

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Luis Salaman,

Complainant

against

Docket #FIC 2018-0710

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

Respondents

October 23, 2019

The above-captioned matter was heard as a contested case on March 11, 2019, 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 in August 2018, the complainant made a request to the respondents for disciplinary reports G.C.I (Garner Correctional Institute) ## 18-08-042, 18-08-038, 18-08-053, and 18-08-047, and certain records associated with such reports (collectively, “disciplinary reports”). It is found that in October 2018, the respondents provided the complainant with records responsive to such request, except for records that they claimed did not exist or were exempt from disclosure, respectively.
3. It is found that, by letter dated November 20, 2018, the complainant renewed his August 2018 request for copies of the disciplinary reports, described in paragraph 2, above. The complainant also requested the following:

[a] any and all e-mails between Warden Corella and Jamie Curto
for the months of August and September 2018[;]

[b] any and all complaints filed against Capt. Kenny by both inmates and civilians from the date of this request till the time he first became a DOC employee[;]

[c] any and all complaints filed against C/O Robert Major by both inmates and civilians from the date of this request till the time he first became a DOC employee[;] and

[d] any and all internal investigation files on Capt. Kenny and C/O Robert Major that may be on file with the DOC/Comm. Office and that may be public information to the public.

4. By letter filed on December 12, 2018, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his November 20th request, described in paragraph 3, above. The complainant also requested that a civil penalty be imposed against the respondents.

5. 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.

6. 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.

7. 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.”

8. 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.

9. It is found that the respondents were not aware of the November 20th request until

they received a copy of the complainant's appeal to the Commission on January 11, 2019.¹

10. It is found that by letter dated February 19, 2019, the respondents informed the complainant that they had already provided him with records responsive to his August 2018 request for disciplinary reports, described in paragraph 2, above. The respondents requested that the complainant remit the amount of \$24.50 if he wanted a second set of copies of such records. The respondents also informed the complainant that there were no records responsive to the requests described in paragraphs 3[b], 3[c] and 3[d], above. In addition, the respondents informed the complainant that they had gathered five pages of emails responsive to his request described in paragraph 3[a], above. It is found that prior to the hearing in this matter, the respondents attempted to deliver the responsive emails (in redacted form) to the complainant, but he refused to accept such records.

11. With respect to the respondents' withholding of a second copy of the disciplinary reports until the fee was remitted, §1-212(c), G.S., provides: "A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more." There is no evidence in the record that the complainant remitted the requisite \$24.50 fee. It is concluded therefore that the respondents properly requested prepayment prior to providing the complainant with copies of the disciplinary reports.

12. With respect to the redacted records, pursuant to three separate orders of the hearing officer, the respondents submitted 66 pages of unredacted documents for in camera inspection, along with separate in camera indices.² Such records have been marked as IC-2018-0710-1 through IC-2018-0710-61, and IC-2018-0710-Email-1 through IC-2018-0710-Email-5. On the in camera indices, the respondents claim that such records, or portions thereof,³ are exempt from disclosure pursuant to §§1-210(b)(18) and 1-210(b)(19), G.S., respectively.

13. By letter dated August 1, 2019, the respondents informed the hearing officer and

¹ The Commission again notes that a modification of the respondents' FOI request process may be in order due to the number of occasions that the respondents do not receive requests from incarcerated persons. Docket #FIC 2018-0597; Ira Alston v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (July 10, 2019)

² On August 2, 2019, pursuant to an order of the hearing officer, the respondents submitted two pages of unredacted documents for in camera inspection. Subsequently, on September 13, 2019, pursuant to a second order of the hearing officer, the respondents submitted 61 pages of unredacted documents for in camera inspection. The Commission notes that the second in camera submission includes the two pages of documents submitted with the first in camera submission. On October 1, 2019, pursuant to a third order of the hearing officer, the respondents submitted five pages of unredacted emails for in camera inspection.

