

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Andres Sosa,

Complainant

against

Docket # FIC 2021-0016

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 30, 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 respondents.

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 inmate request form dated August 2, 2020, the complainant requested a copy of the following:
  - (a) The "current policy I was told by the A&P Officer that states inmates with a cane are to be house[d] in the bottom tear ..."; and
  - (b) "North-2 and/or A&P Station log of entries pursuant to A.D. 6.2 Facility Post Orders and Logs Attachment-B Section: (4). Cell or bed changes by inmate name, number and reason, during 1<sup>st</sup> shift on 6-18-20...."

3. By letter of complaint filed August 28, 2020,<sup>1</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for certain public records.

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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.<sup>2</sup>

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 (1) inspect such records promptly during regular office or business hours ... (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

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

8. It is found that, by letter dated July 12, 2021, the respondents, through FOI Administrator Counselor Supervisor (“CS”) Anthony Campanelli, notified the complainant that no record responsive to the complainant’s request identified in paragraph 3(a), above, exists. It is found that CS Campanelli also advised the complainant that the responsive log book entries (identified in paragraph 3(b), above) are permissibly exempt pursuant to §1-210(b)(18)(G), G.S.

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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 an 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 “public records or files” to also include data or information that is “videotaped.”

However, it is found that CS Campanelli, in his discretion, provided the complainant with a copy of one log book entry, consisting of information related to the complainant's assignment change on June 18, 2020. It is further found that the complainant acknowledged receipt of this record on July 12, 2021.

9. At the hearing, the respondents contended that they do not maintain any record responsive to the request set forth in paragraph 3(a), above, and that the withheld records responsive to paragraph 3(b), above, are permissibly exempt pursuant to §1-210(b)(18)(G), G.S. The complainant disputed these contentions.

10. With regard to the request for the policy identified in paragraph 3(a), above, it is found that the facility in which the complainant is housed has implemented a practice wherein inmates with a physical limitation (e.g., requiring a cane, walker, or crutches) may be moved to a bottom tiered bed or bunk for convenience and safety. It is found that there is no written policy with respect to such practice and it is further found that the complainant himself does not dispute that no written policy exists (in fact, the complainant says so in his request to the respondents). Therefore, it is found that the respondents do not maintain any record responsive to the complainant's request set forth in paragraph 3(a), above.

11. With respect to the withheld records responsive to the request described in paragraph 3(b), above, and claimed to be exempt from disclosure, the respondents submitted an unredacted copy of such records for in camera inspection (hereinafter the "in camera records"). The in camera records have been identified as IC-2021-0016-0001 through IC-2021-0016-0008. The Index to Records Submitted for In Camera Inspection identifies the records as "logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutes or facilities" which are exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.

12. Section 1-210(b)(18)(G), 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 are not limited to ... [l]ogs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities....

13. 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 Department of Correction failed to prove that disclosure of certain 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.

14. The FOI Commission has consistently found that log books or records which contain information on the movement or assignment of inmates or staff within correctional facilities are permissibly exempt pursuant to §1-210(b)(18), G.S., where the Commissioner of Correction, or his designee, has determined that disclosure would constitute a security risk within a facility. See e.g. Docket #2017-0553; Jose Ayuso v. Department of Correction, et al. (July 25, 2018)(records which detail the location and movement of inmates and staff within a correctional facility are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.); Docket #FIC 2015-352; Jason Goode v. Department of Correction, et al. (Mar. 9, 2016)(redacted pages of restrictive housing log book, revealing only signatures of nursing staff, are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.); Docket #FIC 2010-724; George Leniart v. Department of Correction (Sept. 28, 2011)(log book entries concerning entry of an officer into the correctional facility, concerning the cell assignment of the complainant, and concerning the cell assignment of other inmates, are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G)-(H), G.S.); Docket #FIC 2010-061; Robin Elliott v. Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (Jan. 13, 2011)(log books detailing the movement of staff are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.); Docket # FIC 2008-507; Robin Elliott v. Commissioner, State of Connecticut, Department of Correction; Warden, State of Connecticut, Department of Correction, Corrigan-Radgowski Correctional Institution; and State of Connecticut, Department of Correction (July 22, 2009)(logs revealing the location or re-location of inmates and revealing the location of security personnel are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.); and Docket # FIC 2007-317; James Baker v. Warden, State of Connecticut, Department of Correction, Osborn Correctional Institution (April 9, 2008)(log book entries showing location of officers are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.).

15. In this case, it is found that the in camera records detail the movement and assignment of inmates (other than the complainant) within the facility and the assignment of staff. The respondents' witness credibly testified that the disclosure of information related to the location and assignment of inmates and assignment of staff would pose a safety risk within the facility.

16. Based on the foregoing and a careful, in camera inspection, it is found that the respondent Commissioner had reasonable grounds to believe that disclosure of the in camera records may result in a safety risk, including risk of harm to inmates and correctional staff. It is further found that the reasons given by the respondents are bona fide, and not pretextual or irrational.

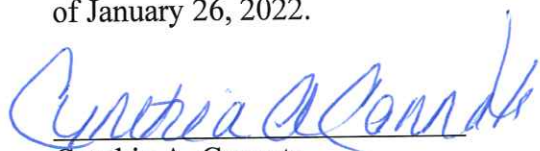
17. It is therefore concluded that the in camera records are permissibly exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.

18. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is hereby 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:

**ANDRES SOSA, #260589**, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION;  
AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o Attorney  
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Cynthia A. Cannata  
Acting Clerk of the Commission