

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by
John Vivo III,

FINAL DECISION

Complainant

against

Docket #FIC 2019-0663

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

Respondents

November 18, 2020

The above-captioned matter was heard as a contested case on February 19, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket No. FIC 2019-0628, John Vivo v. Rollin Cook et al. 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. By letter of complaint filed October 31, 2019,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his October 10, 2019 request for certain public records.
3. It is found that the complainant made an October 10, 2019 request to the respondents for:

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

... "All Records" maintained or kept on file regarding: a "Memorandum" or "Unit Rules" that was posted in E.B.2 (on the bubble glass before recently being removed) signed by Captain James Watson regarding specifically that "inmates are not allowed to work out in the tier or dayroom," during his tenure as unit manager

4. It is found that both the complainant and other inmates saw the memorandum described in paragraph 3, above.

5. However, it is found that the respondents informed the complainant on November 14, 2019 that they were unable to locate a copy of the memorandum.

6. It is also found that Captain Watson disclaimed any knowledge of the memorandum, but nonetheless searched both his electronic and physical files, and also did not find a copy of it.

7. 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.

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

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.

9. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

10. It is concluded that the requested memorandum is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

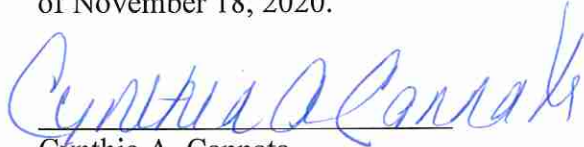
11. It is found that, whether or not the memorandum once existed, a fact which the parties dispute, the respondents and Captain Watson subsequently conducted diligent searches for it, and could not locate it at the time of those searches.

12. It is therefore concluded that the respondents did not violate the FOI Act 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 November 18, 2020.



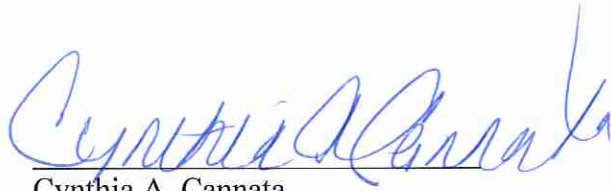
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JOHN VIVO III, #204103, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

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 06109



Cynthia A. Cannata
Acting Clerk of the Commission