³ The Commission notes that in addition to providing page and line reference numbers on the in camera indices, the respondents have highlighted (in red) the information that is being claimed to be exempt from disclosure.

the complainant that they were no longer claiming an exemption from disclosure of Form CN 9507, captioned "Monthly Disciplinary Summary." A copy of Form CN 9507 was attached. In their August 1st letter, the respondents also stated that they attempted to provide a copy of such record to the complainant, but he refused.⁴

14. Section 1-210(b)(18), G.S., permits a public agency to withhold from disclosure the following:

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;

⁴ The respondents' August 1, 2019 letter, and attachment thereto, have been marked as Respondents' Exhibit 2 (after-filed): Letter from Respondents to Hearing Officer with one-page attachment ("Monthly Disciplinary Summary"), dated August 1, 2019.

(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. Section 1-210(b)(19), G.S., permits a public agency to withhold from disclosure the following:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the Chief Court Administrator with respect to records concerning the Judicial Department; and (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, other than a water company, as defined in section 25-32a, a certified telecommunications provider, as defined in section 16-1, or a municipal utility that furnishes electric or gas service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to:

(i) Security manuals or reports;

(ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;

(iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(v) Internal security audits of government-owned or leased institutions or facilities;

(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel; and

(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official.

16. In addition, section 1-210(d), G.S., provides:

Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or

regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively, or, in the case of records concerning Judicial Department facilities, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management.

17. With respect to IC-2018-0710-Email-1 through IC-2018-0710-Email-4,⁵ the respondents claim that the first names of Department of Correction (“DOC”) staff contained therein are exempt from disclosure pursuant to §1-210(b)(18), G.S.

18. 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 Brighthaupt, Deputy Warden, State of Connecticut, Department of Correction, Northern Correctional Institution, et. al. (May 12, 2010); and 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).

19. 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 and 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.” 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.

20. It is found that the Commissioner of Correction had reasonable grounds to believe that the disclosure of the first names of DOC staff members contained in IC-2018-0710-Email-1 through IC-2018-0710-Email-4 may result in a safety risk. It is found therefore that such information is exempt from disclosure pursuant to §1-210(b)(18), G.S. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such information.

21. The respondents also claim that the personal email address of a private citizen contained in IC-2018-0710-Email-1 (lines 6, 19)⁶, IC-2018-0710-Email-2 (line 18), IC-2018-0710-Email-3 (line 17) and IC-2018-0710-Email-4 (line 22), is exempt from disclosure

⁵ The Commission notes that, on the in camera index, the respondents do not claim that IC-2018-0710-Email-5, or a portion thereof, is exempt from disclosure.

⁶ On the in camera index, the respondents indicate that IC-2018-0710-1 (lines 3 and 16) contain “personal email address private citizen”. However, such information is found in IC-2018-0710-1 (lines 6 and 19), and will be addressed accordingly herein.

pursuant to §§1-210(b)(18) and 1-210(b)(19), G.S.⁷

22. At the hearing, Counselor Supervisor (“CS”) Campanelli, the respondents’ FOI Administrator, testified that the disclosure of the email address, described in paragraph 21, above, may result in a safety risk to that individual and therefore is exempt from disclosure pursuant to §1-210(b)(18), G.S. CS Campanelli testified that he does not know the individual, and that such individual is not a DOC employee. He testified that the respondents believe that there are safety concerns with the release of such a personal identifier (i.e., email address) because disclosure of the personal identifier would allow the complainant when he has the capabilities to contact the individual directly.

23. It is found that the first and last name of the individual whose email address is at issue, as described in paragraphs 21 and 22, above, was publically identified at the March 11th hearing in this matter. Based upon a careful review of the in camera records and under the facts and circumstances of this case, it is found that the respondents failed to prove that the Commissioner of Correction has reasonable grounds to believe that the disclosure of the email address may result in a safety risk within the meaning of §1-210(b)(18), G.S.

24. On the in camera index, the respondents also claim that the email address, described in paragraphs 21 and 22, above, is exempt from disclosure pursuant to §1-210(b)(19), G.S. It is found that the respondents submitted no evidence to support their claim that §1-210(b)(19), G.S., exempts such information from disclosure. It is found that the respondents failed to prove that §1-210(b)(19), G.S., exempts the email address at issue from disclosure.

25. It is concluded that the email address, described in paragraphs 21 and 22, above, is not exempt from disclosure pursuant to that provision.

26. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the email address contained in IC-2018-0710-Email-1 (lines 6, 19), IC-2018-0710-Email-2 (line 18), IC-2018-0710-Email-3 (line 17) and IC-2018-0710-Email-4 (line 22).

27. With respect to IC-2018-0710-1 through IC-2018-0710-61, the respondents claim that the following information, as identified by the respondents on the in camera index, is exempt from disclosure pursuant to §1-210(b)(18), G.S.: inmate statement, inmate witness statement, staff first names, witness name/inmate number, classification decisions and determination (inmate placement), personal identifier/identification, emergency contact information, screen code, other inmate information, intel unit investigation, information involving another offender, intelligence meeting notes/review, intelligence meeting notes/review (SRG Information), names of public involved in investigation, discussion of staff and facility protocol and risk and needs scores.

28. On the in camera index, the respondents describe IC-2018-0710-29 (line 27) as

⁷ At the March 11, 2019 hearing, the respondents claimed that the personal email address of a private citizen is exempt from disclosure pursuant to §1-210(b)(18), G.S. On the in camera index, the respondents only claimed that §1-210(b)(19), G.S., exempted such information from disclosure.

“information involving another offender.” Based upon a careful in camera review, however, it is found that IC-2018-0710-29 (line 27) does not contain information pertaining to another offender. It is also found that such record does not contain information similar to information for which the respondents are claiming an exemption from disclosure. It is found therefore that the respondents failed to prove that such information is exempt from disclosure. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such information.

29. On the in camera index, the respondents describe IC-2018-0710-3 as an “inmate witness statement.” It is found that such record consists of an inmate witness statement and includes the witness’ first and last name and inmate number. At the hearing, the respondents contended that the disclosure of such statement may pose a safety and security risk. The respondents, however, did not present any evidence to demonstrate such potential risk. In addition, based upon a careful review of the records submitted for in camera review, the information contained in the section labeled “inmate statement” as well as the inmate’s last name (in line 7 of IC-2018-0710-3) are identified in other in camera records for which the respondents are not claiming an exemption from disclosure. It is therefore found that the respondents failed to prove that the Commissioner of Correction has reasonable grounds to believe that the disclosure of IC-2018-0710-3, except for the inmate’s first name and inmate number as discussed in paragraph 34, below, may result in a safety risk within the meaning of §1-210(b)(18), G.S. Consequently, it is concluded that, under the facts and circumstances of this case, such information is not exempt from disclosure, and the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such information.

30. On the in camera index, the respondents claim that the following in camera records contain “screen codes”: IC-2018-0710-10 (line 21), IC-2018-0710-11 (line 21), IC-2018-0710-21 (line 21), IC-2018-0710-22 (line 21), IC-2018-0710-45 (lines 21, 22), IC-2018-0710-46 (line 21), IC-2018-0710-57 (lines 21, 22) and IC-2018-0710-58 (line 21). At the hearing, the respondents testified that they redacted “screen codes” because “we shouldn’t know what the number is and it corresponds to our computer system.”

31. It is found that the records, described in paragraph 30, above, contain “screen codes.” It is also found that the screen code contained in IC-2018-0710-10 (line 21), IC-2018-0710-21 (line 21), IC-2018-0710-45 (lines 21, 22) and IC-2018-0710-57 (lines 21, 22), was publically identified by the respondents at the March 11th hearing in this matter. It is further found that under the facts and circumstances of this case, the respondents failed to prove that the Commissioner of Correction had reasonable grounds to believe that the disclosure of the particular screen codes as identified in the in camera records at issue in this case, may result in a safety risk. It is therefore concluded that such screen codes are not exempt from disclosure pursuant to §1-210(b)(18), G.S., and the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding such information.

32. Based upon a careful review of the in camera records, it is found that the following records contain the first names of DOC staff members: IC-2018-0710-4 (line 25), IC-2018-0710-17 (line 27), IC-2018-0710-24 (line 15), IC-2018-0710-25 (lines 8, 22), IC-2018-0710-27 (line 7), IC-2018-0710-29 (line 7), IC-2018-0710-30 (lines 7, 9), IC-2018-0710-31 (line 7), IC-2018-0710-32 (line 7), IC-2018-0710-33 (line 7, 40), IC-2018-0710-34 (line 7), IC-2018-0710-35

(lines 6, 26, 35), IC-2018-0710-41 (lines 17, 18), IC-2018-0710-54 (lines 21, 22, 31) and IC-2018-0710-56 (line 24). It is found that the Commissioner of Correction has reasonable grounds to believe that the disclosure of the first names of DOC staff members contained in such records may result in a safety risk. Accordingly, it is found that such information is exempt from disclosure pursuant to §1-210(b)(18), G.S. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such information.

33. With respect to the remaining in camera records at issue,⁸ at the hearing the respondents testified that the disclosure of information contained in a particular screen print-out (including, but not limited to, personal identifiers, emergency contact information, information obtained through the NCIC/COLLECT systems⁹) would pose a safety and security risk.

34. In addition, the Commission has previously found that the disclosure of information about other inmates (e.g., inmate name and/or number), emergency codes and procedures, logs or other documents that contain information on the movement or assignment of inmates or staff, and investigative techniques and intelligence gathered from an investigation, may result in a safety risk. See 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 20, 2009); Docket #FIC 2013-048; Shawn Crocket v. CTO Ilvento, FOI Coordinator, State of Connecticut, Department of Correction, Corrigan-Radgowski Correctional Center; and State of Connecticut, Department of Correction (September 25, 2013); 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*.

35. Based upon a careful review of the in camera records as described in paragraphs 33

⁸ The Commission notes that on the in camera index the respondents describe IC-2018-0710-33 (line 16) and IC-2018-0710-34 (lines 24-27) as “information involving another offender.” It is found that such records do not contain information involving another offender. Nevertheless, it is found that such records contain information similar to information found to be exempt from disclosure in paragraph 35, above. The respondents also describe IC-2018-0710-34 (lines 19, 22) as “discussion of staff and facility protocol.” It is found that such records do not contain information regarding discussion of staff and facility protocol. Nevertheless, it is found that such records contain information similar to information found to be exempt from disclosure in paragraph 35, above.

⁹ NCIC stands for the “National Crime Information Center”, a computerized database of criminal history information, which is maintained by the Federal Bureau of Investigation. COLLECT stands for the “Connecticut Online Law Enforcement Communications Teleprocessing” system, a statewide criminal justice system that is dedicated to the law enforcement and criminal justice agencies in the State of Connecticut. See Docket #FIC 2016-0535; Joseph Sastre v. Marc Montminy, Chief, Police Department, Town of Manchester; Police Department, Town of Manchester; and Town of Manchester (April 12, 2017).

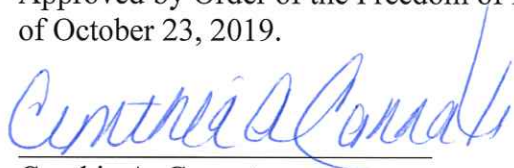
and 34, above, it is found that the Commissioner of Correction has reasonable grounds to believe that the disclosure of such records may result in a safety risk. Accordingly, it is found that such records are exempt from disclosure pursuant to §1-210(b)(18), G.S. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records.

36. Notwithstanding the conclusion reached in paragraphs 26, 28, 29 and 31, above, the Commission in its discretion declines to impose a civil penalty in this matter.

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

1. The respondents shall forthwith provide copies of the in camera records to the complainant, free of charge.
2. In complying with paragraph 1 of this order, the respondents may withhold the in camera records identified as exempt from disclosure in paragraphs 20, 32, 33 and 34 of the findings, above.
3. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 23, 2019.



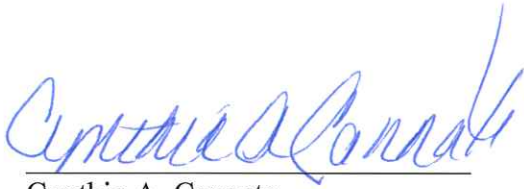
Cynthia A. Cannata
Acting Clerk of the Commission

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:

LUIS SALAMAN, #262626, Carl Robinson Correctional Center, 285 Shaker Road, Enfield, CT 06082

ROLLIN COOK, 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