

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ryan Bailey,

Complainant

against

Docket #FIC 2019-0704

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

Respondents

April 14, 2021

The above-captioned matter was heard as a contested case on October 27, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

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 inmate request form dated November 5, 2019, the complainant made a request to the respondents for the following Department of Correction Administrative Directives ("A.D."): A.D. 6.5 (Authorized Armory Items during Use of Force, attachments A through E); A.D. 7.2 (Armories); A.D. 7.3 (Emergency Plans); A.D. 7.4 (Emergency Response Units); and A.D. 10.1 (Inmate Pay Plan Matrix, only).
3. It is found that on or about November 6, 2019, the respondents informed the complainant that Chapter 7 of the DOC's Administrative Directives was exempt from disclosure and requested payment of \$0.25 for a copy of the A.D. 10.1 matrix, described in paragraph 2, above. The respondents' November 6th response did not specifically address the complainant's request for attachments A through E of A.D. 6.5.

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

4. By letter received on November 21, 2019,² the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with records responsive to his November 5, 2019 request, described in paragraph 2, above. The complainant specifically challenged the respondents’ claim that the requested Chapter 7 Administrative Directives are exempt from disclosure pursuant to §1-210(b)(18), G.S.³

5. Section 1-200(5), G.S., provides:

“[p]ublic 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

[e]xcept 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 . . . or (3) receive a copy of such records in accordance with section 1-212....

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

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

³ Given that the complainant’s complaint specifically challenged the withholding of the requested Chapter 7 Administrative Directives, the request for copies of A.D. 6.5 (Authorized Armory Items during Use of Force, attachments A through E) and A.D. 10.1 (Inmate Pay Plan Matrix, only), shall not be further addressed herein. The Commission also notes that although the complainant provided testimony at the hearing regarding all of the records requested in his November 5th request, the complainant did not dispute that the only records at issue are A.D. 7.2, A.D. 7.3 and A.D. 7.4.

8. At the hearing in this matter, the respondents argued that A.D. 7.2, A.D. 7.3, and A.D. 7.4, are exempt from disclosure pursuant to §1-210(b)(18), G.S., in that disclosure may result in a safety or security risk inside a correctional institution.

9. On January 15, 2021, pursuant to an order of the hearing officer, the respondents submitted 58 pages of unredacted records for in camera inspection, along with an in camera Index. Such records have been marked as IC-2019-0704-1 through IC-2019-0704-58. On the in camera Index, the respondents claimed that such records consist of Administrative Directives 7.1 through 7.8, and are exempt from disclosure pursuant to §1-210(b)(18), G.S.

10. Section 1-210(b)(18), G.S., provides, in relevant part, that disclosure is not required of:

[r]ecords, the disclosure of which the Commissioner of Correction, or as it applies to Whiting Forensic Hospital, the Commissioner of Mental Health and Addiction Services, 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 or Whiting Forensic Hospital. 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 Hospital facilities;
- (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Hospital 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 Hospital 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 Hospital facilities;
- (F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Hospital 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. With respect to IC-2019-0704-1 through 7, and IC-2019-0704-41 through 58, which the respondents described on the in camera Index as Administrative Directives 7.1, 7.5, 7.6, 7.7 and 7.8, it is found that such records are not responsive to the complainant's November 5th request, and therefore shall not be further addressed herein.

12. With respect to IC-2019-0704-8 through 40, which the respondents described on the in camera Index as Administrative Directives 7.2, 7.3 and 7.4, at the hearing the respondents contended that such records contain information relating to security including, but not limited to, emergency plans, security procedures, and security equipment information.

13. Counselor Supervisor ("CS") Campanelli, the respondents' FOI Administrator, testified that the respondent Commissioner believes that the disclosure of such information would pose a threat to the correctional facility. CS Campanelli testified that the Chapter 7 Administrative Directives have never been considered public information, and that only certain supervisory staff are permitted access to such information. In addition, he testified that plans contained therein detail how the Department of Correction ("DOC") handles emergency situations (e.g., riots, escapes), provides greater detail about armory tools and when to and when not to utilize such tools. CS Campanelli also testified that A.D. 7.4, which concerns emergency response units, contains sensitive information about DOC's Correctional Emergency Response Team and Special Operations Group, including assignments, the number of individuals on a team, how many would respond to a certain incident, and where they are to respond in certain incidents.

14. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, Judicial District of New Britain at New Britain, Docket No. CV074015438 and CV084016766 (November 3, 2008), the court concluded that the FOIC's role in reviewing the DOC Commissioner's safety risk determination is to determine "whether the [commissioner's] reasons were pretextual and not bona fide, or irrational."

15. Based upon the foregoing findings of fact and review of the in camera records, it is found that the respondent Commissioner has reasonable grounds to believe that disclosure of the requested records may result in a "safety risk", including the risk of disorder in a correctional institution or facility. It is further found that the reasons given are bona fide, and not pretextual, or irrational.

16. It is concluded that the records, described in paragraphs 12 and 13, above, are exempt from disclosure pursuant to §1-210(b)(18), G.S., and that the respondents did not violate the FOI Act with respect to such records.

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 April 14, 2021.



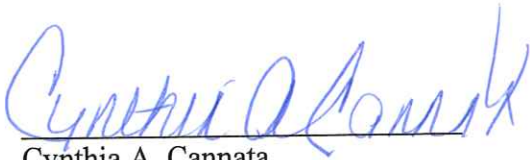
Cynthia A. Cannata
Acting Clerk of the Commission

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:

RYAN BAILEY, #342318, MacDougall-Walker CI, 1153 East Street South, Suffield, CT 06080

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Tracie C. Brown, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission