

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Seth Kershner,

Complainant

against

Docket #FIC 2018-0106

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

Respondents

December 19, 2018

The above-captioned matter was heard as a contested case on May 3, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

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 March 2, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of certain video recordings.
3. It is found that the complainant made a February 8, 2018 request to the respondents for an opportunity to inspect or obtain copies of video recordings of cell extractions conducted at Garner Correctional Institution on February 14, 2017, October 31, 2016, and April 15, 2016.
4. It is found that the respondents did not reply to the request until April 18, 2018, at which time they expressly denied it.
5. It is further found that the request was denied by operation of law on or about February 14, 2018, pursuant to §1-206(a), G.S., which provides:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request,

except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

6. It is found that the requested recordings depict the forcible removal of inmates from cells in which they have barricaded themselves.

7. 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.

8. 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.

9. 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.”

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

11. The respondent Department of Correction claims that the withheld video recordings are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides that disclosure is not required of:

Records, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction... Such records shall include, but are not limited to:

- (A) Security manuals, including emergency plans contained or referred to in such security manuals;
- (B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;
- (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;
- (F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and
- (H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers.

12. It is found that the recordings depict the institution's doors, locking mechanisms, and infrastructure; the location of and specific assigned duties of staff conducting the removal, including the location of staff in the event of an escape attempt; the methods of forcibly removing inmates from cells; and the armament used.

13. The Commission has consistently held that the respondent Commissioner of Correction has reasonable grounds to believe that the disclosure of video recordings of the interior of correctional facilities may result in a safety risk within the meaning of §1-210(b)(18), G.S.

14. The complainant contended the cell extraction procedure is standardized; that the video is required to be tightly focused on the extraction itself, not the surrounding area; that visitors are permitted inside the facility; and that in at least one case reporters were invited to observe an extraction.

15. It is found however, that the opportunity to observe either the interior of the facility or the extraction process itself is not the same as having the opportunity to inspect or study a video recording of the process.

16. The complainant additionally contended that it is difficult to believe how such a video could ever be used for purposes of planning an assault on correctional staff, and that

disclosure of the video would constitute a negligible safety and security risk, which risk should be balanced against “the public interest in discovering how mentally ill inmates are treated during violent cell extractions.”

17. It is concluded, however, that §1-210(b)(18), G.S., does not give this Commission latitude to balance the public interest in disclosure against the risk of harm.

18. Specifically, in Docket No. CV-10-6006278-S, Department of Correction v. FOI Commission, Superior Court, J.D. of New Britain, Memorandum of Decision dated April 5, 2012 (Cohn, J.), the court concluded that the FOI Commission’s role in reviewing the DOC Commissioner’s safety risk assessment is limited to determining “whether the [commissioner’s] reasons were pretextual and not bona fide, or irrational.”

19. It is found that the DOC Commissioner’s safety risk assessment in this case was bona fide, and not pretextual or irrational.

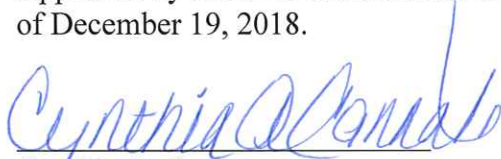
20. It is therefore concluded that the respondents had reasonable grounds to believe that disclosure of video recordings of forcible cell extractions may result in a safety and security risk within the meaning of §1-210(b)(18), G.S.

21. It is therefore concluded that the respondents did not violate §1-210(a), G.S., as alleged.

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 special meeting of December 19, 2018.



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:

SETH KERSHNER, 212 Sandisfield Road, Sandisfield, MA 01255

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Nancy O'Brasky, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission