

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Angel Caballero,

Complainant

Docket # FIC 2018-0475

against

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

Respondents

April 10, 2019

The above-captioned matter was heard as a contested case on November 6, 2018, at which time the complainant and 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 the November 6th hearing, the respondents submitted, without objection, two after-filed exhibits, which have been marked as follows: Respondents' Exhibit 2 (after-filed): Multi-page packet (includes: inmate request form, dated August 6, 2018; letter, dated August 13, 2018, from Officer Bowers to the complainant; and memo, dated August 14, 2018, from Deputy Cotta to the complainant); and Respondents' Exhibit 3 (after-filed): Multi-page packet (includes: inmate request form, dated August 9, 2018; letter, dated August 13, 2018, from Officer Bowers to the complainant; and letter, dated October 19, 2018, from Officer Bowers to the complainant).

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 inmate request form, dated August 6, 2018, the complainant requested the following: "video preservation for all unit cameras for (Echo Pod) on the date of 7-27-18 from 9am to 2pm." (Emphasis in original). It is found that the respondents acknowledged such request by letter dated August 13, 2018.

3. It is found that by an inmate request form, dated August 9, 2018, the complainant requested that the respondents provide him with copies of “[t]he Incident Report, Investigation Report, Advisor Report(s)...photo copies of the pictures taken (color) relating to the D.R. (for Contraband Class A) dated 7-27-18...[and]...a copy of the D.R. package in its entirety.” (“August 9th request”). It is found that the respondents acknowledged such request by letter dated August 13, 2018.

4. It is found that by application form, dated August 14, 2018, the complainant requested that the respondents provide him with “[a] copy of any and all email[s] from the date of 7-21-18 to 8-13-18 pertaining to myself or the cell (E-206) that I was housed in at Corrigan Radgowski Correctional Center.” (“August 14th request”).

5. By letter of complaint dated August 22, 2018, and received on August 28, 2018, the complainant appealed to this Commission, alleging that the respondents failed to comply with the three requests, described in paragraphs 2, 3 and 4, above, in violation of the Freedom of Information (“FOI”) Act.

6. Section 1-200(5), G.S., defines “public records or files” as:

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 . . . (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 by letter dated September 24, 2018, subsequent to the filing of the complaint in this matter, the respondents informed the complainant that the video described in paragraph 2, above, had been preserved. The respondents also informed the complainant that the requested incident report, described in paragraph 3, above, had not yet been signed off and was therefore unavailable for release at that time. In addition, the respondents informed the complainant that they had not received his August 14th request for emails described in paragraph

4, above. The respondents requested that the complainant identify whose emails he sought in order to complete such request.

10. With respect to the August 6th request for the preservation of the video, described in paragraph 2, above, it is found that the complainant has not alleged a violation of the FOI Act with respect to such request. Consequently, it is concluded that the respondents did not violate the FOI Act with respect to the preservation of the video.

11. With respect to the August 14th request for emails, the respondents testified, and it is found, that they did not become aware of such request until after receipt of the complaint in this matter. The complainant testified that on or about October 1, 2018, in response to the respondents' September 24th letter, described in paragraph 9, above, he provided the respondents with the identities of the individuals from whom he sought emails. It is found, however, that the respondents did not receive a copy of the complainant's October 1st letter until the November 6th hearing in this matter. It is therefore concluded that the respondents did not violate the FOI Act as alleged by the complainant with respect to the August 14th request.

12. With respect to the August 9th records request, it is found that by letter dated October 19, 2018, the respondents informed the complainant that records responsive to such request were available for dissemination, upon payment. The respondents indicated that certain responsive records were redacted due to safety and security concerns. It is found that on October 23, 2018, the respondents provided the complainant with redacted copies of records responsive to his August 9th request.

13. After the hearing in this matter, pursuant to an order of the hearing officer, the respondents submitted unredacted copies of the records at issue for in camera review.¹ Such records have been marked as IC-2018-0475-1 through IC-2018-0475-64. On the in camera Index, the respondents claim that §1-210(b)(18), G.S., exempts the following information from disclosure:²

- a. Staff first names
- b. Names of post position/location
- c. Gang information: Gang Unit Intelligence, Gang Intelligence gained from interviews, Gang information regarding another inmate, Gang Bylaws
- d. Information about other inmates
- e. Radio signal
- f. How the weapons were discovered

¹ The Commission notes that in a letter, dated December 27, 2018, the respondents informed the Commission that subsequent to the November 6th hearing, the respondents withdrew their claim of exemption with respect to some of the information that was originally redacted. The respondents did not specifically identify such information. The respondents also stated that a new copy of the responsive records, with fewer redactions, was provided to the complainant. To date, the Commission has not received a response from the complainant regarding their December 27th letter.

