

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ira Alston,

Complainant

against

Docket #FIC 2018-0597

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

Respondents

July 10, 2019

The above-captioned matter was heard as a contested case on April 12, 2019, 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, on an "Inmate Request Form," dated September 24, 2018, the complainant requested all records created in connection with his transfer to, and from, the Virginia Department of Correction.
3. By letter dated October 22, 2018, and filed October 23, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records, described in paragraph 2, above.
4. Section 1-200(5), G.S., provides:

"[p]ublic 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:

[e]xcept 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 . . . .

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

7. It is found that the records pertaining to the complainant's transfer **to** Virginia, were the subject of a prior decision of this Commission in Steven Lance, Hope Metcalf and Allard K. Lowenstein International Human Rights Clinic v. Commissioner, State of Connecticut, Department of Correction, and State of Connecticut, Department of Correction, Docket #FIC 2018-0067 (November 14, 2018). In that matter, heard as contested case on August 28, 2018, the respondents claimed that only certain portions of the requested records were exempt from disclosure pursuant to §1-210(b)(18), G.S., and the attorney-client privilege. The Commission ordered disclosure of the requested records, but permitted the respondents to redact certain portions pursuant to those exemptions.

8. It is found that, in response to the request at issue in the present case, a copy of the redacted records that were disclosed in connection with Docket #FIC 2018-0067, described in paragraph 7, above, were provided to the complainant on March 13, 2019. It is found that the respondents made no additional redactions to such records.

9. With regard to the records pertaining to the complainant's transfer **from** Virginia, it is found that, although the respondents initially informed the complainant that the records pertaining to his transfer from Virginia would be disclosed, by letter dated March 29, 2019, the respondents' FOI Administrator informed the complainant that such records were entirely exempt from disclosure.

10. The respondent's FOI Administrator testified, however, that after he sent the March 29<sup>th</sup> letter, he reviewed the requested records again, and determined that it was necessary to withhold only certain portions of the records pertaining to the complainant's transfer from Virginia, pursuant to §1-210(b)(18), G.S.

11. Accordingly, it is found that, on April 8, 2019, four days before the hearing in this matter, and approximately six months after the request in this case was made, the records pertaining to the complainant's transfer **from** Virginia were delivered to the complainant at his cell.

12. It is found that the records identified in paragraph 11, above, contained certain redactions.

13. At the hearing in this matter, the complainant contested the redactions. In addition, the complainant argued that the respondents failed to provide the requested records to him promptly.

14. At the request of the complainant, the hearing officer ordered the respondents to submit those pages of records, described in paragraph 11, above, that they had redacted, to the Commission for in camera inspection, and the respondents submitted an unredacted copy of those pages on April 24, 2019. The in camera records consist of a total of five pages and were submitted with two separate indexes, one with one page of records; the other with four pages.<sup>1</sup>

15. At the hearing in this matter and on the indexes, the respondents claimed that the portions of records identified on such indexes are exempt from disclosure pursuant to §1-210(b)(18)(G), G.S. Such provision states that disclosure is not required 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...  
(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities....

16. After careful in camera inspection of the records submitted by the respondents, it is found that the portions claimed to be exempt from disclosure are documents that contain information on the movement or assignment of an inmate. Accordingly, it is found that such portions are exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.

17. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by redacting the portions of the records identified on the indexes.

18. With regard to whether the records were provided to the complainant “promptly,” the Commission has ruled that “promptness” is a particularly fact-based question, and that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested;

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<sup>1</sup> Of the four pages submitted with the second index, the respondents submitted two pages (identified as pages 1 and 2) that did not contain redactions, which pages are not claimed to be exempt from disclosure. Those two pages shall not be considered herein.

the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

19. At the hearing in this matter, the FOI liaison who was responsible for responding to inmate FOI requests at the facility where the complainant was housed at the time, testified that she did not receive the request at the time it was made, in September 2018, and did not see it until after the complaint was filed with this Commission in February 2019. On the other hand, it is found, based on the credible testimony of the complainant, that the complainant "stuck" the completed request form on his cell door on or about September 24, 2018, in accordance with the respondents' usual procedure for requesting public records, and that an employee of the respondent department came by and took the request.

20. It is found that the facility generally follows a specific procedure for receipt of, and responding to, FOI requests from inmates. Based upon the facts found in paragraph 19, above, it is further found that the request in this case was misplaced or misdirected and therefore did not come into the liaison's possession in accordance with the usual procedure.

21. It is found that, when the FOI liaison became aware of the request in February 2019, she immediately forwarded the request to the respondents' FOI Administrator for response.

22. In this case, it is found that the six month delay in providing the requested records to the complainant occurred, in part, because the FOI liaison did not receive the request at the time it was made. As noted above, it is also found that in February 2019, the respondents' FOI Unit was undergoing a transition in staffing, and that such transition contributed to the delay.

23. Based on the facts and circumstances of this particular case, it found that the respondents provided the requested records to the complainant promptly.

24. Accordingly, it is concluded that the respondents did not violate the promptness provisions in §§1-210(a) and 1-212(a), G.S.

25. Although the Commission has concluded that a violation did not occur in this case, it notes that this is not the first time the respondents have claimed in a contested case hearing that the appropriate personnel did not receive a records request from an inmate. See e.g., Angel Caballero v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (April 10, 2019); Umar Shahid v. Department of Legal Affairs, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (March 23, 2016); Kacey Lewis v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (October 28, 2015); Umar Shahid v. Commissioner, State of Connecticut, Department of Correction; and State

of Connecticut, Department of Correction (September 9, 2015); David Osuch v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (June 24, 2015); Gaylord Salters v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (May 23, 2013).

26. The above-referenced decisions, as well as the facts of the instant case, suggest that a modification of the respondents' FOI request process may be necessary in order to reduce the number of requests that are not received by the appropriate personnel, and to potentially avoid promptness violations under similar circumstances in the future.

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 July 10, 2019.



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, 287 Bilton Road, Somers, CT 06071

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

A handwritten signature in cursive script, reading "Cynthia A. Cannata". The signature is written in black ink and is positioned above a horizontal line.

Cynthia A. Cannata  
Acting Clerk of the Commission