

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Jose Perez,

Complainant

against

Docket #FIC 2020-0239

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

Respondents

December 15, 2021

The above-captioned matter was heard as a contested case on April 7, 2021, 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 The complainant is incarcerated at a correctional institution operated by the 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. It is found that, by Inmate Request Form dated April 23, 2020, the complainant requested copies of an incident report and photos of his injuries sustained on March 6, 2020. ("April 23rd request").
3. It is found that, by letter dated April 28, 2020, the respondents' Freedom of Information Liaison at the Corrigan-Radgowski Correctional Center ("FOI Liaison") acknowledged the April 23rd request.
4. It is found that, by Inmate Request Form dated April 30, 2020, the complainant informed the respondents that he "wish[ed] to pay for whatever amount it is for my incident reports and photos of injuries sustained on March 6, 2020."

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

5. It is found that, by letter dated May 6, 2020, the FOI Liaison informed the complainant that once the incident report and photos were ready, a payment request form would be sent to the complainant.

6. It is found that, by Inmate Request Form dated May 8, 2020, the complainant requested that the respondents preserve the handheld video for a March 8, 2020 incident.

7. It is found that, by letter dated May 19, 2020, the FOI Liaison acknowledged the complainant's May 8, 2020 request for preservation of the handheld video.

8. By letter of complaint received and filed May 29, 2020,² 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.

9. By letter dated June 17, 2020, the FOI Liaison informed the complainant that 37 pages of records responsive to his April 23rd request were available and requested that the complainant go to his unit counselor to fill out a special request form for payment in the amount of \$9.25.

10. It is found that on March 16, 2021, the respondents' FOI Administrator, after having reviewed the complaint filed in this matter, followed-up with the complainant and noted that "[t]o date, payment has not been received and we have confirmed you are not indigent at this time nor at the time of your request. If you would like to receive the requested records, please submit payment as previously advised." The FOI Administrator also enclosed a copy of the June 17th letter, described in paragraph 9, above.

11. It is found that sometime between March 16, 2021, and April 6, 2021, the FOI Administrator located an additional six pages of records responsive to the April 23rd request. It is found that by letter dated April 6, 2021, he informed the complainant that there were 43 pages of responsive records, and that such records would be provided upon receipt of payment in the amount of \$10.75.³

12. At the time of the request, §1-200(5), G.S., provided:

‘[p]ublic records or files’ means any recorded data or information relating to the conduct of the public's business prepared, owned,

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 In the April 6, 2021 letter, the FOI Administrator also informed the complainant that certain redactions were made to the incident report. Such redactions are not at issue in this matter, and therefore will not be further addressed herein.

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

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

[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, (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.

14. 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.... The fee for any copy provided in accordance with the Freedom of Information Act...shall not exceed twenty-five cents per page....

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

16. 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.

17. At the hearing in this matter, the complainant contended that he was indigent and that the respondents failed to provide him with records responsive to his April 23rd request. He also contended that the respondents failed to respond to his May 8, 2020, request for the preservation of the handheld video.

18. With respect to the May 8, 2020 request for the preservation of the handheld video, it is found that the complainant did not allege a violation of the FOI Act in his complaint with respect to such request. Furthermore, jurisdiction over the retention and destruction of public records does not rest with the Commission, but rather with the State’s Public Records Administrator, and the applicable State’s Attorney, as provided by statute, or as provided by other state or federal law.

⁴ The Commission notes that the definition of “public records or files” in §1-200(5), G.S., subsequently was amended to include the term “videotaped”. See June Sp. Sess. Public Act 21-2, §147.

19. With respect to the April 23rd request for records, the respondents claimed that the complainant was not indigent under the Department of Correction's standard of indigence, as reflected in its Administrative Directive 6.10.

20. It is found that the Department of Correction'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."

21. It is found that at the time of the April 23rd request, the complainant had more than \$5.00 in his inmate trust account.

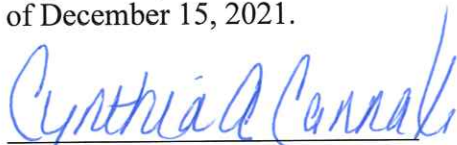
22. The Commission also takes administrative notice of its decisions in Docket #FIC 2010-030; Bryant Rollins v. Freedom of Information Officer, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (September 22, 2010); Docket #FIC 2009-137; Bryant Rollins 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 Department of Correction'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. See also Thomas May v. Freedom of Information Commission, Superior Court, J.D. of New Britain, Docket No. HHB CV 06 4011456 (April 30, 2007, Schuman, J.) (the standard for establishing indigence, and therefore waiver of copying fees, is wholly within the discretion of the custodial public agency, as long as the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner).

23. 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 December 15, 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:

JOSE PEREZ, #259825, Bridgeport Correctional Center, 1106 North Ave, Bridgeport, CT. 06604

ROLLIN COOK, 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