

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Alejandro Velez,

Complainant

against

Docket #FIC 2017-0296

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

Respondents

May 23, 2018

The above-captioned matter was heard as a contested case on April 5, 2018 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, by letter dated April 3, 2017, the complainant submitted a request to the respondents for copies of all documents pertaining to the investigation of an incident involving the complainant which took place in the prison system on February 27, 2016 (hereinafter "the investigation"). It is further found that such request was acknowledged by the respondents on April 4, 2017.
3. It is found that, having received no records responsive to the request described in paragraph 2, above, by letter dated May 2, 2017, the complainant submitted a request

to the respondents for copies of the findings of the investigation of the February 27, 2016 incident (hereinafter "the findings").

4. It is found that, by letter dated May 8, 2017, the complainant requested that the respondents forward his May 2, 2017, request to the respondents' Security Division, and, further, that the respondents did so forward such request.

5. By letter dated May 9, 2017, postmarked May 30, 2017, and filed on May 31, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his requests described in paragraphs 2 and 3, above. The complainant requested the imposition of civil penalties in this matter.

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 section 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, (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 that "[a]ny person applying in writing shall receive promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

9. It is found that the records at issue in this matter are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. Section 1-206(a), G.S., provides in relevant part:

(b)(1) Any person denied the right to inspect or copy

records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial... For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.

11. It is found that the complaint in this matter was postmarked more than thirty days after the alleged denial of the request described in paragraph 2, above. Moreover, the complainant effectively narrowed the request described in paragraph 2, above, when on May 2, 2017, he specified that he sought only the findings, as described in paragraph 3, above. Accordingly, it is concluded that only the request described in paragraph 3, above, is at issue in this matter.

12. It is found that the respondents provided the complainant with a copy of the findings, as described in paragraph 3, above, on February 13, 2018, albeit with some redactions.

13. At the hearing in this matter, the complainant testified that the only remaining issues are the fact that he did not receive appendices to the findings and, further, he questioned the redactions described in paragraph 12, above. The complainant requested that the Commission conduct an in camera review of the records.

14. It is found that the appendices to the investigation report do not constitute the findings, but rather consist of supplementary materials such as witness statements. It is further found that the request and complaint in this matter do not encompass the appendices, as they were not clearly requested by the complainant on May 2, 2017. Accordingly, only the redactions within the findings remain at issue.

15. The respondents provided copies of the findings to the Commission for in camera review. Such documents are hereby identified as IC-2017-0296-1 through IC-2017-0296-14.

16. It is found that the respondents provided the complainant with a copy of a document that is comprised of findings into two incidents involving a single correctional officer: one incident was the February 27, 2016 incident described above, which involved the complainant; and a second incident, which occurred on a different date, and which involved a different inmate.

17. It is found that the portions of the findings which involve the second incident were not requested by the complainant, and are not fairly within the scope of the

complaint in this matter. Accordingly, to the extent that the respondents provided portions of findings related to the second incident, with certain details redacted, the Commission will not further address such redactions herein. Redactions in such portions of the in camera documents are identified as follows:

IC-2017-0296-4, lines 12-25, line 27, lines 36-38  
IC-2017-0296-5, lines 1-2  
IC-2017-0296-6, last paragraph  
IC-2017-0296-7, lines 3-25  
IC-2017-0296-8, lines 25-35  
IC-2017-0296-9, line 1, lines 6-13  
IC-2017-0296-10, lines 1-17  
IC-2017-0296-11, lines 30-35.

18. With respect to the remaining redactions, the respondents contend that the following pages, or portions thereof, are exempt by virtue of §1-210(b)(18), G.S.:

IC-2017-0296-2 First Name of a DOC employee  
IC-2017-0296-3 First Name of a DOC employee  
IC-2017-0296-4, lines 4-8, First Name of a DOC employee  
IC-2017-0296-4, line 11, Emergency Code  
IC-2017-0296-4, line 26, First Name of a DOC employee  
IC-2017-0296-5, line 17, First Name of a DOC employee  
IC-2017-0296-6, lines 1-2, First Name of a DOC employee  
IC-2017-0296-7, line 1 Emergency Code  
IC-2017-0296-7, line 31, First Name of a DOC employee  
IC-2017-0296-8, lines 10-22, First Name of a DOC employee  
IC-2017-0296-9, lines 3 and 15, First Name of a DOC employee  
IC-2017-0296-10, line 31, First Name of a DOC employee

19. Section 1-210(b)(18), G.S., exempts from mandatory disclosure:

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....

20. The Commission has previously found that the first names of staff members of the respondent department are exempt from disclosure pursuant to §1-210(b)(18), G.S. Curt Rivard v. Jon Brighthaupt, Deputy Warden, State of Connecticut, Department of Correction, Northern Correctional Institution, et al., Docket #FIC 2009-350 (May 12, 2010) (“Rivard”).

21. In Rivard, the Commission found that “the use of only last names creates and maintains the formal relationship between staff and inmates that is necessary to maintain order in a correctional institution or facility because the formality generates respect for a staff member and his or her authority.” The Commission further found that “if an inmate does not respect a staff member or his or her authority, he is more likely to disobey directives which may result in a safety risk...within the meaning of §1-210(b)(18), G.S.”

22. Accordingly, the Commission concluded in Rivard that the Commissioner of Correction had reasonable grounds to believe that disclosure of the first names of staff members may result in a safety risk, and that therefore, the respondents did not violate the FOI Act by withholding such information. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by redacting the first names of the respondents’ staff members, as described in paragraph 18, above.

23. With respect to emergency codes, the respondents contended that certain codes used for differing types of emergencies call for different responses and procedures among the respondents’ staff. The respondents contended that release of the emergency codes could lead to the inmate population’s familiarity with the respondents’ emergency

protocols. The Commission has previously ordered that the respondents may redact emergency codes. Docket #FIC 2008-507; Robin Elliott v. Commissioner, State of Connecticut, Department of Correction; Warden, State of Connecticut, Department of Correction, Corrigan-Radgowski Correctional Institution; and State of Connecticut, Department of Correction (July 22, 2009).

24. The Commission concludes that the respondent Commissioner of Correction had reasonable grounds to believe that disclosure of the emergency codes may result in a safety risk, and that therefore, the respondents did not violate §§1-210(a) and 1-212(a), G.S., Act by withholding such information, as described in paragraph 18, above.

25. The respondents also contended that the following in camera records, or portions, thereof, are exempt by virtue of §18-101f, G.S.:

IC-2017-0296-5, line, 3-6, 9-13, 20-34  
IC-2017-0296-12 through IC-2017-0296-14

26. Section 18-101f, G.S., provides, in relevant part:

A personnel or medical file or similar file concerning a current or former employee of the Department of Correction ... shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction ...

27. Based upon careful review of the records described in paragraph 25, above, it is found that such records are contained in the personnel or medical or similar file of a current employee of the respondent department. It is further found that the complainant is an individual committed to the custody of such department.

28. It is concluded that §18-101f, G.S., provides a basis to withhold the records described in paragraph 25, above. It is further concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

29. Finally, the respondents contended that the following documents are exempt by virtue of HIPPA: IC-2017-0296-4, lines 34-35.

30. It is found that the respondents redacted four words in the records described in paragraph 29, above, and that such words constitute scores regarding the complainant's own medical records. At the hearing in this matter, the respondents testified that such records would be provided upon receiving a release from the complainant.

31. HIPPA is a reference to the Health Insurance Portability and Accountability Act, a federal law that prohibits a "covered entity" from using or disclosing protected

health information. 45 C.F.R. §164.502(a). Covered entities include a “health plan,” a “health care clearinghouse,” and a “health care provider who transmits any health information in electronic form in connection with a transaction” that HIPAA covers. 45 C.F.R. §164.104(a). The respondents failed to prove that they are a covered entity within the meaning of the HIPPA regulations.

32. It is therefore found that the respondents relied in error on the HIPPA confidentiality requirements when they withheld the records described in paragraph 29, above, from the complainant. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by denying the complainant copies of the records described in paragraph 29, above.

33. Based upon the facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties in this matter.

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 paragraph 29 of the findings, above, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 23, 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:

**ALEJANDRO VELEZ, #225611**, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

**SCOTT SEMPLE, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o Attorney Nancy Canney, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata  
Acting Clerk of the Commission