

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Victor Velasco,

Complainant

against

Docket # FIC 2019-0723

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

Respondents

August 11, 2021

The above-captioned matter was heard as a contested case on December 7, 2020 and February 11, 2021, at which times the complainant and the respondents appeared, stipulated to certain facts, 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

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 dated November 27, 2019 and filed December 6, 2019², the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records. The complainant also requested that the Commission impose a civil penalty.

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

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §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.

3. It is found that, by inmate request form dated November 20, 2019, the complainant requested that the respondents provide him with a copy of his entire Medical and Mental Health Master File from December 19, 1996 through the date of his request.

4. 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 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:

[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.

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 records identified in paragraph 3, above, are public records within the meaning of §§1-200(5), 1-210, and 1-212(a), G.S.

8. It is found that, on November 21, 2019 Northern Correctional Institution Medical Records Specialist Lisa Bessette acknowledged the complainant's request, notified the complainant that he is not indigent, and that copies are 25 cents per page.

9. It is found that on or about March 6, 2020 the respondents' FOI Administrator, Correctional Counselor Supervisor (“CCS”) Anthony Campanelli informed the complainant by letter that his office received a copy of the instant complaint filed with the Commission. It is further found that CCS Campanelli did not become aware of the request until on or about February 18, 2020 when he received a copy of the instant appeal.

10. It is found that on or about March 4, 2020, the respondents' Medical Records Department searched for responsive records and subsequently provided the complainant with 1,170 pages of responsive records, free of charge. It is further found that the complainant acknowledged receipt of the records under the respondent “Acknowledgment – Receipt of FOI Documents” form on March 6, 2020.

11. It is further found that on or about January 12, 2021, additional responsive records, identified as the contents of the complainant's electronic health record (EHR) file were provided to the complainant, free of charge.

12. The respondents contended that the records identified in paragraphs 10 and 11, above, constitute all records which are maintained and are responsive to the complainant's November 20, 2019 records request at issue herein.

13. The complainant contended that the respondents violated the FOI Act by failing to promptly provide copies of records responsive to his November 20, 2019 request and that all responsive records have not been provided.

14. 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 the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request." Recently, in Comm'r of Dep't of Emergency Services & Pub. Prot. v. Freedom of Info. Comm'n, 70 Conn. L. Rptr. 203, 2020 WL 5540637, at *3 (July 20, 2020), the Superior Court noted that "[a]n agency's FOIA duty is a statutory duty or command. As such, it is not second class to any other statutory duty or command."

15. Advisory Opinion #51 describes several factors that should be considered in weighing a request for records against other priorities: the volume of the requested records; the amount of personnel time necessary to comply with the request; the time by which the requester needs the records; 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 loss of personnel time involved in complying with the request.

16. In this case, the respondents did not present any evidence with respect to the factors identified in paragraph 15, above, nor did the complainant attest to the importance of the records at the time of the request. It is found that over three (3) months transpired between the date of the request and first disclosure of responsive records. No evidence was presented that any action was taken to search for and identify responsive records until CCS Campanelli's office received notice of the appeal pending before the Commission on or about February 18, 2020. It is found that a search was subsequently conducted on or about March 4, and that responsive records were provided on March 6, 2020.

17. Such quick turnaround suggests that the records sought could have been provided to the complainant within a matter of days or weeks had respondents quickly, and without undue delay, searched for responsive records and notified the complainant of the total number of pages of records and amount due for copies.

18. Moreover, on or about January 12, 2021, well over one year from the date of the complainant's request and after the first date of hearing in this matter, an additional package of electronically stored records were provided to the complainant. Though CCS Campanelli

testified credibly that the staff person responsible for the search was not aware of the existence of the electronic health records or whether such records could be provided to the complainant, an over one year delay in identifying and providing nonexempt responsive records to the complainant in this case does not support a finding that records were provided quickly or without undue delay. Consequently, it is found that the respondents failed to prove that they promptly provided the complainant with copies of records responsive to his request.

19. It is therefore concluded that the respondents violated the FOI Act by failing to promptly provide copies of records responsive to the complainant's request.

20. The complainant next contended that he is aware of several records, including photos, images, and test results that are responsive to his request but were not been provided. The complainant contended that he has undergone medical care and treatment while in the respondents' custody and therefore the respondents should maintain certain records related to such care and treatment.

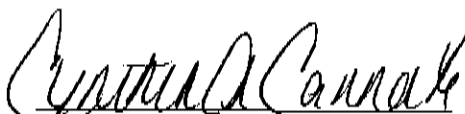
21. While it is plausible that the complainant received certain medical care and treatment, such is not evidence that the respondents maintain medical or mental health records pertaining to such. CCS Campanelli credibly testified about where medical and mental health records are maintained and that he has no reason to believe that additional responsive records are maintained. Moreover, CCS Campanelli credibly testified that no responsive records have been withheld. Therefore, it is found that the respondents do not maintain any additional records responsive to the complainant's request and have not violated the FOI Act by failing to disclose all responsive records.

22. The complainant seeks a civil penalty in the amount of \$1000.00. Conn. Gen. Stat. §1-206(b)(2) provides that "the commission may, in its discretion, impose against the custodian or other official a civil penalty of no less than twenty dollar nor more than one thousand dollars." In light of the fact that the respondents ultimately provided the complainant with all responsive records, free of charge, the Commission declines, in its discretion, to impose a civil penalty herein.

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

1. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 11, 2021.




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:

VICTOR VELASCO, #213065, Corrigan-Radgowski CC, 986 Norwich-New London Tpke., Uncasville, CT. 06382

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 06114



Cynthia A. Cannata
Acting Clerk of the Commission