

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Victor Velasco,

Complainant

against

Docket #FIC 2020-0295

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

Respondents

October 13, 2021

The above-captioned matter was heard as a contested case on June 15, 2021, 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 For purposes of hearing, this matter was consolidated with Docket #FIC 2020-0294, Victor Velasco v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction. The complainant is incarcerated in a correctional facility of 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 letter dated May 19, 2020, the complainant requested from the respondents a copy of all communications between Counselor Supervisor Iozzia to Head Nurse Supervisor Kara Phillips regarding the complainant on certain specified dates.
3. It is found that, by letter dated May 19, 2020, the complainant requested from the respondents a copy of all incident reports, video and audio recordings, medical incident reports and other documents related to a May 6, 2020 incident. The complainant also requested a copy of the "P-unit" video recording "angled at cell 112" on May 6, 2020.

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

4. It is found that, by letter dated May 19, 2020, the complainant requested from the respondents a copy of all incident reports, video and audio recordings, medical incident reports and other documents related to a May 7, 2020 incident.

5. By Affidavit dated June 26, 2020, and filed July 1, 2020,² the complainant appealed to this Commission, alleging the respondents violated the Freedom of Information (“FOI”) Act by denying his requests. The complainant also requested that the Commission impose a civil penalty against the respondents.

6. 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, 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.³

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 hoursor (3) receive a copy of such records in accordance with section 1-212....

8. Section 1-212(a), G.S., provides, in relevant part: [a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

9. It is found that the requested records, described in paragraphs 2, 3 and 4, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S. For purposes of establishing

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. Accordingly, the Commission retains jurisdiction over this appeal.

³ Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.”

the Commission's jurisdiction, it is also found that the request at issue in this matter was deemed denied pursuant to §1-206(a), G.S.

10. It is found that the respondents acknowledged the requests, conducted a search for responsive records, and provided some of those records to the complainant, free of charge.

11. Specifically, it is found that with respect to the request described in paragraph 2, above, the respondents contacted the Department of Administrative Services/Bureau of Enterprise Systems & Technology ("DAS/BEST") and requested that DAS/BEST conduct a search for any and all responsive emails. It is found that one responsive email was located and that such email was provided to the complainant.

12. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, with respect to the request described in paragraph 2, above.

13. With respect to the requests described in paragraphs 3 and 4, above, it is found that the respondents provided a redacted copy of all incident reports relating to the May 6, 2020 and May 7, 2020 incidents to the complainant, but that they withheld the requested videos. It is found that the respondents do not maintain any audio recordings related to either the May 6, 2020 or the May 7, 2020 incidents.

14. At the hearing in this matter, the respondents claimed that the videos and the redacted portions of the reports responsive to the requests described in paragraphs 3 and 4, above, are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides 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.....Such records shall include but are not limited to (G) logs or other documents that contain information on the movement of assignment of inmates or staff at correctional institutions or facilities....

15. With regard to the videos, the respondents requested that the hearing officer take administrative notice of the testimony of the witnesses in Victor Velasco v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2020-0294, September 8, 2021 as to the safety and security concerns that may result from disclosure of video recordings of images of the inside of a correctional institution. The hearing officer granted such request and administrative notice is hereby taken of the following testimony in Docket #FIC 2020-0294: that the requested video recordings depict the locations of the security cameras, which in turn depict the areas covered and not covered by the cameras; staffing levels and escorting procedures; locations of doors and windows; types of locks on the doors; location of the "traps" on the doors; and the method by which restraints are removed from the inmates for medical procedures; and that disclosure of the videos may result in the risk of escape because the

videos reveal vulnerabilities in the security of the facilities, and that disclosure of a series of videos could create a complete picture of the inside of the facility, which could be studied by someone on the outside and provided to an inmate for the purpose of planning an escape.

16. 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 reversed the FOIC's finding that the DOC failed to prove that disclosure of certain personnel records may result in a safety risk. According to the court:

the commissioner of DOC and his staff certainly have the experience to know when a particular request will result in a safety risk. Having received the reasons given by the DOC for declining to make the record available, the FOIC is not free to reject DOC's reasons because they are "hypothetical" and not based on actual events. The FOIC's role is to determine whether the DOC's reasons were pretextual and not bona fide, or irrational.

