

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Dale H. Kukucka,

Complainant

against

Docket #FIC 2019-0132

James C. Rovella, Commissioner, State
of Connecticut, Department of
Emergency Services and Public
Protection; and State of Connecticut
Department of Emergency Services and
Public Protection,

September 11, 2019

Respondents

The above-captioned matter was heard as a contested case on July 1, 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, 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 February 6, 2019, the complainant requested that the respondents provide him with the following records:
 - a. The original email you sent to Sean Mahar, in which he responded to you on February 27, 2018.
 - b. All emails sent to DOC with attachments of photos generated via MIS employees, as referenced in Wednesday, April, 4, 2018, from Lt Jimenez to you, for a line up to Sean Mahar, Sean Velasquez, and / or Christopher Burns. (This pertains to the temporary surrender you claimed under oath in an earlier FOI

hearing) and you referenced in an email sent on Monday, April 2, 2018 to Lt. Jimenez.

- c. All email documents sent to DOC from Sean Mahar, Sean Velasquez, and / or Christopher Burns in regards to, but not limited by “Kukucka was a temporary surrender at the time...based on the temp surrender photo.”

3. By letter of complaint filed March 1, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying him copies of the requested records. Additionally, the complainant requested that the Commission consider the imposition of civil penalties against the respondents.

4. 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.

5. 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.

6. 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.”

7. It is found that the requested records, to the extent such records exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that the respondents provided the complainant with records responsive to his request. Regarding the photographs referenced in paragraph 2b, above, the respondents provided the requested photographs, however such photographs were intercepted by Department

of Correction (DOC) personnel and withheld from the complainant as the release of such images would create a safety risk within the DOC facility. The respondents agreed to forward the requested images to the complainant's attorney. The complainant consented to this arrangement.

9. It is further found that the respondents agreed to provide the complainant with an affidavit attesting to the authenticity of the records provided to the complainant.

10. Based on the facts and circumstances of this case, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint. Accordingly, the Commission declines to impose civil penalties against the respondents.

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 September 11, 2019.



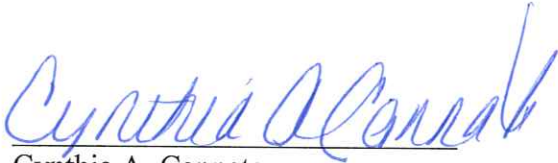
Cynthia A. Cannata
Acting Clerk of the Commission

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:

DALE KUKUCKA, #400170, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

JAMES C. ROVELLA, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Douglas Sauve, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission