

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by
John Vivo III,

FINAL DECISION

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

Docket #FIC 2019-0628

Respondents

October 28, 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 2019-0663, 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 16, 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.

- a. Mental Health staff members “Duty Roster” (1st and 2nd shift) for the period of 6-13-2016 through 6-16-2016, to include clinical social workers; and
 - b. Written “records” in relation to myself while I was housed in cell #13 [in] restrict housing unit from 6-13-2016 through 6-16-2016, whether written by mental health or custody staff. [emphasis and quotation marks in original]
4. It is found that the respondents provided four pages of records responsive to the portion of the request described in paragraph 3.b, above, on February 11, 2020.
5. 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.
6. 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.
7. 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.”
8. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.
9. It is found that the respondents provided all the records responsive to the portion of the complainant’s request described in paragraph 3.b, above.
10. With respect to the complainant’s request for duty rosters, as described in paragraph 3.a, above, the respondents contend that such rosters are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides in relevant part that disclosure is not required of:

Records, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Hospital,

the Commissioner of Mental Health and Addiction Services, 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:

...

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities

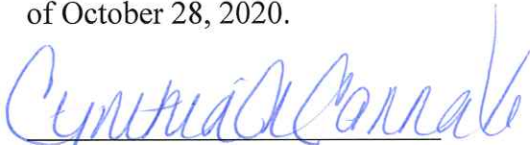
11. It is found that the requested rosters are documents that contain information on the movement or assignment of staff, within the meaning of §1-210(b)(18), G.S.

12. It is concluded that the rosters are exempt from mandatory disclosure, and that the respondents therefore 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 October 28, 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