

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Robert Nichols

FINAL DECISION

Complainant

Docket #FIC 84-196

against

Warden, Hartford Correctional  
Center of the State of  
Connecticut

April 24, 1985

Respondent

The above captioned matter was heard as a contested case on January 8, 1985 at which time the complainant and the respondent appeared, stipulated as to certain facts, and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. By letter filed with the Commission on September 19, 1984, the complainant alleged that he had requested that the respondent provide access to all personnel records pertaining to his employment at the Hartford Correctional Center.
3. It is found that at all times pertaining to this case, the complainant was employed by the State of Connecticut as a correctional officer with the Department of Correction and was assigned to the Hartford Correctional Center.
4. It is found that the complainant held a second job as a hall monitor at Bulkeley High School in Hartford. The complainant worked at the Correctional Center from 11:45 p.m. to 8:00 a.m. and at the high school from 8:30 a.m. to 4:30 p.m.
5. It is found that on August 21, 1984 the complainant was called into the Warden's office for an interview concerning allegations that on 12 occasions in 1982, 1983 and 1984 he had fraudulently called in sick for his regular shift at the Correctional Center.

6. The purpose of the interview was to allow the complainant to respond to the allegations prior to the imposition of disciplinary sanctions.

7. During the course of the interview, the Warden referred to a document on her desk which was the complainant's attendance sheet at Bulkeley High School. The attendance sheet had been obtained by the Personnel Section of the Department of Correction and forwarded to the Warden.

8. The attendance sheet purportedly showed that the complainant reported to work for his second job at the high school on the occasions when he called in sick for his regular shift at the Correctional Center.

9. At the interview the complainant requested that he be allowed to inspect the Bulkeley High School attendance sheet.

10. The Warden denied the request to inspect the attendance sheet on the grounds that it had been received from the Department of Correction personnel office and that it provided the basis for the disciplinary action against the complainant.

11. On August 24, 1984 the Warden imposed a 60 day suspension on the complainant. The suspension was based on a finding that the complainant fraudulently called in sick to the Department of Correction but reported for work at Bulkeley High School.

12. By letter dated August 29, 1984, the complainant requested that the Warden provide access to all of his personnel files on the premises of the Hartford Correctional Center.

13. At the hearing, the respondent made available to the complainant the personnel file on the premises of the Hartford Correctional Center, which did not include the attendance sheet from Bulkeley High School. The attendance sheet was returned to Department of Correction personnel officials after the August 21 interview.

14. The complainant claims that additional personnel files existed in the possession of individual officers at the Hartford Correctional Center.

15. It is found that there was insufficient evidence to show that specific additional files on the complainant existed at the Hartford Correctional Center, and if they did, the complainant should make a more specific request to obtain them.

16. The complainant filed a contract grievance of the 60 day suspension. As part of the grievance process, the complainant was shown the Bulkeley High School attendance sheet in November or December, 1984.

17. The respondent claims that because the complainant was shown the attendance sheet in November or December, 1984, the alleged violation of the Freedom of Information Act is moot.

18. It is found that the Bulkeley High School attendance sheet when it was in the custody of the respondent on August 21, 1984, was a public record within the meaning of §§1-18(d) and 1-19(a), G.S.

19. §1-19, G.S., provides that every person shall have the right to inspect public records promptly during regular office hours.

20. It is concluded that inspection of the attendance sheet in November or December, 1984, which was requested on August 21, 1984, is not prompt access within the meaning of §1-19, G.S.

21. The respondent further claims that the Warden's refusal to allow the complainant access to the Bulkeley High School attendance sheet did not violate the FOIA because the document was part of an ongoing personnel disciplinary procedure and therefore exempt under §1-19(b)(4), G.S.

22. §1-19(b)(4), G.S., in pertinent part, exempts "records pertaining to strategy and negotiations with respect to pending claims and litigation...."

23. It is found that the attendance sheet was the evidentiary basis for the charges against the complainant and was not a record pertaining to strategy and negotiations.

24. It is concluded that the exemption in §1-19(b)(4), G.S., is not applicable to the attendance sheet.

25. It is found that the Bulkeley High School attendance record formed a part of the personnel records of the complainant.

26. Pursuant to §1-19b, G.S., each public agency is required "to disclose information in its personnel files...to the individual who is the subject of such information."

27. It is concluded that the respondent violated §§1-19 and 1-19b, G.S., by failing to disclose the Bulkeley High School attendance sheet to the complainant promptly upon his request on August 21, 1984.

28. It is found that the complainant's inability to inspect the Bulkeley High School attendance sheet severely prejudiced his ability to respond to the respondent's charges at the August 21, 1984 interview.

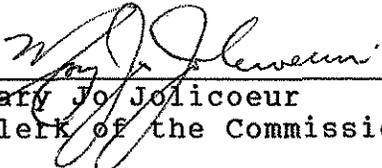
The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint.

1. The actions of the respondent in issuing a 60 day suspension of the complainant is hereby declared null and void.

2. The respondent shall restore to the complainant the lost wages from the suspension.

3. Henceforth, the respondent shall make available to employees of the Hartford Correctional Center information in their own personnel files, pursuant to the provisions of §1-19b, G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of April 24, 1985.

  
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Mary Jo Jolicoeur  
Clerk of the Commission