

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jan Gawlik,

Complainant

against

Docket #FIC 2016-0140

Denise Merrill, Secretary of the State,
State of Connecticut, Office of the
Secretary of the State; and State of
Connecticut, Office of the Secretary of
the State,

Respondents

January 11, 2017

The above-captioned matter was heard as a contested case on November 15, 2016, 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 letter and application dated December 16, 2015, the complainant requested from the respondents certified copies of Department of Correction (“DOC”) Administrative Directives 6.10, 10.7 and 10.8, as well as copies of statements from the DOC “heads” certifying that the administrative directives “are true copies approved by the legislative branch review committee by General Assembly.”
3. By letter dated February 10, 2016, and filed with the Commission on February 18, 2016, 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.
4. 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.

5. 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... (3) receive a copy of such records in accordance with section 1-212.

6. It is found that, to the extent the respondents maintain the records, described in paragraph 2, above, such records are public records.

7. At the hearing in this matter, the complainant claimed that §§4-172 and 4-170(d), G.S., require the DOC to obtain legislative approval of its administrative directives, and to file evidence of such approval with the respondent Office of the Secretary of the State. However, in Jan Gawlik v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction, Docket #FIC 2016-0317 (December 7, 2016) (“Gawlik 2016-0217”), the Commission concluded, in paragraph 11, that:

the requirements of §§4-172 and 4-170, G.S., apply only to state agency regulations, and that the [DOC]’s administrative directives are not state agency regulations. It is found that the legislature does not approve the [DOC]’s administrative directives; but rather, the [C]ommissioner [of the DOC] alone has authority on behalf of the [DOC] to approve and adopt administrative directives.

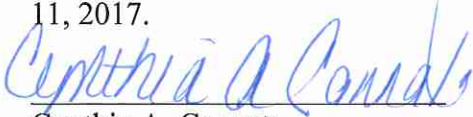
8. In addition, it is found that the respondents conducted a thorough search for records responsive to the request, described in paragraph 2, above, and that they do not maintain any such records.

9. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act, as alleged 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.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 11, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Jan Gawlik #138888
Cheshire Correctional Institution
900 Highland Avenue
Cheshire, CT 06410

Denise Merrill, Secretary of the State, State of Connecticut,
Office of the Secretary of the State; and State of
Connecticut, Office of the Secretary of the State
c/o Philip Miller, Esq.
Assistant Attorney General
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55 Elm Street
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Cynthia A. Cannata
Acting Clerk of the Commission