It is found that the complainant made an August 14, 2015 request to the respondents for the Catholic services roster from February 1, 2012 to April 9, 2012:
4. It is found that the complainant seeks to discredit testimony against him in his criminal trial by proving that he did not attend Catholic services from February 1, 2012 to April 9, 2012.
5. It is found that the complainant was not provided with a copy of the requested record.
6. 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.

7. 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 (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

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

9. It is concluded that the requested record, if it still exists, is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. However, the respondents assert that the requested record, which was more than three years old when requested, falls beyond the required records retention period.

11. The Commission takes administrative notice of State Records Retention Schedule S1: Administrative Records (Revised: 05/2014), page 8 of 22. Section S1-190, "Facilities Use Records," provides that records that document the use of agency facilities for activities, programs and community events, such as religious services, are required to be retained for the current year plus one year, and may be destroyed after receipt of signed Form RC-108.

12. The complainant provided some evidence, in the form of hearsay, that the rosters are in fact retained for four years.

13. Although asked to do so by the hearing officer, the respondents did not produce a signed Form RC-108, which would have authorized the destruction of the records.

14. The respondents also offered no evidence of a search for the requested record.


15. At the hearing, the respondents represented that they would be willing to provide the complainant with a copy of the requested roster, with the names of all other inmates redacted, if they were able to locate it. The respondents made no claim of exemption for the record so redacted, and the complainant would be satisfied with the record so redacted.

16. It is concluded that the respondents violated §1-210(a), G.S., by failing to look for the requested record.

17. The Commission in its discretion declines to consider the imposition of civil penalties against the respondents.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall forthwith conduct a diligent search for the requested record, and, if located, provide a copy free of charge to the complainant. The respondent may redact from the record all inmate names other than the complainant's.



Victor R. Perpetua  
as Hearing Officer