

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Sergio Correa,

Complainant

against

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

Respondents

FINAL DECISION

Docket # FIC 2023-0059

January 24, 2024

The above-captioned matter was heard as a contested case on December 12, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint. 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.).

Pursuant to the parties' agreement at the December 12, 2023 contested case hearing, the Commission takes administrative notice of the administrative record in Docket #FIC 2023-0004, *Sergio Correa v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction* (hereafter "#FIC 2023-0004").

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, at all relevant times, the complainant was incarcerated at Cheshire Correctional Institution in the custody of the respondents.
3. It is found that, by letter dated June 9, 2022, the complainant submitted a request to the Hartford Police Department ("HPD") for copies of certain records related to a State Police investigation (case number 1700661493).
4. It is found that, on December 6, 2022, the HPD forwarded records responsive to the request described in paragraph 3, above, to the respondents' Freedom of Information ("FOI")

Administrator. It is found that included among such records was a CD containing one video data file with a recording of a police interview of the complainant.<sup>1</sup>

5. It is found that, by letter dated January 31, 2023, the respondents notified the complainant that the CD described in paragraph 4, above, was “withheld pursuant to [§1-210(b)(18), G.S.,] as such disclosure would cause a safety and security issue if allowed in a correctional facility.”<sup>2</sup> The respondents further notified the complainant that, at the complainant’s request, they would send the CD to a legal representative or family member.

6. By letter of complaint filed February 14, 2023, the complainant appealed to the Commission, alleging that the respondents violated the FOI Act by refusing to provide him with the CD described in paragraph 4, above.

7. 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, videotaped, printed, photostated, photographed or recorded by any other method.

8. 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 ... or (3) receive a copy of such records in accordance with the provisions of section 1-212.

9. 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.”

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

---

<sup>1</sup> The records provided by the HPD also included certain paper records. The paper records are not at issue in this case and will not be further addressed in this decision.

<sup>2</sup> 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. By motion filed September 25, 2023, the respondents moved to dismiss this case pursuant to the prior pending action doctrine. The respondents claimed that this case is barred by the prior pending action doctrine because, in #FIC 2023-0004, the complainant attempted to raise the same claim that he raised in this matter, namely, that the respondents violated the FOI Act by refusing to provide him with the CD described in paragraph 4, above.

12. “[T]he prior pending action doctrine permits the [tribunal] to dismiss a second case that raises issues currently pending before the [tribunal].” *Bayer v. Showmotion, Inc.*, 292 Conn. 381, 395 (2009). “The policy behind the prior pending action doctrine is to prevent unnecessary litigation that places a burden on our state’s already crowded court dockets.” *Id.* at 396.

13. The Supreme Court has adopted the following framework to determine whether a case should be dismissed based on the prior pending action doctrine:

[T]he trial court [or other tribunal] must determine in the first instance whether the two actions are: (1) exactly alike, i.e., for the same matter, cause and thing, or seeking the same remedy, and in the same jurisdiction; (2) virtually alike, i.e., brought to adjudicate the same underlying rights of the parties, but perhaps seeking different remedies; or (3) insufficiently similar to warrant the doctrine’s application. In order to determine whether the actions are virtually alike, we must examine the pleadings ... to ascertain whether the actions are brought to adjudicate the same underlying rights of the parties.... If the two actions are exactly alike or lacking in sufficient similarities, the [tribunal] has no discretion. In the former case, the [tribunal] must dismiss the second action, and in the latter instance, the [tribunal] must allow both cases to proceed unabated. Where the actions are virtually, but not exactly alike, however, the [tribunal] exercises discretion in determining whether the circumstances justify dismissal of the second action. (Citations & quotation marks omitted.) *Id.* at 397-98.

14. In #FIC 2023-0004, the complainant alleged in pertinent part that the respondents violated the FOI Act by failing to provide him with records from the HPD containing “[n]ames of all detectives who assisted detectives from Troop E & Troop C in a homicide investigation originating in Griswold, CT.”<sup>3</sup> The complainant requested that the Commission order the respondents to provide him with copies of the records identified in the complaint.

15. At the hearing in #FIC 2023-0004, the complainant attempted to raise the claim that the respondents improperly withheld the CD that is at issue in this case. However, the respondents objected to the Commission considering such claim because the complainant did not

---

<sup>3</sup> In #FIC 2023-0004, the complainant also alleged that the respondents failed to provide him with records of “cellphone extractions done by [HPD],” but the complainant withdrew that claim.

reference the CD in his complaint. Based on an in camera inspection, the Commission found that the CD did not contain any records responsive to the complainant's request for the "[n]ames of all detectives who assisted detectives from Troop E & Troop C in a homicide investigation originating in Griswold, CT," which was the only request at issue in that case. The Commission therefore concluded that the respondents did not violate the FOI Act as alleged in the complaint.

16. In this case, unlike in #FIC 2023-0004, the complainant specifically alleged that the respondents violated the FOI Act by failing to provide him with the CD at issue. With respect to the relief requested, the complainant specifically sought an order requiring the respondents to provide him with "access to and copies of the [CD] ...." Thus, while the complaint in this matter and #FIC 2023-0004 contain some overlapping factual allegations, each complaint alleged a distinct violation of the FOI Act and sought different relief. Accordingly, it is concluded that this matter and #FIC 2023-0004 are not "exactly alike," for purposes of the prior pending action doctrine.

17. The Commission further concludes that, even if this matter and #FIC 2023-0004 were "virtually alike" for purposes of the prior pending action doctrine, dismissal of this matter is not justified. First, if the Commission were to dismiss this matter, the complainant would be free to resubmit his request for the CD and then file a new complaint based on the respondents' refusal to comply with such request. Thus, dismissing this matter would undermine, rather than promote, the "policy behind the prior pending action doctrine [of] prevent[ing] unnecessary litigation ...." *Bayer*, supra, 292 Conn. at 396.

18. Moreover, applying the prior pending action doctrine in this case would be contrary to the principle that the doctrine "is an equitable [one] based on notions of fairness," and that a tribunal considering whether to apply that doctrine must "keep[] in mind [the] principle that ... it is desirable that claims be tried on their merits." *Fox v. Desteoglu*, 2002 WL 31939125, at \*3 (Conn. Super. Dec. 24, 2002). In #FIC 2023-0004, the complainant was unable to litigate the merits of his claim that the respondents improperly withheld the CD at least in part because the respondents argued that such claim was not raised in the complaint. Under the circumstances, it would be unfair to dismiss this matter based on the prior pending action doctrine.

19. Based on the foregoing, the respondents' motion to dismiss is denied.

20. At the hearing in this matter, the respondents clarified that they were no longer claiming that the records at issue were exempt from disclosure pursuant to §1-210(b)(18), G.S. Rather, the respondents testified that they refused to permit the complainant to possess the CD in his cell pursuant to their Administrative Directives because they consider the CD to be contraband. The respondents testified that they consider the CD to be contraband because the complainant does not have the means to access the video contained on the CD, and therefore is unable to use the CD for its intended purpose. The respondents further testified that, in their experience, inmates are more likely to use an item as a weapon if they are unable to use such item for its intended purpose. The respondents claimed that pursuant to the Commission's decision in *Gawlik v. Commissioner, State of Connecticut, Department of Correction, et al.*,

Docket #FIC 2020-0073 (Jan. 13, 2021), they are not required to provide inmates with CDs that are considered contraband pursuant to their Administrative Directives.<sup>4</sup>

21. In *Gawlik*, the public agency from which the complainant requested the records at issue offered the complainant the opportunity to receive paper copies of such records, but the complainant insisted on receiving such records on CD. Thus, the disputed issue in *Gawlik* was whether the respondents were required to provide an inmate with records via a method of delivery that conflicted with their Administrative Directives, even though another method of delivery was available and offered to the complainant. The Commission concluded that, under the facts and circumstances of that case, the respondents were not required to provide the complainant with the CD.

22. *Gawlik* does not stand for the broad proposition that the respondents may withhold non-exempt public records from an inmate based solely on the respondents' Administrative Directives. The Commission notes that, pursuant to §1-210(a), G.S., "[a]ny agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void." Thus, absent a statutory exemption, the respondents may not withhold a requested record from an inmate based solely on their Administrative Directives.

23. However, in the present case, it is found that sometime after the complaint was filed, the respondents transferred the CD to a dedicated storage locker containing other property owned by the complainant. It is found that although the complainant is not permitted to possess the CD in his cell, the complainant otherwise has ownership and control over the CD. It is found that the CD will remain with the complainant's property unless and until the complainant requests that the respondents transfer it elsewhere, including by providing it to a legal representative or family member. The respondents further testified, and it is found, that at the complainant's request, the respondents would permit a legal representative to review the video contained on the CD at the respondents' main office in Wethersfield.

24. The complainant acknowledged that he does not have the technology necessary to access the video contained on the CD. The complainant testified that he does not currently have a legal representative or family member who is able to assist him by reviewing the video on his behalf. The complainant claimed that the respondents should be required to provide him with the technology necessary to access the video.

25. Section 1-210(c), G.S., provides in relevant part:

Whenever a public agency receives a request from any person confined in a correctional institution ... for disclosure of any public record under the [FOI] Act, the public agency shall promptly notify the Commissioner of

---

<sup>4</sup> At the hearing, the respondents stated that they were not claiming that the records at issue were exempt pursuant to §1-210(b)(18), G.S., because the Commission concluded in *Gawlik* that such exemption applies only when the respondents reasonably believe that the *contents* of the requested records may pose a safety risk, and not when the method of delivery (in this case, a CD) may pose a safety risk.

Correction ... of such request, in the manner prescribed by the commissioner, before complying with the request as required by the [FOI] Act. If the commissioner believes the requested record is exempt from disclosure pursuant to [1-210(b)(18), G.S.], the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility ....

26. The purpose of §1-210(c), G.S., is to allow the respondents to ensure that inmates do not obtain information through public records requests that could pose a safety risk in a correctional institution. It is found that the only role for the respondents contemplated by §1-210(c), G.S., is to screen public records sent to an inmate from another public agency for any information that the respondents reasonably believe may pose a safety risk.

27. It is further found that, with respect to any records that the respondents do not reasonably believe may pose a safety risk, the respondents' only obligation is to forward such records to the inmate who requested such records. Nothing in §1-210(c), G.S., requires the respondents to provide an inmate with the technology necessary to access computer-stored public records that such inmate requested from another public agency.

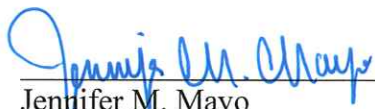
28. It is found that, under the facts and circumstances of this case, the respondents complied with their obligations under §§1-210(a), 1-210(c), and 1-212, G.S., by storing the CD at issue with the complainant's property in his storage locker, so that the complainant will be able to access the requested records if and when he obtains the means to do so. It is further found that the respondents were not obligated to provide the complainant with the means to access the video contained on the CD.

29. Based on the foregoing, it is concluded 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 dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 24, 2024.

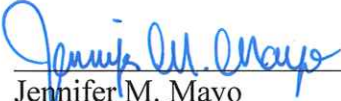
  
\_\_\_\_\_  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**SERGIO CORREA, #351915**, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

**ANGEL QUIROS, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o Attorney Jennifer Lepore, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109

  
\_\_\_\_\_  
Jennifer M. Mayo  
Acting Clerk of the Commission