² The Commission notes that on the in camera Index, the respondents indicate that the only information claimed to be exempt from disclosure has been highlighted.

- g. Location and description of weapon
- h. Pictures of weapon found and location of where weapon was found
- i. Protocol after discovering a weapon discussed not otherwise known
- j. Logbooks

14. Section 1-210(b)(18), G.S., provides, in relevant part that:

Nothing in the Freedom of Information Act shall be construed to require disclosure of... Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Hospital, the Commissioner of Mental Health and Addiction Services, 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 or Whiting Forensic Hospital. 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 Hospital facilities;

(C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Hospital 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 Hospital 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 Hospital facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Hospital 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....

15. At the hearing, Counselor Supervisor (“CS”) Washington, the respondents’ FOI Administrator, testified that the redacted records relate to the discovery of Class A contraband (i.e., metal pieces) found in the complainant’s cell, located in the gang block. The complainant was given a disciplinary report for the possession of such contraband.

16. CS Washington testified that the disclosure of the size, thickness and type of metal, the specific location in which the weapons were found, as well as the manner by which they were fashioned and concealed, would jeopardize the safety and security of inmates, Department of Correction (“DOC”) staff and facility. Inmates could use such information to improve their ability to fashion and conceal these types of metal weapons. See Docket #2010-061; Robin Elliott v. Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (January 13, 2011).

17. CS Washington also testified that the first names of DOC personnel were redacted due to safety and security concerns. The Commission has previously found that the first names of DOC staff members are exempt from disclosure pursuant to §1-210(b)(18), G.S. See Docket #FIC 2009-350; Curt Rivard v. Jon Brighaupt, Deputy Warden, State of Connecticut, Department of Correction, Northern Correctional Institution, et. al. (May 12, 2010); Docket #2010-061; Robin Elliott, supra.

18. In addition, CS Washington testified that information concerning “security risk groups” (i.e., “gangs”) was redacted due to safety and security concerns. For a detailed discussion of the significant law enforcement and disciplinary problems caused by organized gang activity inside correctional facilities, see Docket #FIC 2010-093; John C. Barletta v. Kimberly Weir, Acting Director of Security, State of Connecticut, Department of Correction; Angel Quiros, Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (November 17, 2010). That decision details the manner in which gang related records are used for communication and the instigation of safety risk.

19. The Commission has also previously found that the disclosure of information about other inmates, logbooks and emergency codes may result in a safety risk. See Docket #FIC 2017-0296; Alejandro Velez v. Scott Semple, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (May 23, 2018); Docket #FIC 2017-0755; Victor Velasco v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (October 10, 2018); and Docket #2010-061; Robin Elliott, supra.

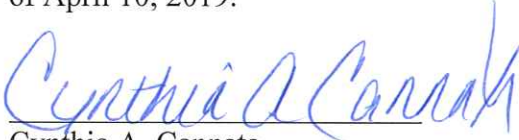
20. Based upon testimonial evidence and a careful in camera review, it is found that the Commissioner of Correction had reasonable grounds to believe that the disclosure of the portions of the in camera records described in paragraph 13, above, and as referenced on the in camera Index, may result in a safety risk, within the meaning of §1-210(b)(18), G.S. It is therefore found that such records are exempt from disclosure.³

21. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the information described in paragraph 20, above.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 10, 2019.



Cynthia A. Cannata
Acting Clerk of the Commission

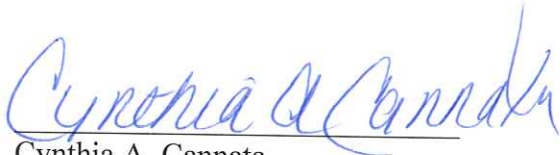
³ The Commission notes that although the information contained in IC-2018-0475-1 (line 10 (starting at word 9) to line 12 (end at word 5) of narrative), IC-2018-0475-7 (line 2 (word 15) of narrative) and IC-2018-0475-8 (line 2 (word 14) of narrative) were not described on the in camera Index, such information was highlighted by the respondents on the in camera record and contains information which, was found in paragraph 20, above, to be exempt from disclosure pursuant to §1-210(b)(18), G.S.

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:

ANGEL CABALLERO, #214362, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Tracie Brown, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission