

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kenneth Krayske,

Complainant

against

Docket #FIC 2019-0075

Rollin Cook, 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 April 25, 2019, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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. By letter of complaint filed February 6, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act when they denied his request for certain public records. Additionally, the complainant requested that the Commission impose a civil penalty against the respondents.
3. It is found that in a letter dated January 7, 2019, the complainant requested the following records:
  - a) All videos from all code whites at York Correctional Institution (hereinafter “York”) on Sunday, June 3, 2018, Monday, June 4, 2018, and Tuesday, June 5, 2018.
  - b) All reports, including all mandatory reports, and all records and correspondence to the United States Department of Justice about inmate deaths across the Connecticut Department of Correction in 2018.

- c) All morbidity and mortality reports and related records about all inmate deaths in York in June 2018, including all reports created by the Correctional Managed Health Care that are in the possession and control of the Department of Correction.
- d) All security investigations regarding all inmate deaths that occurred in York in June 2018.
- e) All records concerning all logs, dispatch logs, security reports and interdepartmental communications from June 3, 2018 through June 8, 2018 concerning all code whites and inmate deaths at York during that timeframe.
- f) All log sheets, roll calls, rosters and other documents showing all Connecticut Department of Correction personnel, including guards, correction officers, all guards and counselors on duty from June 3, 2018 through June 6, 2018 at York.

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 are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that on January 8, 2019, the respondents acknowledged the complainant's request. It is further found that on March 13, 2019, the respondents replied to the complainant's request in detail claiming exemptions for some of the items requested and providing the complainant with some records responsive to his request.

9. With regard to the videos requested in paragraph 3a, above, the respondents agreed to make arrangements with the complainant to allow him to view the requested videos.

10. With regard to the records requested in paragraph 3e, and 3f, above, the respondents contended that the release of such records would result in a safety risk and are therefore exempt from disclosure pursuant to §1-210(b)(18), G.S.

11. Section 1-210(b)(18), G.S., states that nothing in the Act shall be construed to require disclosure of:

Records, 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 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;

(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;

12. At the hearing in this matter, the complainant did not contest that the records requested in paragraph 3e, and 3f, above, were exempt from disclosure for the reasons stated. However, he argued that the records requested in paragraphs 3b, c, and d, above, had been in draft form for a lengthy period of time and requested access to such records once they were no longer in draft form.

13. With regard to the records requested in paragraph 3b, above, the respondents provided the complainant with copies of two incident reports and the referenced US Department of Justice report. The respondents testified that remaining reports responsive to the complainant's request are in draft form awaiting executive review and approval. The respondent claimed that as drafts, the reports are exempt from disclosure pursuant to §1-210(b)(1), G.S. The respondents testified that they will release such reports upon executive approval.

14. With regard to the records requested in paragraph 3c, and 3d, above, the respondents contended that such records are currently in draft form awaiting executive review and approval and therefore exempt from disclosure pursuant to §1-210(b)(1), G.S. The respondents testified that they will release such reports upon executive approval.

15. Section 1-210(b)(1), G.S., states the nothing in the Act shall be construed to require disclosure of preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.

16. Additionally, at the hearing in this matter, the complainant objected to the lack of promptness of the response to his request by the respondents.

17. With respect to the timeliness of the respondents' compliance, the meaning of the word "promptly" is a fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as

much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority.

18. The advisory opinion describes some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

19. It is found that the complainant's initial request was made on January 7, 2019. The respondent acknowledged the request the next day, on January 8, 2019. Having received no records and no further response, the complainant filed his appeal with the Commission on February 5, 2019. The respondent provided the first records and a detailed response to the complainant's request on March 13, 2019.

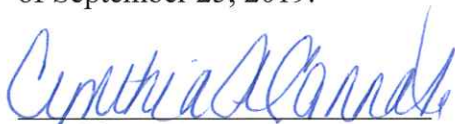
20. It is found that at the time of the complainant's appeal to the Commission, the respondents were transitioning to a new FOI Administrator on or about February 4, 2019. The FOI Administrator is responsible for gathering records and coordinating responses to FOI requests for the respondents. The respondents testified that their response was delayed not only by the transition to a new FOI Administrator, but also as the result of the time it took for each facility to search for records and then provide such records to the FOI Administrator.

21. It is found that the respondents did not violate the promptness provision of the Act. Additionally, it is found that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S. Accordingly, the Commission declines to consider the imposition of civil penalties against the respondents.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 25, 2019.



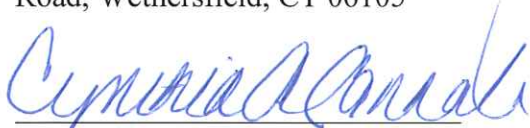
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**KENNETH KRAYESKE**, c/o Attorney Ken Krayeske, Kenneth T. Krayeske Law Offices, 255 Main Street, 5th Floor, Hartford, CT 06106

**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 06105



Cynthia A. Cannata  
Acting Clerk of the Commission