

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ian Wright,

Complainant

against

Docket #FIC 2020-0393

Chairman, State of Connecticut,
State Marshal Commission; and
State Marshal Commission,

Respondents

January 12, 2021

The above-captioned matter was heard as a contested case on October 4, 2021, at which time the complainant appeared, presented testimony, exhibits and argument on the complaint. The respondents did not appear. 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 is incarcerated at a facility of the 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 August 5, 2020, the complainant requested that the respondents provide him with "a copy of the State Marshal Commission Manual published and/or in effect for the year 2018 through 2019." ("August 5th request"). The complainant in his request alleged that he was indigent and requested that the fees for copies be waived.

3. It is concluded that the respondents did not provide the requested record in response to the August 5th request, because they did not believe that he was indigent.

4. By letter dated August 13, 2020,¹ the complainant appealed to the Commission,

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

alleging that the respondents violated the Freedom of Information Act by failing to provide him with a copy of the record described in paragraph 2, above. The complainant also requested the imposition of civil penalties 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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.²

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 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...

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.... The fee for any copy provided in accordance with the Freedom of Information Act:

(A) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page...

8. Additionally, §1-212(d)(1), G.S., provides: "The public agency shall waive any fee provided for in this section when: (1) The person requesting the records is an indigent individual"

² 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”.

9. It is concluded that the requested record is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. At the request of the complainant, the Commission takes administrative notice of its final decision in Docket #FIC 2019-0522; Ian Wright v. Chairman, State of Connecticut, Connecticut Marshal Commission; and State of Connecticut, Connecticut Marshal Commission (August 26, 2020). In Docket #FIC 2019-0522, the complainant made a request for a copy of the State Marshal Commission Manual published on or about 2017, among other records. The Marshal Commission did not provide the requested records, because they did not believe that the complainant was indigent. The Commission found that, for purposes of §1-212(d)(1), G.S., the Connecticut Marshal Commission applies the same indigence standard used by the State of Connecticut Department of Correction (“DOC”) in deciding whether to waive copying fees for an inmate. The Commission further found, using the DOC standard of indigence insofar as it looks at the inmate’s trust account balance as of the date of the request, and 90 days before the request, that the complainant had more than \$5.00 in his trust account and therefore was not indigent under the DOC standard. See also 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) (the Commission notes its approval of the DOC’s standard insofar as it looks at the inmate’s trust account balance as of the date of the request and 90 days before the request).

11. It is found that the respondents’ indigency policy is similar to the DOC’s indigency policy in that such policy looks at the funds available in the inmate’s trust account on the date of the request, and looks back in time on the inmate’s trust account history.

12. Based on the testimonial and documentary evidence in the record, it is found that the complainant had only \$0.13 in his inmate trust account at the time of the August 5th request, and 90 days before such request. Accordingly, it is found that the complainant was indigent under the DOC standard.

13. It is concluded that, under the facts and circumstances of this case, the respondents violated §§1-210(a) and 1-212(d)(1), G.S., when they required payment for copies of the requested record.

14. Notwithstanding the conclusion reached in paragraph 13, above, the Commission in its discretion declines to consider the imposition a civil penalty in this matter.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall provide the complainant with a copy of the requested record, described in paragraph 2 of the findings, above, free of charge.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(d)(1),
G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting
of January 12, 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

CHAIRMAN, STATE OF CONNECTICUT, STATE MARSHAL COMMISSION; AND STATE MARSHAL COMMISSION, 450 Columbus Boulevard, Suite 1403, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission