

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Abel Reyes,

Complainant

against

Docket #FIC 2021-0011

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 July 21, 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 The complainant was incarcerated at a facility of the respondents at the time of the request and at the time of the hearing.

After the hearing, the respondents submitted an after-filed exhibit, which has been admitted into evidence, without objection, and marked as follows: Complainant's Exhibit A (after-filed): Complainant's FOI Request.

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 29, 2020, the complainant requested the following: "2 copies of the incident report and 2 copies of the whole summary report that was written on by LT Valentine and DR Officer Grady."
3. It is found that the respondents provided all records responsive to the complainant's request on or about December 14, 2020. It is further found that such records were redacted.
4. By letter of complaint, dated December 29, 2020 and filed January 6, 2021, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with access to the requested records, described in paragraph 2, above.

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

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 that:

[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 inspect such records promptly during regular office or business hours...or...receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part that “[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 are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. During the hearing in this matter, the respondents testified that the following categories of information were redacted from the records: the first names of Department of Correction (“DOC”) staff; Security Risk Group (“SRG”) information; intelligence investigation information; and information regarding staff movement. The respondents contended that §1-210(b)(18), G.S., provides a basis for withholding the requested information in that disclosure would result in a safety risk or a disorder in the correctional facility.

10. The complainant disputed such contention, claiming that because he only sought the written details of his own alleged role in an incident that occurred in the correctional facility, he was entitled to receive an unredacted copy of the reports. However, the complainant did not object to the redactions of the first names of DOC staff or the names of witnesses, and therefore, such redactions shall not be further addressed herein.

11. Upon order of the hearing officer, the respondents submitted to the Commission an unredacted copy of the records, consisting of a document entitled “Incident Report –

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”.

Supplemental”, for an in camera inspection, along with an in camera index. Such records were submitted by the respondents on August 5, 2021 and shall be identified hereinafter as IC-2021-0011-1 through IC-2021-0011-5.

12. On the in camera index, the respondents contended that the information redacted from the in camera records is exempt from disclosure under §§1-210(b)(18), G.S.

13. 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 “[I]ogs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities.”

14. 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).

15. Based on the credible testimony of the respondents’ witness, Counselor Supervisor (“CS”) Anthony Campanelli, and a careful inspection of the in camera records, it is found that the following redactions consist of SRG information, intelligence investigation information, and information regarding staff movement: IC-2021-0011-1 (lines 9 through 41), IC-2021-0011-2 (lines 11 through 38), IC-2021-0011-3 (lines 9 through 12), IC-2021-0011-4 (lines 9 through 36), and IC-2021-0011-5 (lines 9 through 26).

16. At the hearing in this matter, CS Campanelli testified that disclosure of the information described in paragraph 15, above, may result in a safety risk because the nature of the narrative could put witnesses at risk by revealing specific details that could lead to the identity of witnesses. CS Campanelli further testified that the nature of the narrative could also hamper future investigations by revealing investigative methods.

17. Although the complainant sought information only pertaining to himself, CS Campanelli testified, and it is found, that all SRG members involved in an incident could potentially request their own piece of an investigation through FOI requests and put those pieces together to determine the identity of witnesses. The respondents further testified that SRG inmates are known to retaliate against witnesses and DOC staff.

18. The Commission takes administrative notice that, on several occasions, it has held that records concerning security risk groups are exempt from disclosure pursuant to §1-210(b)(18), G.S. See e.g., Ira Alston v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction, Docket #FIC 2015-189 (November 18, 2015).

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 paragraph 15, 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 were bona fide and were not pretextual or irrational.

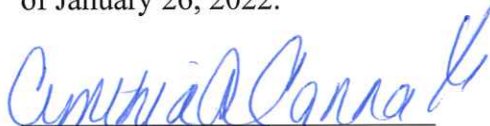
20. Therefore, it is found that the requested records are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

21. Based on the foregoing, it is concluded that the respondents did not violate the FOI Act by withholding such requested records from 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.



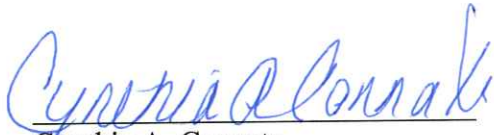
Cynthia A. Cannata
Acting Clerk of the Commission

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:

ABEL REYES, #295186, MacDougall-Walker CI, 1153 East Street South, Suffield, CT 06080

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