

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Victor Velasco,

Complainant

against

Docket #FIC 2020-0026

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

Respondents

December 15, 2021

The above-captioned matter was heard as a contested case on October 7, 2020, February 25, 2021, March 23, 2021, August 3, 2021, and September 23, 2021, at which times 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 At the time of the hearing the complainant was incarcerated at a facility of the respondent Department of Correction.

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 dated January 15, 2020, the complainant appealed to this Commission, alleging the respondents violated the Freedom of Information (FOI) Act by denying his December 18, 2019 request for certain video recordings.²

3. At the time of the request, §1-200(5), G.S., provided:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business

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. Accordingly, the Commission retains jurisdiction over this appeal.

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.³

4. 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....

5. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

6. It is found that the requested video recordings are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

7. The complainant testified that he made a written request for certain video recordings on an “Inmate Request Form”, dated December 18, 2019, and “submitted it to the FOI liaison.”

8. The complainant further testified that he received no response to his request, so on another “Inmate Request Form” addressed to the facility’s mailroom, he inquired about the status of his December 18th request.

9. The respondents’ witness Counselor Supervisor Campanelli testified that the request at issue in this case was not received from the complainant on or about December 18, 2019, and that the respondents became aware of it only when they received notice of the complaint from this Commission, on or about February 26, 2020.

10. CS Campanelli testified, and it is found, that pursuant to the applicable records retention policy, video recordings are retained for 30 days after which time they are overwritten. He further testified that by the time the respondents became aware of the request in February 2020, the video recordings at issue in this matter had been overwritten. It is therefore found that the requested records are not retained by the respondents.

³ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped”.

11. The complainant argued at the hearing that if the respondents had appropriate policies in place regarding the FOI request process, the video recordings might not have been overwritten. Such argument, however, was not fairly raised in the complaint and in any event, does not allege a violation of the FOI Act.

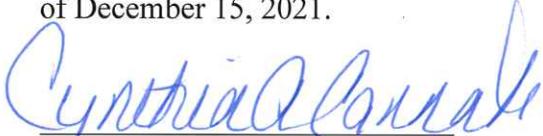
12. Moreover, it is not necessary for the Commission to make any findings regarding the complainant's allegation, in view of the finding in paragraph 10, above, that the requested records do not exist.

13. Because the requested records are not retained by the respondents, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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 15, 2021.



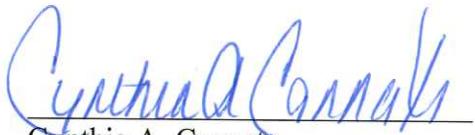
Cynthia A. Cannata
Acting Clerk of the Commission

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, Cheshire Correctional Institution, 900 Highland Ave., 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, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission