

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Osuch,

Complainant

against

Docket #FIC 2016-0578

Timothy Carey, Environmental Analyst III,  
State of Connecticut, Department of Correction; and  
State of Connecticut, Department of Correction;

Respondents

June 28, 2017

The above-captioned matter was heard as a contested case on December 13, 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.). The caption has been amended to reflect the complainant's withdrawal of his complaint against the State of Connecticut, Department of Administrative Services 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 August 12, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his August 3, 2016 request to review or copy certain public records.
3. It is found that the complainant made an August 3, 2016 request to the respondents to review records relating to environmental sampling done at Osborne Correctional Institution.
4. It is found that the requested records report on the levels of polychlorinated biphenyl ("PCB") in areas of Osborne where inmates are located.

5. It is found that the respondents replied on November 2, 2016 that the request was denied based on safety and security concerns.

6. Section 1-200(5), G.S., defines “public records” as follows:

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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. 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, (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.

8. 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.”

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

10. The respondent Department of Correction claimed that the withheld records are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides that disclosure is not required of:

Records, 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... Such records shall include, but are not limited to:

(A) Security manuals, including emergency plans contained or referred to in such security manuals;

(B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;

(C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and

(H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers.

11. It is found that the requested records are highly technical, and easily susceptible to misinterpretation, which the Commissioner of Correction has reasonable grounds to believe may result in inmates experiencing, and expressing, dissatisfaction or fear over their conditions of confinement.

12. It is found that work stoppages by inmates in correctional institutions have arisen over other conditions of confinement, e.g., when inmates are unhappy with meals, housing, medical care, religious services, or with policies regarding recreation and discipline. It is found that the Commissioner of Correction has reasonable grounds to believe that such work stoppages, particularly in areas believed to be dangerous, may also result from disclosure of PCB contamination, whether true or not.

13. It is found that inmate complaints about conditions of confinement have also lead to other disruptions by inmates, such as covering windows such that correctional staff cannot see the inmates inside. It is found that the Commissioner of Correction has

reasonable grounds to believe that such disruptions may also result from disclosure of PCB contamination, whether true or not.

14. It is found that inmate complaints about conditions of confinement have led to inmates refusing to cooperate with a correctional officer, or taking their anger out on the officer who is, for example, moving the inmate into what the inmate perceives as unsafe housing. It is found that the Commissioner of Correction has reasonable grounds to believe that such refusal to cooperate may also result from disclosure of PCB contamination, whether true or not.

15. It is found that the Commissioner of Correction has reasonable grounds to believe that work stoppages, disruptions, and conflicts between inmates and correctional officers may result in a safety risk.

16. It is therefore concluded that the Commissioner of Correction has reasonable grounds to believe that disclosure of the requested records may result in a safety risk, and that the records are thus permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S.

17. It is therefore concluded that the respondents did not violate the FOI Act as alleged.

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 June 28, 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:

David Osuch #139268  
Willard-Cybulski Correctional Institution  
391 Shaker Road  
Enfield, CT 06082

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State of Connecticut, Department of Correction; and  
State of Connecticut, Department of Correction;  
c/o James Neil, Esq.  
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and

Jeffrey Beckham, Esq.  
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