

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Anthony Torres,

Complainant

against

Docket #FIC 2016-0521

Craig Washington, FOI Administrator,
State of Connecticut, Department of
Correction; and State of Connecticut,
Department of Correction,

Respondents

June 14, 2017

The above-captioned matter was heard as a contested case on December 1, 2016 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.).

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, by letter dated July 6, 2016 and filed on July 15, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his records request.
3. 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, printed, photostated, photographed or recorded by any other method.

4. Section 1-210(a), G.S., provides in relevant part that:

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, (2) copy such records in accordance with subsection (g) of section 1-212, 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 that “[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, by letter dated May 12, 2016, and again by letter dated June 20, 2016, the complainant made a request to the respondents for copies of records identified as follows:

- a. Any and all service contracts entered [into] by the DOC [Department of Correction] with Inmates’ Legal Assistance Program/Schulman and Associates/Sydney T. Schulman, Esq.;
- b. Any and all service contracts between DOC and Inmates’ Legal Aid Program/Bansley and Anthony, LLC /Walter C. Bansley, IV, Esq.;
- c. Any and all collective bargaining agreements for the American Federation of State County and Municipal Employees Local-1560 and/or Local-1565 (representing Connecticut DOC correctional officers);
- d. Any and all collective bargaining agreements for the labor union/collective bargaining organization representing Connecticut DOC Lieutenants (correctional officer supervisors); and

- e. Correctional Managed Health Care/University of Connecticut-Health Center (service contract and memorandum of understanding).

7. It is found that, in response to the complainant's May 12, 2016 request, the respondent department's FOI liaison, by letter dated May 19, 2016, provided the complainant with records responsive to his requests described in paragraphs 6.a, 6.b and 6.e, above. It is found, however, that the respondents claimed that disclosure of the records described in paragraphs 6.c and 6.d, above, would create a risk of safety and security within the prison and were withheld pursuant to §1-210(b)(18), G.S.

8. It is found that the complainant received records responsive to his request on July 11, 2016 and November 30, 2016.

9. It is found that, by the time of the hearing in this matter, the complainant had been provided with many of the records responsive to his requests, including certain collective bargaining agreements, but that he had not been provided with the following:

- a. the service contract(s) between DOC and Schulman and Associates, described in paragraph 6.a, above, effective between January 2006 and 2010, and pages 39 and 40 of the contract that was provided;
- b. page 50 of the service contract between DOC and Bansley and Anthony, LLC, described in paragraph 6.b, above;
- c. the collective bargaining agreements described in paragraph 6.c, above, for certain contract years;
- d. the collective bargaining agreements, described in paragraph 6.d, above, for certain contract years; and
- e. Appendix E of the service contract and memorandum of understanding, described in paragraph 6.e, above, that was provided and the contract(s) for the years between 2006 and 2012.

10. With respect to the records described in paragraph 9.a, above, the respondents testified, and it is found, that they maintain, and will provide the complainant with the service contract between DOC and Schulman and Associates, effective between January 2006 and 2010, which is responsive to his request described in paragraph 6.a, above. It is found, however, that pages 39 and 40 of the contract that were provided were forms that, once completed, are not kept with the service contract and therefore are not maintained by the respondent department.

11. With respect to page 50 of the service contract, described in paragraph 9.b, above, it is found that such page is also a form that once completed is not kept with the service contract and is not maintained by the respondent department.

12. With respect to the records described 9.c and 9.d, above, it is found that copies of the collective bargaining agreements are not generally maintained by the respondent department. It is found that the complainant was provided with the two contracts maintained by the respondent department, and, further, that the respondent department maintains no other such contracts.

13. With respect to the records described in paragraph 9.e, above, the respondents testified at the hearing on this matter, and it is found, that they maintain, and will provide the complainant with, a readable copy of Appendix C, a copy of Appendix E, and a copy of the service contract and memorandum of understanding, described in paragraph 6.e, above, effective between 2006 and 2012.

14. It is found that the respondents do not maintain any other records responsive to the complainant's request other than those that have already been provided and those described in paragraphs 10 and 13, above.

15. With respect to the complainant's allegation that the respondents failed to promptly comply with his request, the complainant alleged in his appeal, and at the hearing on this matter, that the respondents ignored his request and that they intentionally and maliciously failed to timely comply with his request because he was an inmate. He claimed that it took a total of six months to receive the bulk of the records responsive to his request which still has not been fulfilled since several records remain missing or unreadable. The complainant contended that the delay was unwarranted and that a civil penalty should be levied against the FOI Liaison which penalty should be paid "out of his own pocket."

16. It is found that the respondent department's FOI Liaison immediately, upon receipt of the May 12, 2016 request, compiled and sent the records responsive to the requests described in paragraphs 6.a, 6.b, and 6.c, above, through the respondent department's interdepartmental mail on May 19, 2016, to the correctional facility in which the complainant is housed. It is found, however, that those records were not provided to the complainant until July 11, 2016.

17. It is found that the FOI Liaison sent the responsive records to the attention of the FOI Liaison for the correctional facility, but there were several staff changes and the records changed hands among and between correctional officers at that facility until they were finally offered to the complainant on July 11, 2016.

18. With respect to the records described in paragraph 6.c and 6.d, above, it is found that the respondent department's FOI Liaison withheld the two collective bargaining agreements with the understanding that the union attorney, who claimed that the exemption found in §1-210(b)(18), G.S., was applicable, would appear at the hearing

and defend that claim. It is found that once the attorney informed the FOI Liaison that he would not defend the claim before the Commission, the collective bargaining agreements that the respondent department maintained were provided to the complainant on November 30, 2016.

19. It is found that the respondents offered no explanation for the delay in providing the records described in paragraphs 10 and 13, above.

20. Based on the entire record of this case, it is found that the respondents failed to promptly comply with the complainant's request within the meaning of §§1-210(a) and 1-212(a), G.S. It is concluded therefore that the respondents violated §§1-210(a) and 1-212(a), G.S., of the FOI Act.

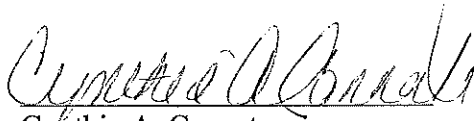
21. Notwithstanding the finding and conclusion in paragraph 20, above, the Commission declines to consider the complainant's request for a civil penalty in this case.

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

1. The respondents shall forthwith provide the complainant with a copy of the records described in paragraphs 10 and 13 of the findings, above, free of charge. In addition, the respondents shall notify the Commission, in writing, when said records have been provided to the complainant.

2. Henceforth, the respondents shall comply with the promptness provisions of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 14, 2017.




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:

Anthony Torres #246027
Corrigan-Radgowski Correctional Institution
986 Norwich New London Tpke.
Uncasville, CT 06382

Craig Washington, FOI Administrator, State of Connecticut,
Department of Correction; and State of Connecticut,
Department of Correction
c/o James Neil, Esq.
24 Wolcott Hill Road
Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission