

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Albert Farah,

Complainant

against

Docket # FIC 2020-0287

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

Respondents

July 28, 2021

The above-captioned matter was heard as a contested case on June 25, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.¹ The complainant is incarcerated in a correctional facility of the respondents.

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 June 30, 2020, 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.²

3. It is found that, by letter dated May 15, 2020, the complainant requested that the respondents provide him with a copy of a video recording made by the respondents of the complainant on May 5, 2020.

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 and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

4. It is found that, on or about May 19, 2020, the respondents denied the complainant's request.

5. 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.

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

7. 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.”

8. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), and 1-212(a), G.S.

9. At the hearing, the complainant contended that he wanted an opportunity to review the video and did not intend to request a copy. The respondents contended that regardless of whether the complainant requested a copy, or an opportunity to inspect or review the recording, the video is exempt from disclosure pursuant to §1-210(b)(18), G.S.

10. Section 1-210(b)(18), G.S., provides, in relevant part, that disclosure is not required of “[r]ecords, the disclosure of which the Commissioner of Correction . . . 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....”

11. The Commission's role in reviewing the Commissioner's safety risk determination under §1-210(b)(18), G.S., is to determine “whether the [commissioner's] reasons were

pretextual and not bona fide, or irrational.” Comm'r v. Freedom of Info. Comm'n, 46 Conn. L. Rptr. 533, 2008 WL 4926910, at *5 (Conn. Sup. Ct. Nov. 3, 2008).

12. The Commission has consistently held that the Commissioner of Correction has reasonable grounds to believe that the disclosure of video recordings of the interior of correctional facilities may result in a safety risk within the meaning of §1-210(b)(18)(G), G.S. See e.g., Docket #FIC 2018-0106; Kershner v. State of Connecticut, Department of Correction, et al.; Docket #FIC 2015-882; Alston v. State of Connecticut Department of Correction, et al.; Docket #FIC 2011-066; Holloway v. State of Connecticut, Department of Correction, et al. (each finding that disclosure of video captured within a correctional facility poses a risk of harm and that such video is permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.).

13. The respondents’ FOI Administrator, Counselor Supervisor Anthony Campanelli testified at the hearing. It is found that CS Campanelli watched the video himself. Based upon the credible testimony about the video, it is found that the video depicts the complainant being escorted through the correctional facility and consequently, depicts windows, doors, security cameras (and areas not covered by security cameras), staffing, and escort and restraint procedures.

14. Therefore, it is found that the respondents had reasonable grounds to believe that disclosure of the video would pose a safety risk; the respondents had reasonable grounds to believe that disclosure of the records could result in a risk of harm or escape in that disclosure of the video could reveal security vulnerabilities within the facility and could be studied for purposes of planning an escape. It is further found that the reasons given by the respondents are bona fide, and not pretextual or irrational.

15. Accordingly, it is concluded that the in camera records are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S., and 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 July 28, 2021.



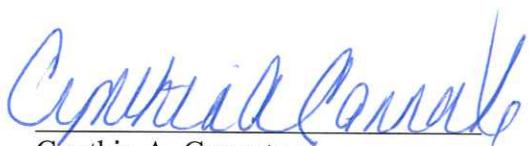
Cynthia A. Cannata
Acting Clerk of the Commission

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:

ALBERT FARAH, #228922, Cheshire CI, 900 Highland Avenue, Cheshire, CT 06410

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION;
AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Lori McCurdy, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission