

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Victor Velasco,

Complainant

against

Docket #FIC 2018-0705

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

Respondents

September 25, 2019

The above-captioned matter was heard as a contested case on August 2, 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 November 13, 2018, the complainant requested a copy of "the secured video, NCI-VP-18-0578," from the respondents.
3. It is found that, by letter dated November 15, 2018, the respondents denied such request.
4. By "sworn affidavit" dated November 27, 2018, and received and filed on December 12, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for the video, 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

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 the respondents maintain two videos responsive to the request, described in paragraph 2, above. At the hearing in this matter, the respondents claimed that disclosure of the videos may constitute a safety risk, including the risk of escape, pursuant to §1-210(b)(18), G.S.

9. 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 the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution.... Such records shall include, but are not limited to...(B) [e]ngineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Hospital facilities....

10. 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."

11. At the hearing in this matter, the respondents' witness, Counselor Supervisor Campanelli, testified that he reviewed the requested videos and that they depict the entire south side of the inside of a housing unit, as well as the medical screening area and the recreation area within the correctional facility. Campanelli further testified that the videos, which he equated to

a map or a drawing, show the location and number of officers, location of exits and entrances, and reveal how the doors unlock and open. Although Campanelli conceded that the inmates who live in this housing unit already know what the inside of the unit looks like, including where the exits and staff are located, he testified that the Commissioner's concern is with disclosure of such information to members of the public, who do not have this information, but who could use the information to plan an escape. He testified that although one video in itself may not contain enough information for an inmate or other person to plan an escape, a series of videos, disclosed pursuant to numerous FOI requests, could be pieced together to create a complete picture of a facility's vulnerabilities.

12. At the request of the complainant, the hearing officer ordered the respondents to submit the videos to the Commission for in camera inspection, and the respondents submitted such videos on August 14, 2019.

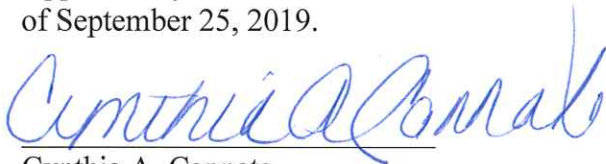
13. Based upon careful in camera inspection of the videos, and Campanelli's testimony, it is found that the respondent Commissioner has reasonable grounds to believe that disclosure of the requested videos may result in a safety risk, including risk of escape, in a correctional facility. It is further found that the reasons given are bona fide, and not pretextual, or irrational.

14. Accordingly, it is concluded that the requested videos, described in paragraph 2, above, are exempt from disclosure pursuant to §1-210(b)(18)(B), 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 September 25, 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:

VICTOR VELASCO, #213065, 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 Tracie C. Brown, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission