

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ira Alston,

Complainant

against

Docket #FIC 2016-0340

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

Respondents

April 12, 2017

The above-captioned matter was heard as a contested case on August 25, 2016, 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. It is found that the complainant made the following requests to the respondents:
 - a. by letter dated March 24, 2016, he requested his “entire security risk group profile from the beginning of time to the present;”
 - b. by letter of request dated March 28, 2016, he requested “the incident report package NCI 2015-11-043”;

- c. by letter dated April 4, 2016, he requested “any and all transmittal memorandum(s) CN1303, Administrative Directive transmittal memorandum; and any and all CN 1305 Administrative Directive 6.14, Security Risk Groups (6/7/2013);”
- d. by letter dated April 4, 2016, he requested “any and all documentation from DOC Commissioner’s office to the warden of NCI regarding changes in the administrative segregation program from 1-1-12 to present;”
- e. by letter dated April 6, 2016, he requested the “CT DOC Administrative Directive 6.14, Security Risk Groups dated 2/21/1997;”
- f. by letter dated April 11, 2016, he requested his “Administrative Remedies requests filed at Walker CI from the beginning of time to present;” and
- g. by letter dated April 15, 2016, he requested his “NCI central property file.”

3. By letter dated April 25, 2016 and filed on May 3, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his records requests. The complainant requested the imposition of a civil penalty against the respondent Commissioner.

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 section 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 (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.

6. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

7. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that the respondents acknowledged all of the complainant’s requests in a timely manner, however, at the time of the complainant’s appeal to this Commission, they had not provided the complainant with any records responsive to his request except for those responsive to the request described in paragraph 2a, above, for his entire security risk group profile.

9. With respect to the complainant’s request described in paragraph 2a, above, it is found that by letter dated March 31, 2016, the respondents informed the complainant that the records responsive to that request were available upon payment of the copying fee of \$77.25. It is found that the respondents also informed the complainant that some of the records in his security risk group profile had been determined to be exempt from disclosure pursuant to §1-210(b)(18), G.S., and had been withheld. It is found that the complainant informed the respondents, by letter dated April 4, 2016, that he could not pay the copying fee because he was indigent.

10. The term “indigent individual” is not defined in the FOI Act. However, the Commission has previously reviewed the issue of indigence in the context of §1-212(d)(1), G.S., and made clear that: “the standard for establishing one’s eligibility for a waiver or reduction of the fees charged for copies of public records, is wholly within the discretion of the custodial public agency, as long as the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.” Kulick v. West Hartford, contested case docket #FIC 1991-356 (October 14, 1992).

11. It is found that the Department of Corrections (“DOC”) Administrative Directive 3.10 (Fees, Reimbursements and Donations), provides, in relevant part:

An inmate shall be charged twenty-five cents for each page copied. The fee shall be waived if an inmate is indigent. For copies of records pursuant to the [FOI] Act, an inmate shall be considered indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety (90) days preceding the receipt by the Department of the request for records and (2) during the days preceding the

date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request).

12. It is found that while the complainant's monetary balance in his trust account was below five dollars at the time of his March 24, 2016 request, he received money raising his balance above five dollars within 90 days preceding the date on which the request for records was fulfilled.

13. It is found that the complainant was not indigent and therefore it is concluded that he is not entitled to a fee waiver under the FOI Act.

14. Consequently, it is also concluded that the respondents did not violate the FOI Act with respect to the complainant's request described in paragraph 2a, above.

15. With respect to the request described in paragraph 2b, above, it is found, notwithstanding the complainant's contentions otherwise, that the respondents provided the complainant with a copy of those records on or about July 7, 2016.

16. It is also found, however, that there is no evidence in the administrative record in this case to support the respondents' contention that the four months it took the respondents to compile and provide the requested records was reasonable.¹

17. It is concluded, therefore, that the respondents violated §1-210(a), G.S., by failing to provide the incident report package NCI 2015-11-043, described in paragraph 2b, above, to the complainant promptly upon request.

18. With respect to the request described in paragraph 2c, above, it is found that the respondents provided the complainant with records they believed complied with his request on or about May 2, 2016. However, at the hearing on this matter, the complainant claimed that the records that were provided did not include the records he requested. At the hearing on this matter the respondents stated that they would look into the matter to determine what may have occurred in their efforts to respond to this request.

19. After hearing the respondents' explanation, the complainant withdrew his complaint with respect to his request described in paragraph, 2c, above.

20. With respect to the request described in paragraph 2d, above, it is found that the responsive records were stored in an area of the respondents' facilities that had been flooded, preventing access to the area. It is found that the respondents were not able to retrieve the records until the week of August 15, 2016 and that, at the time of the hearing in this matter, had not yet reviewed them for any applicable exemptions.

21. At the hearing on this matter, the complainant contended that the respondents are in violation of the FOI Act for failing to promptly comply with his request.

¹ "[U]nsupported conclusory allegations of counsel are not evidence" New Haven v. Freedom of Information Commission, 205 Conn. 767, 776, 535 A.2d 1297 (1988).

22. It is found that the respondents were legitimately unable to retrieve the responsive records until the week of August 15, 2016 due to a flood. It is found, however, that there is no evidence in the administrative record in this case that explains why the respondents had not conducted a review of the records and provided any non-exempt records to the complainant prior to the hearing.

23. It is therefore concluded that the respondents violated §1-210(a), G.S., by failing to provide the records responsive to the complainant's request, described in paragraph 2d, above, to the complainant promptly upon request.

24. With respect to the request described in paragraph 2e, above, it is found that the complainant made a request for different versions of the CT DOC Administrative Directive 6.14, Security Risk Groups on at least two other occasions within the past year. It is found that the respondents were legitimately confused about when they responded to the complainant's request and with which version he had been provided. It is found that they were so confused that they inadvertently brought to the hearing evidence of their response to a 2015 request for the records. It is found, however, that the respondents did not provide the directive in response to the complainant's April 4, 2016 request. At the time of the hearing in this matter, the respondents stated that they would provide the complainant with a copy of the responsive records free of charge.

25. After hearing the respondents' explanation, the complainant withdrew his complaint with respect to his request described in paragraph 2e, above.

26. With respect to the request described in paragraph 2f, above, it is found that without further explanation, the respondents stated at the hearing that they intended to provide the complainant with the requested records free of charge.

27. After hearing the respondents' explanation, the complainant withdrew his complaint with respect to his request described in paragraph 2f, above.

28. With respect to the request for his NCI central property file, described in paragraph 2g, above, it is found that the complainant was provided with a packet of records that the respondents contended are all the records responsive to that request. However, at the hearing on this matter, the complainant contended that while he did receive his central property file in response to his April request, the file was not complete because it did not include the "Missing Property" complaints he filed with the respondent department.

29. At the request of the complainant, the Commission takes administrative notice of the respondent department's Administrative Directive 9.6 and 6.10.

30. It is found that the only records that are required to be maintained in an inmates' central property file under the respondent department's Administrative Directive 9.6 are the original CN 9610, Property Investigation Withdrawal (when a property complaint is resolved at the facility level) or the original CN 9613, Property Claim

Settlement (when the issue is resolved prior to the conclusion of the Lost Property Board's investigation).

31. It is found that the only records that are required to be maintained in an inmate's central property file under the respondent department's Administrative Directive 6.10 are "all original property forms, as required by [the] Directive" which forms include the following:

- A. CN 61001, Inmate Property Inventory Form;
- B. CN 61002, Inmate Property Status and Receipt;
- C. CN 61003, Inmate Property, Valuables, Document Storage and Discharge Receipt;
- D. CN 61004, Inmate Property Transfer Receipt;
- E. CN 61005, Inmate Property Monthly Disposal Report;
- F. CN 61006, Request for Outside Tapes/CDs;
- G. CN 61007, Outside Tape/CD Rejection Notice;
- H. Attachment A, Property Matrix;
- I. Attachment B, Female Property Matrix;
- J. Attachment C, Male Property Matrix;
- K. Attachment D, Official Receipt (COR-9);
- L. Attachment E, Receipt Journal;
- M. Attachment F, Special Request Form; and,
- N. Attachment G, Official Receipt (CO-99).

32. It is found that missing property complaint forms are not among the forms required to be maintained in an inmate's central property file. At the hearing on this matter, the respondents testified, and it is found, that the complainant's missing property complaint forms, to the extent any exist, would be maintained in the office of the grievance officer for the facility or facilities in which the complainant is or was housed, and that a separate request for those records should be made by the complainant.

33. It is found that the respondents provided the complainant with all of the records responsive to the complainant's request for his central property file and it is therefore concluded that the respondents did not violate the FOI Act with respect to such request.

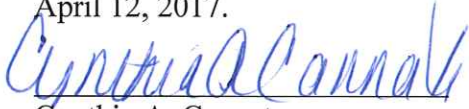
34. Notwithstanding the violations described in paragraphs 17 and 23, above, the Commission declines to consider the imposition of a civil penalty against the named respondent in this case.

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

1. Forthwith the respondents shall provide the complainant with a copy of the records described in paragraphs 2b and 2d, of the findings above.

2. Henceforth, the respondents shall strictly comply with the promptness requirements in §1-210(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 12, 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:

Ira Alston #275666
Northern Correctional Institution
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Somers, CT 06071

Scott Semple, Commissioner, State of Connecticut,
Department of Correction; and State of Connecticut,
Department of Correction
c/o FOI Administrator
24 Wolcott Hill Road
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Cynthia A. Cannata
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Acting Clerk of the Commission