

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Taylor,

Complainant

against

Docket #FIC 2021-0093

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

Respondents

February 23, 2022

The above-captioned matter was heard as a contested case on November 5, 2021, at which time the complainant and the respondents appeared remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Special Session). At the time of the request and the hearing, the complainant was incarcerated. For hearing purposes, this matter was consolidated with Docket #FIC 2021-0092, David Taylor v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction.

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 February 16, 2021, the complainant requested from the respondents a copy of:
 - (a) all records, such as any risk analysis or assessment, criteria, statistical data and other “tools” used to determine the complainant’s “designation or classification as a public safety risk in the UK, as a low risk offender in the USA, and any results of those determinations”; and
 - (b) the proposed reentry and discharge plan “to enable successful reintegration into my UK community”.
3. By letter dated February 24, 2021, and filed March 1, 2021,¹ the complainant appealed to this Commission, alleging the respondents violated the FOI Act by denying his request.

¹ 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

4. 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.²

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

6. 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.”

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

8. With regard to the records described in paragraph 2(a), above, pertaining to a safety risk assessment of the complainant in the UK, it is found that the respondents conducted a thorough search and that no such records were located.

9. With regard to the records, described in paragraph 2(a) above, pertaining to a safety risk assessment in the USA, it is found that the respondent department maintains an Objective Classification Manual. Although a “library copy” of the manual is available in the facility’s library for review by the inmate population, it is also found that a 25 page section of the manual, which contains the criteria by which the department determines an inmate’s safety risk score, is considered by the respondents to be confidential, and is not part of the “library copy”. It is found that such “confidential” portion of the manual is responsive to the request, described in paragraph 2(a), above. At the hearing in this matter, the respondents claimed that the confidential portion of the manual is exempt from disclosure pursuant to §1-210(b)(18), G.S.

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. Accordingly, the Commission retains jurisdiction over this appeal.

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

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...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 not be limited to ...(G) [l]ogs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutional or facilities....

11. 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.

12. CS Campanelli testified, and it is found, that an inmate's risk score determines, in part, where such inmate is housed within the correctional system. CS Campanelli further testified that disclosure of the confidential portion of the manual containing the criteria used to determine an inmate's risk assessment may result in a safety risk because inmates could use such information to manipulate their housing assignment within the correctional system.

13. Based upon the foregoing, it found that the Commissioner has reasonable grounds to believe that disclosure of the "confidential" portion of the manual, described in paragraph 9, above, may result in a safety risk, pursuant to §1-210(b)(18)(G), G.S. It is further found that the reasons given by the Commissioner are bona fide and not pretextual or irrational.

14. It is therefore found that the "confidential" portion of the manual, described in paragraph 9, above, is exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.

15. Also, with regard to the request, described in paragraph 2(a), above, for the results of the safety risk assessment in the USA, it is found that the respondents provided records to the complainant containing his safety risk score.

16. With regard to the request, described in paragraph 2(b), above, it is found that the respondents conducted a thorough search for a reentry and discharge plan. It is found, based on the credible testimony of CS Campanelli that no such records exist at this time because the complainant is not scheduled to be discharged from the respondents' custody until 2024.

17. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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 February 23, 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:

DAVID TAYLOR, #272912, Osborn CI, PO 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 06109



Cynthia A. Cannata
Acting Clerk of the Commission