

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ian Wright,

Complainant

against

Docket #FIC 2020-0392

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

Respondents

April 13, 2022

The above-captioned matter was heard as a contested case on October 7, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session). The complainant was incarcerated at a facility of the Department of Correction at the time of the request and at the time of the hearing.

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 August 5, 2020, the complainant requested from the respondents a copy of the following records:
  - (a) any and all memoranda created and maintained by the Department of Correction ("DOC") regarding COVID-19 social distancing protocols;
  - (b) log book entries and incident reports regarding the complainant's hunger strike;
  - (c) medical incident reports regarding the complainant's hunger strike;
  - (d) log book entries regarding (i) outdoor or gymnasium recreation from 2019 through 2020 at the complainant's correctional facility and (ii) two specific tours of the correctional facility by certain members of the DOC staff;

- (e) records describing the responsibilities and duties of certain members of the DOC staff;
- (f) records showing the full name of Correctional Head of Food Services 3 Winton; and
- (g) records showing the exact date(s) that certain members of the DOC staff were hired or appointed to their respective positions.

3. It is found that, by letter dated August 11, 2020, the respondents acknowledged the request described in paragraph 2, above, and informed the complainant that some of the requested records would be disclosed and that others were exempt from disclosure. It is also found that in a second letter dated August 11, 2020, the respondents informed the complainant that there were no records responsive to the request described in paragraph 2(b), above.

4. By letter of complaint, dated August 13, 2020 and filed August 17, 2020<sup>1</sup>, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records, described in paragraph 2, above. The complainant also requested the imposition of a civil penalty against the respondents.

5. 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.<sup>2</sup>

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

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<sup>1</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 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, through June 30, 2021. Consequently, the Commission retains jurisdiction.

<sup>2</sup> Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

every person shall have the right to ... (3) receive a copy of such records in accordance with section 1-212.

7. 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.”

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

9. With regard to the request, described in paragraph 2(a), above, it is found that, on October 26, 2020, the respondents provided the complainant with a copy of one memorandum dated July 1, 2020.

10. At the hearing in this matter, the complainant argued that the respondents should maintain more than the single memorandum he received. However, the respondents testified, and it is found, that a thorough search was conducted and all records responsive to the request described in paragraph 2(a), above, were provided to the complainant.

11. With regard to the request for log book entries and incident reports, described in paragraph 2(b), above, the complainant argued that the requested log book entries and incident reports should exist because the respondents’ protocols require them to create such log book entries and incident reports in response an inmate’s participation in a hunger strike. However, the respondents testified, and it is found, that because the DOC determined that the complainant had not participated in a hunger strike, no corresponding incident reports were generated and no log book entries were made.

12. With regard to the request for “medical incident reports” described in paragraph 2(c), above, Counselor Supervisor (“CS”) Campanelli, testified, and it is found, that the FOI liaisons in correctional facilities do not have access to inmates’ medical records. However, in an effort to satisfy the complainant’s request which should have been directed to the DOC’s medical division, CS Campanelli contacted the medical division and requested that they conduct a search for such medical incident reports. It is found that “medical incident reports” responsive to the requested were located and provided to the complainant.

13. Based on the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with regard to the requests described in paragraphs 2(a), 2(b) and 2(c), above.

14. With regard to the requests described in paragraphs 2(d), 2(e) and 2(f), above, the respondents contended that such records are exempt from disclosure pursuant to §1-210(b)(18), G.S.

15. 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 or facility under the supervision of the Department of Correction..." Section 1-210(b)(18)(G), G.S., specifically provides that disclosure is not required of "[l]ogs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities."

16. The Commission's role in reviewing the DOC Commissioner's safety risk determination under §1-210(b)(18), G.S., is to determine "whether the [commissioner's] reasons were pretextual and not bona fide, or irrational." Comm'r v. Freedom of Info. Comm'n, 46 Conn. L. Rptr. 533, 2008 WL 4926910, at \*5 (Conn. Sup. Ct. Nov. 3, 2008).

17. With regard to the requests, described in paragraphs 2(d) and 2(e), above, CS Campanelli testified that log book entries and other documents showing the daily duties and functions of staff, referred to as "Post Orders," are never disclosed to the public. CS Campanelli testified, and it is found, that log books and Post Orders reveal the movement of DOC staff, the timing for such staff movement and the completion of tasks, how the respondents generally operate, and the schedule that staff follow. CS Campanelli further testified, and it is found, that disclosing such details about the movement, operation and assignment of inmates and staff may result in a safety risk because individuals could find vulnerabilities in the respondents' procedures and determine optimal times for causing disruptions in the correctional facility.

18. The complainant argued that, because he had received unrelated Post Orders in the past, the respondents should be required to disclose the Post Orders responsive to his request at issue here. Effectively, the complainant argued that the respondents' prior disclosure is a waiver of their right to claim that Post Orders are exempt from disclosure pursuant to §1-210(b)(18), G.S. However, as previously held by the Commission, a public agency does not waive its right to claim an exemption under the FOI Act by virtue of a prior disclosure (except with regard to attorney-client privilege). See e.g. Goshdigian v. Town of West Hartford, Docket #FIC 2005-112 (the Town's use of information contained in public records does not waive the Town's right to claim that such records are exempt from disclosure); General Electric Comp. v. Office of Attorney Gen., et al., Docket #FIC 1998-089 (waiver of an exemption by a public agency in one instance does not abrogate the claim of exemption in other instances); and Ryffel v. Town of Fairfield, et al., Docket #FIC 88-83 (prior disclosure of contract proposals does not waive or otherwise abrogate the exemption to disclosure under Conn. Gen. Stat. §1-210(b)(9)).

19. Based on the foregoing, it is found that the Commissioner of Correction had reasonable grounds to believe that disclosure of the requested records described in paragraphs 2(d) and 2(e), above, may result in a safety risk, including the risk of harm to a person, or a disorder in a correctional institution or facility, within the meaning of §1-210(b)(18), G.S. It is further found that the respondents' reasons are bona fide and were not pretextual or irrational.

20. Therefore, it is found that the requested records described in paragraphs 2(d) and 2(e), above, are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

21. With regard to the request, described in paragraph 2(f), above, CS Campanelli testified that disclosure of the first names of DOC staff may result in a safety risk because

disclosing the full names of staff can lead to inmates threatening or harassing employees outside of the prison.

22. The Commission has previously held that the first names of staff members of the DOC are exempt from disclosure pursuant to §1-210(b)(18), G.S. See e.g., Alejandro Velez v. Scott Semple, Commissioner, State of Connecticut, Department of Correction; and Stat of Connecticut, Department of Correction, Docket #FIC 2017-0296 (May 23, 2018).

23. Based on the foregoing, it is found that the Commissioner of Correction had reasonable grounds to believe that disclosure of the requested records described in paragraph 2(f), above, may result in a safety risk, including the risk of harm to a person, or a disorder in a correctional institution or facility, within the meaning of §1-210(b)(18), G.S. It is further found that the respondents' reasons are bona fide and were not pretextual or irrational.

24. Therefore, it is found that the requested records described in paragraph 2(f), above, are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

25. With regard to the request described in paragraph 2(g), above, the respondents claimed such records are exempt from disclosure pursuant to §18-101f, G.S.

26. Section 18-101f, G.S. provides, in relevant part:

[a] personnel or medical file or similar file concerning a current or former employee of the ... Department of Correction ... including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction .... For the purposes of this section, an "employee of the Department of Correction" includes a member or employee of the Board of Pardons and Paroles within the Department of Correction.

27. CS Campanelli testified that the records responsive to the request described in paragraph 2(g), above, consist of employment details that are only located in individual staff personnel files. CS Campanelli further testified that the respondents do not maintain any single record that contains all start dates for DOC staff.

28. Based upon the testimony provided at the hearing, it is found that the requested records described in paragraph 2(g), above, constitute a personnel or medical file or similar file of a current or former employee of the DOC. It is further found that the complainant was committed to the custody of the DOC at the time of the request and at the time of the hearing in this matter.

29. Therefore, it is found that the requested records described in paragraph 2(g), above, are exempt from disclosure pursuant to §18-101f, G.S.

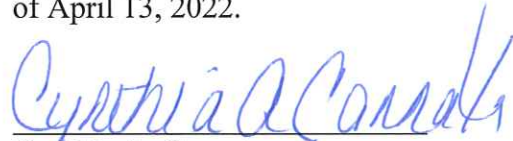
30. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the records described in paragraphs 2(d), 2(e), 2(f) and 2(g), above, as alleged in the complaint.

31. Because the respondents did not violate the FOI Act, consideration of the complainant's request for the imposition of a civil penalty is not warranted.

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 April 13, 2022.



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:

**IAN WRIGHT, #286236**, Osborn Correctional Institution, 335 Bilton Road, P.O. Box 100, Somers, CT 06071

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o Attorney Tracie C. Brown, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06114



Cynthia A. Cannata  
Acting Clerk of the Commission