

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jan Gawlik,

Complainant

against

Docket #FIC 2020-0073

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

Respondent

January 13, 2021

The above-captioned matter was heard as a contested case on November 2, 2020, at which time the complainant and the respondents appeared 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

During the hearing, the complainant stated that he wished to submit one additional exhibit after the hearing. The respondents objected, and the hearing officer overruled such objection.² The exhibit was received by the Commission on November 6, 2020, and has been marked Complainant's Exhibit E (after-filed).

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 the complainant requested a copy of certain racial profiling reports from the State of Connecticut, Department of Emergency Services and Public Protection (DESPP), and further requested that such reports be provided to him on a compact disc (CD).
3. It is found that, by letter dated December 9, 2019, DESPP informed the complainant that a CD containing the requested reports had been sent to him at his correctional facility. DESPP also informed the complainant that it was likely that the facility would not permit him to possess a CD inside the facility, and offered to send a copy of the CD to an "alternate address". Further, DESPP informed the complainant that, if he wished to receive a paper copy of the

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

² Upon review of the exhibit after the hearing, the respondents withdrew their objection.

requested reports, he should remit a check for \$54.75, and the reports would be mailed to him. It is found that the complainant declined to pursue these alternative means of obtaining the requested reports.

4. It is found that the CD containing the requested reports was received by the correctional facility, and that, by letter dated January 29, 2020, the respondents' Freedom of Information (FOI) Administrator, Counselor Supervisor Campanelli, informed the complainant that such CD was being withheld pursuant to §1-210(b)(18), G.S. However, CS Campanelli offered to send the CD to a family member or to the complainant's attorney. It is found that the complainant did not respond to CS Campanelli's offer to send the CD elsewhere.

5. By letter dated February 4, 2020, and filed February 10, 2020, the complainant appealed to this Commission, alleging the respondents violated the FOI Act by denying his request.

6. 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.

7. 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....

8. It is found that the requested records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. 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...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....

10. Although the respondents cited to §1-210(b)(18), G.S., as the basis for withholding the CD from the complainant, it is found that the respondents did not claim that disclosure of the requested *public records*, as that term is defined in §1-200, G.S., as any recorded data or information relating to the conduct of the public's business, may result in a safety risk. In fact, it is found that CS Campanelli testified that the CD was withheld not because of the content (i.e., the racial profiling reports contained on the CD), but rather, because of the method of delivery of such information (i.e., the CD itself). It is found that the CD itself, as a method of delivery of information, is not a public record.

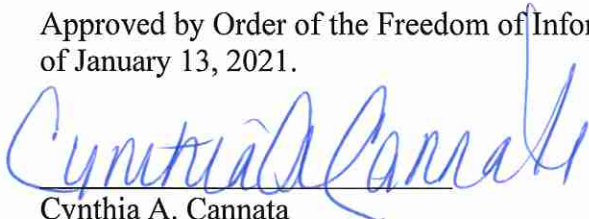
11. It is found that the respondents withheld the CD containing the requested public records based on the department's Administrative Directive 6.9, relating to the prohibition on contraband. According to the respondents, a CD/DVD is considered contraband because it can be broken and used as a weapon. It is found that inmates are prohibited from having blank CDs in their cells, and further are prohibited from possessing CDs containing information they requested directly pursuant to the FOI Act, because they do not have the means to view the information contained on CDs in their cells.

12. Although the complainant alleged a violation of the FOI Act in his complaint, such allegation was based on the respondents' improper citation to §1-210(b)(18), G.S., as discussed above, as the basis for withholding the CD. It is clear, however, that the controversy that exists between parties in this case is whether the respondents appropriately and fairly enforced the department's administrative directive prohibiting inmates from possessing certain CDs in their cells, when they withheld the CD from the complainant. It is equally clear that this Commission lacks jurisdiction to weigh in on that controversy, based on the specific facts of this case.³

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 January 13, 2021.



Cynthia A. Cannata
Acting Clerk of the Commission

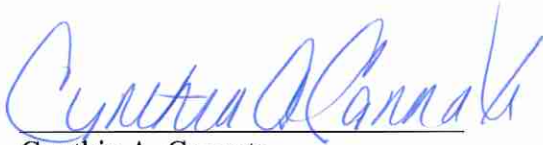
³ This case is distinguishable from David Tuttle v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2017-0241 (February 28, 2018) and Farouh Dorlette v. Warden, State of Connecticut, Department of Correction, Northern Correctional Institution et al., Docket #FIC 2010-284 (April 27, 2011), in which this Commission found jurisdiction, and ruled that, because the requested records *themselves* were considered "contraband" by the Department of Correction, such records were not public records and that therefore the department did not violate the FOI Act by withholding them.

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:

JAN GAWLIK, #138888, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Jennifer Lepore, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission