

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Andres Sosa,

Complainant

against

Docket #FIC 2015-644

Scott Semple, Commissioner,
State of Connecticut, Department of
Correction; and State of Connecticut,
Department of Correction,

Respondents

July 27, 2016

The above-captioned matter was heard as a contested case on May 17, 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, on a request form dated September 22, 2015, the complainant requested that the respondents provide him with a copy of the respondent Department of Correction's "new agreement with Inmate Legal Assistance."
3. It is found that, by letter dated September 23, 2015, the respondents acknowledged receipt of the complainant's request, described in paragraph 2, above, and informed him that he would hear back from them when the documents were available.
4. It is found that, by a second letter dated September 23, 2015, the respondents informed the complainant that the requested record was available and would be forwarded to him upon their receipt of payment in the amount of \$13.75 (for the cost of copying 55 pages of records). The respondents also informed the complainant that he was not currently considered to be indigent. In addition, the respondents informed the complainant that the copy of the new Inmate Legal Assistance agreement had been redacted due to safety and security concerns. However, at the hearing the respondents testified that they were not claiming any exemptions from disclosure.

5. By letter of complaint received and filed September 30, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the records he requested as described in paragraph 2, above. The complainant also requested the imposition of civil penalties.

6. 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.

7. 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 . . . (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:

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.... The fee for any copy provided in accordance with the Freedom of Information Act:

By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page....

9. Additionally, §1-212(d), G.S., provides: “The public agency shall waive any fee provided for in this section when: (1) The person requesting the records is an indigent individual....”

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

11. At the hearing in this matter, the complainant contended that he was indigent and that the respondents improperly denied his request for a fee waiver. The complainant also contended that the Department of Correction's ("DOC") standard of indigence for inmates is unreasonable and discriminates against inmates.

12. The respondents claimed, however, that the complainant was not indigent under the DOC's standard of indigence, as reflected in its Administrative Directives 3.10 and 6.10. The respondents also maintained that the Commission has already upheld DOC's standard for waiving copying fees for indigent inmates.

13. It is found that DOC's Administrative Directive 3.10 (Fees, Reimbursements and Donations), provides, in relevant part:

An inmate shall be charged twenty-five cents for each page copied. The fee shall be waived if an inmate is indigent. For copies of records pursuant to the [FOI] Act, an inmate shall be considered indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety (90) days preceding the receipt by the Department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request).

14. It is found that DOC's Administrative Directive 6.10 (Inmate Property) provides, in relevant part, that "[a]n inmate shall be considered indigent when he or she has less than five dollars (\$5.00) on account at admission or when the monetary balance in his or her inmate trust account, or in any other known account, has not equaled or exceeded five dollars (\$5.00) at any time during the preceding ninety (90) days."

15. It is found that at the time of the September 22nd request, the complainant had less than \$5.00 in his inmate trust account.

16. It is found that on August 21, 2015, which was during the 90 days preceding the September 22nd request, the complainant received \$50.00 into his inmate trust account.

17. It is also found that on September 1, 2015, approximately three weeks before his September 22nd request, the complainant made purchases at the commissary totaling \$29.77.

18. It is found that during the 90 days preceding the complainant's request, the complainant had a balance in his inmate trust account that exceeded five dollars (\$5.00).

19. The Commission also takes administrative notice of its decisions in Docket #FIC 2010-030; Bryant Rollins v. Freedom of Information Officer, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (September 22, 2010); Docket #FIC 2009-137; Bryant Rollins v. Administrator, State of Connecticut, Department of Correction, Freedom of Information Office; and State of Connecticut, Department of Correction (February 24, 2010); and Docket #FIC 2009-483; Bryant K. Rollins v. Executive Director, State of Connecticut, University of Connecticut Health Center, Correctional Managed Health Care; and State of Connecticut, University of Connecticut Health Center, Correctional Managed Care (July 14, 2010), in which this Commission approved the DOC's standard of indigence insofar as it looks at the inmate's trust account balance as of the date of the request, and looks back in time on the inmate's trust account history.

20. It is concluded that the respondents did not violate §1-212(d)(1), G.S., by refusing to waive copying fees for the complainant at the time of his request in this matter.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 27, 2016.

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:

Andres Sosa # 260589
Corrigan-Radgowski Corectional Center
986 Norwich-New London Tpke.
Uncasville, CT 06382

Scott Semple, Commissioner, 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