

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Victor Velasco,

Complainant

against

Docket #FIC 2020-0294

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

Respondents

September 8, 2021

The above-captioned matter was heard as a contested case on June 15, 2021, at which time 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 For purposes of hearing, this matter was consolidated with Docket #FIC 2020-0295, Victor Velasco v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction. 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. It is found that, on an "Inmate Request Form" dated May 16, 2020, the complainant requested from the respondents a copy of three video recordings of the inside of a correctional institution, specifically: one of the restrictive housing unit ("RHU"), dated April 9, 2020; and two of the medical in-patient unit ("medical unit"), dated May 12, 2020, and May 14, 2020.

3. It is found that, by letter dated May 20, 2020, the respondents acknowledged the request, described in paragraph 2, above, but mistakenly interpreted it as a request to preserve the videos, rather than a records request. Based upon Administrative Directive 6.9, the respondents denied what they believed was a request to preserve the videos.

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

4. It is found that, by letter dated June 1, 2020, the complainant reiterated his request for copies of the videos identified in paragraph 2, above.

5. It is found that, by letter dated June 15, 2020, the respondents again misinterpreted the complainant's request as a request to preserve the videos, rather than a request for copies, and denied the request pursuant to Administrative Directive 6.9.

6. By letter dated June 26, 2020, and filed July 1, 2020,² the complainant appealed to this Commission, alleging the respondents violated the Freedom of Information ("FOI") Act by denying his request. The complainant also requested that this Commission impose a civil penalty against the respondents.

7. 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 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

8. 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....

9. 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."

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.

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

10. It is found that the requested records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S. For purposes of establishing the Commission's jurisdiction, it is also found that the request at issue in this matter was deemed denied pursuant to §1-206(a), G.S.

11. At the hearing in this matter, the respondents claimed that the videos are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides 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...

12. At the hearing in this matter, the witnesses for the respondents testified, and it is found, that the video recordings of the RHU and the medical unit depict the locations of the security cameras, which in turn depict the areas covered and not covered by the cameras; staffing levels and escorting procedures; locations of doors and windows; types of locks on the doors; location of the "traps" on the doors; and the method by which restraints are removed from the inmates for medical procedures. The witnesses further testified, and it is found, that disclosure of the videos may result in the risk of escape because the videos reveal vulnerabilities in the security of the facilities, and that disclosure of a series of videos could create a complete picture of the inside of the facility, which could be studied by someone on the outside and provided to an inmate for the purpose of planning an escape.

13. The complainant argued that the respondents' security risk claim is invalid because neither of the witnesses viewed the requested videos.

14. It is found that the witnesses did not view the requested videos. However, it is found that the witnesses have viewed other video footage from the cameras in the RHU and medical units, and that such cameras are fixed, meaning that they always depict the same images, as described in paragraph 12, above. It is therefore found that disclosure of any videos captured by cameras in the RHU and medical unit raise the same security concerns, which concerns are described in paragraph 12, above. It is therefore found that the fact that the witnesses did not view these particular videos does not invalidate their claim that disclosure would constitute a safety and security risk pursuant to §1-210(b)(18), G.S.

15. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, Judicial District of New Britain at New Britain, Docket No. CV074015438 and CV084016766 (November 3, 2008), the court reversed the FOIC's finding that the DOC failed to prove that disclosure of certain personnel records may result in a safety risk. According to the court:

the commissioner of DOC and his staff certainly have the experience to know when a particular request will result in a

safety risk. Having received the reasons given by the DOC for declining to make the record available, the FOIC is not free to reject DOC's reasons because they are "hypothetical" and not based on actual events. The FOIC's role is to determine whether the DOC's reasons were pretextual and not bona fide, or irrational.

16. Since that decision, the Commission has deferred to the DOC Commissioner's judgment and experience regarding safety and security risks and consistently found that video recordings of the inside of a correctional institution are exempt from disclosure pursuant to §1-210(b)(18), G.S., in cases in which a witness for the DOC has testified as to what is depicted on the video, and explained how disclosure of such video may result in a safety risk, and in which it was found that such reasons were bona fide, rational and not pretextual. See e.g., Robin Elliot v. Warden, State of Connecticut, Department of Correction et al., Docket #FIC 2008-733 (July 1, 2009); Brandon Holloway v. State of Connecticut, Department of Correction et al., Docket #FIC 2011-066 (January 11, 2012); Ira Alston v. Commissioner, State of Connecticut, Department of Correction et al., Docket #2015-882 (September 14, 2016); Charles Fonck, III v. Scott Semple, Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2018-0155 (December 19, 2018); Seth Kerschner v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2018-0106 (December 19, 2018); Victor Velasco v. Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2018-0705 (September 25, 2019); Albert Farah v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2020-0287 (July 28, 2021).

17. In the present case, it is found that the Commissioner of the Department of Correction has reasonable grounds to believe that disclosure of the requested videos, described in paragraph 2, above, may result in a safety risk. It is further found that the DOC's reasons are bona fide and not pretextual or irrational.

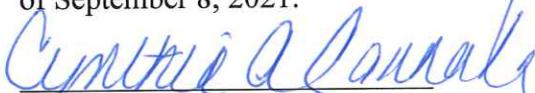
18. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

19. Because the respondents did not violate the FOI Act, the Commission need not consider the complainant's request for the imposition of a civil penalty.

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 September 8, 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 Correctional Center, 986 Norwich-New London Turnpike, Uncasville, CT 06382

ROLLIN COOK, 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