17. Since that decision, the Commission has deferred to the judgment and experience of the Commissioner of the Department of Correction ("DOC") regarding safety and security risks and consistently found that video recordings of the inside of a correctional institution are exempt from disclosure pursuant to §1-210(b)(18), G.S., in cases in which a witness for the DOC has testified as to what is depicted on the video, and explained how disclosure of such video may result in a safety risk, and in which it was found that such reasons were bona fide, rational and not pretextual. See e.g., Robin Elliot v. Warden, State of Connecticut, Department of Correction et al., Docket #FIC 2008-733 (July 1, 2009); Brandon Holloway v. State of Connecticut, Department of Correction et al., Docket #FIC 2011-066 (January 11, 2012); Ira Alston v. Commissioner, State of Connecticut, Department of Correction et al., Docket #2015-882 (September 14, 2016); Charles Fonck, III v. Scott Semple, Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2018-0155 (December 19, 2018); Seth Kerschner v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2018-0106 (December 19, 2018); Victor Velasco v. Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2018-0705 (September 25, 2019); Albert Farah v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2020-0287 (July 28, 2021); Victor Velasco v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2020-0294 (September 8, 2021).

18. In the present case, it is found that the DOC Commissioner has reasonable grounds to believe that disclosure of the requested videos, described in paragraphs 3 and 4, above, may result in a safety risk, and that the reasons given are bona fide, and not pretextual or irrational. It is therefore found that the requested videos are exempt from disclosure pursuant to §1-210(b)(18), G.S.

19. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, with respect to the requested videos.

20. At the hearing in this matter, the complainant challenged the redactions contained in the incident reports, and requested that the hearing officer review such records in camera. On June 25, 2021, the hearing officer issued an order to the respondents to submit the incident reports to the Commission for in camera inspection, and such records, consisting of 66 pages, were submitted to the Commission on June 29, 2021.

21. On the Index to the in camera records, the respondents described the redacted information as: (1) first names of DOC staff; (2) personal identifier of other inmate(s); (3) assignment/post of DOC staff; (4) emergency response code used by DOC staff; (5) information/details of another offender; (6) medical information of other inmate; (7) social security number; (8) management sub codes used by DOC. After careful in camera inspection of the records, it is found that the redactions are limited to such information.

22. At the hearing in this matter, Campanelli testified that disclosure of all of the information described in paragraph 21, above, may result in a safety risk.

23. With respect to the first names of DOC staff, the Commission takes administrative notice of the following findings of fact in Curt Rivard v. Jon Brighthaupt, Deputy Warden, State of Connecticut, Department of Correction, Northern Correctional Institution, Docket #FIC 2009-350 (May 12, 2009):

(a) DOC staff is trained not to disclose their first names to inmates, and to direct inmates to address them only by their last names if their first names are otherwise learned by inmates;

(b) the use of only last names creates and maintains the formal relationship between staff and inmates that is necessary to maintain order in a correctional institution or facility because the formality generates respect for a staff member or his or her authority;

(c) if an inmate does not respect a staff member or his or her authority, such inmate is more likely to disobey directives which may result in a safety risk.

See also Luis Salaman v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction, Docket #FIC 2018-0710 (October 23, 2019) (disclosure of first names of DOC staff may constitute a safety risk and therefore are exempt from disclosure pursuant to §1-210(b)(18), G.S.); Alejandro Velez v. Scott Semple, Commissioner, State of Connecticut, Department of Correction, Docket #FIC 2017-0296 (May 23, 2018) (disclosure of first names of DOC staff may constitute a safety risk and therefore are exempt from disclosure pursuant to §1-210(b)(18), G.S.).

24. Based upon the foregoing, it is found that the DOC Commissioner has reasonable grounds to believe that disclosure of the first names of DOC staff may result in a safety risk, and

that the reasons given are bona fide, and not pretextual or irrational. It is therefore found that such first names are exempt from disclosure pursuant to §1-210(b)(18), G.S.

25. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, by withholding the first names of DOC staff contained in the in camera records from the complainant.

26. With respect to the respondents' claim that the personal identifier of other inmate(s); medical information about an inmate; and information/details of another offender, are exempt from disclosure pursuant to §1-210(b)(18), G.S., Campanelli testified at the hearing in this matter that such information, in the possession of an inmate, can be used to bribe or extort other inmates, which may result in a safety risk.

27. Based upon the foregoing, it is found that the DOC Commissioner has reasonable grounds to believe that disclosure of personal identifiers and medical information of other inmate(s), and information/details of another offender may result in a safety risk, and that the reasons given are bona fide, and not pretextual or irrational. It is therefore found that personal identifiers and medical information of other inmate(s) and information/details of another offender are exempt from disclosure pursuant to §1-210(b)(18), G.S.

28. Accordingly, it is found that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, by withholding personal identifiers and medical information of other inmates and information/details of another offender contained in the in camera records from the complainant.

29. With respect to the respondents' claim that emergency response codes and management sub codes used by DOC staff are exempt from disclosure pursuant to §1-210(b)(18), G.S., the Commission takes administrative notice of the following findings of fact in Velez, supra:

(a) certain codes are used for different types of emergencies within the facility and the responses to various emergencies by DOC staff depends upon the code;

(b) disclosure of the codes to inmates may enable inmates to familiarize themselves with the respondents' emergency protocols, which may result in a safety risk.

See also Salaman, supra (Commissioner had reasonable grounds to believe that disclosure of emergency codes and procedures may result in a safety risk pursuant to §1-210(b)(18), G.S.); Angel Caballero v. Commissioner, State of Connecticut, Department of Correction, Docket #FIC 2018-0475 (April 10, 2019) (Commissioner had reasonable grounds to believe that disclosure of emergency codes may result in a safety risk pursuant to §1-210(b)(18), G.S.); Victor Velasco v. Commissioner, State of Connecticut, Department of Correction, Docket #FIC 2017-0755 (Commissioner had reasonable grounds to believe that disclosure of emergency codes may result in a safety risk pursuant to §1-210(b)(18), G.S.).

30. Based upon the foregoing, it is found that the DOC Commissioner has reasonable grounds to believe that disclosure of emergency response codes and management sub codes may result in a safety risk, and that the reasons given are bona fide, and not pretextual or irrational. It is therefore found that that the emergency response codes and management sub codes are exempt from disclosure pursuant to §1-210(b)(18), G.S.

31. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, by withholding the emergency response codes and management sub codes contained in the in camera records from the complainant.

32. With regard to the social security number contained in the in camera records, the Commission has consistently declined to order disclosure of such information, based on the finding that “social security numbers are used by both the public and private sector for a wide range of personal identification purposes including but not limited to use of this number for state and federal taxpayer information.....Disclosure of social security numbers would allow persons with knowledge of such numbers to access a wealth of data, including personal, financial, and tax data concerning the individual assigned that number.” See Eric Garrison v. Supervisor, Unclaimed Property Division, State of Connecticut, Office of the Treasurer, Docket #FIC 89-76, (September 13, 1989). See also Robert H. Boone and the Journal Inquirer v. Anthony Milano, District Manager, Metropolitan District Commission, Docket #FIC 2000-173 (August 23, 2000); Yvonne Perkins v. Chief, Police Department, City of Danbury, Docket #FIC 2018-0408 (April 24, 2019).

33. In the present case, the Commission again declines to order disclosure of the social security number contained in the in camera records.

34. With regard to the assignment/post of DOC staff, the Commission has consistently held that the Commissioner of Correction has reasonable grounds to believe that disclosure of records reflecting the schedule, work assignments and locations of DOC staff may result in a safety risk pursuant to §1-210(b)(18)(G), G.S. See Jason Goode v. Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2015-352 (March 9, 2016) (noting that the statute specifically lists “logs” and “other documents” that contain information on the assignment of staff as exempt from disclosure); Timothy Townsend v. Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2014-323 (March 25, 2015) (noting that the statute specifically lists “logs” and “other documents” that contain information on the assignment of staff as exempt from disclosure); Andres Sosa v. Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2012-691 (October 9, 2013) (noting that the statute specifically lists “logs” and “other documents” that contain information on the assignment of staff as exempt from disclosure).

34. Based upon the foregoing, it is found that the DOC Commissioner has reasonable grounds to believe that disclosure of information in the in camera records reflecting the assignment/post of DOC staff may result in a safety risk pursuant to §1-210(b)(18), G.S., and that the reasons given are bona fide and not pretextual or irrational. It is therefore found that such information is exempt from disclosure pursuant to §1-210(b)(18), G.S.

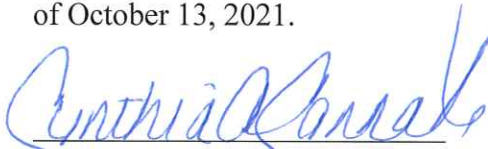
35. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint, by withholding information reflecting the assignment/post of DOC staff from the complainant.

36. Because the respondents did not violate the FOI Act, there is no basis on which to impose a civil penalty against them.

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 October 13, 2021.



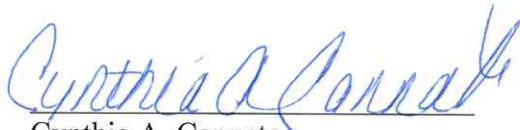
Cynthia A. Cannata
Acting Clerk of the Commission

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:

VICTOR VELASCO, #213065, Corrigan/Radgowski Correctional Center, 986 Norwich-New London Turnpike, Uncasville, CT 06382

ROLLIN COOK, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Lori McCurdy, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission