

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Shawn Crocker,

Complainant

against

Docket # FIC 2020-0321

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

Respondents

January 26, 2022

The above-captioned matter was heard as a contested case on August 18, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts 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 is incarcerated in a correctional facility of the 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 form dated July 1, 2020, the complainant requested from the respondents the opportunity to inspect, or be provided copies of, records indicating the "ethnicity" of all inmates granted parole from January 1, 2015 through July 1, 2020.
3. It is found that, by form dated July 6, 2020, the respondents acknowledged the complainant's request. It is also found that, by letter dated July 7, 2020, the respondents informed the complainant that they did not maintain any records responsive to his request.
4. By letter of complaint, filed July 10, 2020¹, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his records 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 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. On May 20, 2021, the Governor issued Executive Order 12B, thereby extending Executive Order 7M through Jun 30, 2021. Consequently, the Commission retains subject matter jurisdiction.

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.”

8. It is found that the requested records, to the extent such records exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

9. At the hearing in this matter, the complainant testified that he did not receive the correspondence described in paragraph 3, above, from the respondents. The complainant further testified that the requested records must exist because the information was previously compiled for a report published by the American Civil Liberties Union (ACLU).

10. The respondents’ witness testified that Officer McMahon, who has since retired, conducted a thorough search for the requested records.

11. The respondents’ witness further testified, and it is found, that the information compiled for the ACLU report was data on the “race” of inmates, and that although the Department of Correction tracks the “race” of inmates, it does not track the “ethnicity” of inmates.

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”.

12. It is found that “race” and “ethnicity” are not treated as interchangeable terms by the respondents. Accordingly, it is found that there are no records responsive to the complainant’s request.

13. Consequently, 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 January 26, 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:

SHAWN CROCKER, #204918, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

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



Cynthia A. Cannata
Acting Clerk of the Commission