

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Daniel Wine,

Complainant

against

Docket #FIC 2019-0157

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

Respondents

December 11, 2019

The above-captioned matter was heard as a contested case on October 25, 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 the complainant requested from the Vernon Police Department records pertaining to his arrest on various charges, including first degree sexual assault of a person under the age of 13.
3. It is found that, by letter dated February 28, 2019, the Vernon Police Department provided records responsive to the request to the complainant at the facility in which he was housed. It is found that the respondent department intercepted those records and the department's Freedom of Information ("FOI") Administrator reviewed them, pursuant to §1-210(c), G.S., to determine whether their disclosure may constitute a safety risk. It is found that, by letter, dated March 1, 2019, the FOI Administrator informed the complainant that he had reviewed the records, and that such records were determined to be exempt from disclosure pursuant to §1-210(b)(18), G.S. Based on that determination, the respondents withheld the records from the complainant.

4. By undated letter, filed with the Commission on March 18, 2019, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by withholding the records, described in paragraph 2, above.

5. 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.

6. 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 . . . or (3) receive a copy of such records in accordance with section 1-212....

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

8. It is found that, by letter dated September 6, 2019, the FOI Administrator provided the complainant with 11 pages of records responsive to his request. It is found that such records were redacted by the Vernon Police Department. The complainant stated that he was not contesting the redactions, and therefore such redactions shall not be considered herein. It is found that the respondents continued to withhold other responsive records, citing §1-210(b)(18), G.S., but offered to send copies of such records to the complainant’s attorney. The complainant declined such offer.

9. At the hearing in this matter, the respondents argued that the records are exempt from disclosure pursuant to §1-210(b)(18), G.S., in that disclosure may result in a safety risk, including risk of harm to the complainant, and/or disorder in a correctional institution.

10. Section 1-210(b)(18), G.S., provides, in relevant part, that disclosure is not required of “[r]ecords, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution....”

11. It is found that the complainant was convicted of first degree sexual assault of a person under the age of 13. It is found that the records that were withheld by the respondents consist of reports of the police investigation that resulted in the complainant's arrest, and that such records contain sexually explicit information.

12. The respondents' FOI Administrator testified, and it is found, that a social hierarchy exists inside the correctional institution, and that inmates who are sex offenders, particularly involving juveniles, are at the bottom of such hierarchy. It is found that sex offenders are at risk of harm, which harm includes anything from having their food taken away from them, to being killed, by other inmates. The respondents presented evidence that sex offenders are killed in prison more often than other types of offenders, and identified three high profile instances in which sex offender inmates were killed in prison. The FOI Administrator testified credibly that the Commissioner is a former correctional officer and understands well the social hierarchy and danger to sex offender inmates inside prisons, and believes that disclosure of information identifying the complainant as a sex offender may result in risk of harm to the complainant.

13. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, Judicial District of New Britain at New Britain, Docket No. CV074015438 and CV084016766 (November 3, 2008), the court concluded that the FOIC's role in reviewing the DOC Commissioner's safety risk determination is to determine "whether the [commissioner's] reasons were pretextual and not bona fide, or irrational."

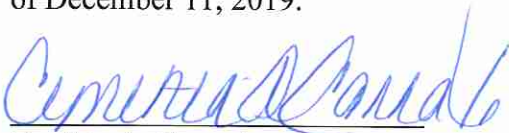
14. Based upon the foregoing findings of fact, it is further found that the respondent Commissioner has reasonable grounds to believe that disclosure of the requested records may result in a safety risk, specifically risk of harm to the complainant. It is further found that the reasons given are bona fide, and not pretextual, or irrational. Accordingly, the Commission need not address the respondents' additional argument that disclosure of the records may result in risk of disorder in a correctional facility.

15. It is concluded that the records, described in paragraph 2, above, are exempt from disclosure pursuant to §1-210(b)(18), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint.

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 December 11, 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:

DANIEL WINE, #402025, MacDougall-Walker CI, 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 C. Brown, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06114



Cynthia A. Cannata
Acting Clerk of the Commission