

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Herbert Clark,

Complainant

against

Docket #FIC 2018-0544

James P. Wardwell, Chief, Police Department,
City of New Britain; Police Department,
City of New Britain; City of New Britain;
Commissioner, State of Connecticut,
Department of Correction; and
State of Connecticut, Department of Correction,

Respondents

April 24, 2019

The above-captioned matter was heard as a contested case on March 9, 2019, at which time the complainant and the respondents appeared 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, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

At the hearing, the Department of Correction (“DOC”) respondents requested to be removed from the case on the ground that the complaint does not allege that the DOC respondents violated any provision of the Freedom of Information (FOI) Act. The hearing officer denied such request.

Thereafter, in a written submission dated March 14, 2019, the DOC respondents again moved “to amend the case caption” to remove the DOC from the case. Such motion shall be addressed herein.

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. The Commission takes administrative notice of the record and decision in Docket #FIC 2017-0545, Herbert Clark v. Chief, Police Department, City of New Britain; and Police Department, City of New Britain (August 8, 2018). In that case, the Commission concluded that

the respondents violated the FOI Act by failing to deliver certain medical records requested by the complainant to him at the DOC facility where he was incarcerated. Accordingly, the Commission ordered the respondents to forthwith deliver such records to the complainant, free of charge.

3. It is found that, by letter dated September 23, 2018, and filed September 26, 2018, the complainant appealed to this Commission, alleging that the New Britain respondents failed to comply with the order of this Commission, described in paragraph 2, above.

4. At the hearing in this matter, the complainant testified that the only medical record still at issue in this case is a toxicology report, a copy of which he has not yet received. Counsel for the New Britain respondents represented at the hearing that the New Britain respondents do not maintain such record and therefore did not send such record to the complainant at the DOC facility where he is incarcerated.

5. After the hearing, the New Britain respondents submitted an affidavit of Detective Jenifer Yarsawich of the New Britain Police Department. In that affidavit, Detective Yarsawich described her search for any responsive medical records and averred that no medical records exist in the case file pertaining to the complainant's criminal case.

6. Such affidavit has been marked as Respondents' Exhibit 1 (after-filed).

7. Based upon the affidavit, it is found that the New Britain respondents conducted a thorough search for the records they were ordered by this Commission to disclose, and that they do not maintain any such records.

8. Accordingly, it is found that the New Britain respondents did not fail to comply with the Commission's order in Docket #2017-0545, as alleged.

9. Based on the foregoing evidence, it is found the DOC respondents' rights, duties or privileges were not at issue in this matter, and such respondents are hereby removed as parties to the case.¹ The case caption shall be amended to reflect such removal.

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.

¹ Section 1-21j-30 of the Commission's regulations provides, in relevant part: (a) In issuing the notice of hearing described in section 1-21j-34 of the Regulations of Connecticut State Agencies, the executive director or his or her designee shall designate as a party any person known to the commission whose legal rights, duties or privileges are required by statute to be determined by a commission proceeding and who is required by law to be a party in a commission proceeding, and any person whose participation as a party is then deemed to be necessary to the proper disposition of such proceeding. Subsequent to the issuance of the notice of hearing no other person before the commission shall have standing as a party, and no party having been designated as such shall be removed as a party, except upon the express order of the commission or the presiding officer....(c) The commission or the presiding officer may remove as a party any person whose rights, duties or privileges are determined not to be at issue in the contested case....

Approved by Order of the Freedom of Information Commission at its regular meeting of April 24, 2019.

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:

HERBERT CLARK, #187886, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

JAMES P. WARDWELL, CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN; POLICE DEPARTMENT, CITY OF NEW BRITAIN; CITY OF NEW BRITAIN, c/o Attorney Joseph E. Skelly, Jr., Corporation Counsel, City of New Britain, 27 West Main Street, New Britain, CT 06051; **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

Cynthia A. Cannata
Acting Clerk of the Commission