

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joshua Smith,

Complainant

against

Docket #FIC 2019-0068

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

Respondents

January 22, 2020

The above-captioned matter was heard as a contested case on November 19, 2019 at which time the complainants 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, by written request dated December 14, 2018, the complainant requested a copy of an incident report related to a fight involving the complainant. The complainant did not provide the date of the incident. It is found that the respondent replied to such request on December 19, 2018 and asked the date of the incident.
3. It is found that, by letter dated December 20, 2018, the complainant requested that the respondent preserve two videos taken on December 12, 2018 and December 13, 2018.
4. It is found that, by written request dated December 24, 2018, the complainant requested copies of all statements generated through his advisor/CO Strillacci within the last two weeks.

5. By letter dated January 19, 2019, postmarked January 29, 2019, and filed January 30, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by:

- a. Failing to provide him with all records in response to a request for records of correspondence of Commissioner Scott Semple, dated October 22, 2017 and February 17, 2018;
- b. Failing to provide records responsive to his request described in paragraph 2, above;
- c. Failing to preserve the videos, as described in paragraph 3, above;
- d. Failing to provide him with all statements and reports generated by Captain Manning;
- e. Failing to provide records responsive to his request described in paragraph 4, above.

6. The allegation set forth in paragraph 5.c, above, does not allege a violation of the FOI Act. Therefore such allegation shall not be further address herein.

7. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken....

8. The complaint in this matter was received more than thirty days after certain alleged denials at issue. Therefore, the Commission must look to the postmark date of January 29, 2019.

9. The complainant did not provide evidence as to when he made the requests described in paragraphs 5.a, and 5.d, above. Moreover, it is found that the deemed denial alleged in paragraph 5.b, above, occurred more than thirty days before the postmark date of January 29, 2019. Accordingly, it is concluded that the allegations described in paragraphs 5.a, 5.b. and 5.d, above, were not timely filed.

10. Nevertheless, the Commission notes that the respondents informed the complainant by letter dated February 4, 2019, and again through testimony at the hearing in this matter that: with respect to the request described in paragraph 5.a, above, the correspondence of Commissioner Semple has been provided, and the complainant is free to make more specific requests if he wishes; with respect to the request described in paragraph 5.b, above, the requested incident report has not been finalized; and with respect to the request described in paragraph 5.d, above, no records exist.

11. With respect to the request described in paragraphs 4 and 5.e, §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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

12. Section 1-210(a), G.S., provides in relevant part that:

[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 . . . (3) receive a copy of such records in accordance with section 1-212.

13. 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.”

14. It is found that the records described in paragraphs 4 and 5.e, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

15. It is found that the respondents provided copies of the records described in paragraphs 4 and 5.e, to the complainant on January 22, 2019.

16. Based upon the record in this matter, it is concluded 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 22, 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:

JOSHUA SMITH, #223489, 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 Tracie C. Brown, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109

Cynthia A. Cannata
Acting Clerk of the Commission