

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jan Gawlik,

Complainant

against

Docket #FIC 2020-0003

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

Respondent

December 9, 2020

The above-captioned matter was heard as a contested case on October 23, 2020, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹ This matter had been consolidated for hearing purposes with Docket #FIC 2019-0701, Jan Gawlik v. Commissioner, State of Connecticut, Department of Correction, et al., which was withdrawn prior to the hearing.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that, by "Application", dated December 19, 2019, the complainant requested from the respondents a copy all "memos, policies, regulations, and directives" pertaining to an inmate's ability to obtain "fresh air/outside recreation" during the winter months.
3. It is found that, by letter dated December 27, 2019, the respondents, through FOI Liaison McMahon ("McMahon"), informed the complainant that one document responsive to his request had been located, but that such document was exempt from disclosure pursuant to §1-210(b)(18), G.S., and therefore would not be provided.

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

4. By letter dated January 2, 2019² and received and filed January 3, 2020, the complainant appealed to this Commission, alleging the respondents violated the Freedom of Information (“FOI”) Act by denying his request.

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, described in paragraph 2, above, to the extent they exist, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

8. It is found that the record that was located by McMahon and withheld from the complainant is a memorandum from Captain Rodriguez to Unit Managers, dated November 14, 2019, regarding “Outside Recreation North Block 1 and 2”. It is found that the memorandum informs the unit managers that, in order to conduct outside recreation, the temperature outside must be at least 35 degrees and there must be at least 3 inmates who would like to participate.

9. It is found that, after the complaint in this case was filed, the respondents’ FOI Administrator, Counselor Supervisor Campanelli, reviewed the request, McMahon’s response, and the document that was withheld.

10. It is found that, upon review, Counselor Supervisor Campanelli determined that disclosure of the memorandum would not constitute a safety risk pursuant to §1-210(b)(18), G.S., overruled McMahon’s decision to withhold such record, and provided such record to the complainant. It is found that Counselor Supervisor Campanelli also conducted a thorough search for any other records that might be responsive to the request, described in paragraph 2, above,

² The reference to 2019 apparently was a typographical error. Based on the date the letter was filed, the Commission presumes that the correct date of the letter was January 2, 2020.

and provided several pages of records, consisting of emails, roll call notices, and a letter, each of which relates to the issue of outdoor recreation, to the complainant.

11. At the hearing in this matter, the complainant argued that the policy articulated in the memorandum, described in paragraph 8, above, should have been set forth in a “unit directive”, written and issued by the warden, and that that was the record he was seeking.

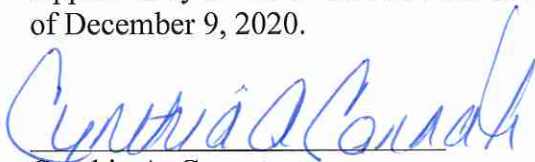
12. It is found, however, that the respondents do not maintain any such unit directive.

13. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged.

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 9, 2020.



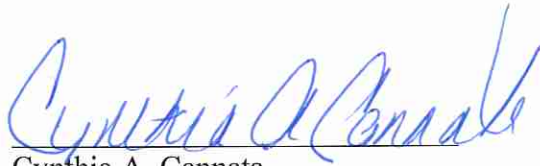
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JAN GAWLIK, #138888, Cheshire Correctional Institution, 900 Highland Avenue,
Cheshire, CT 06410

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF
CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF
CORRECTION**, c/o Attorney Jennifer Lepore, Department of Correction, 24 Wolcott Hill
Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission