

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jan M. Gawlik,

Complainant

against

Docket # FIC 2021-0428

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

Respondents

June 8, 2022

The above-captioned matter was heard as a contested case on January 27, 2022, 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). At the time of the request and hearing in this matter, the complainant was 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 letter dated July 5, 2021, the complainant requested that the respondents provide him with copies of “[a]ll documents, directives, policies, memos, emails, ect [sic], pertaining to ‘modified lockdown’, in which the criteria articulates the governing of outside exercise/recreation, lunch, dinner, ect [sic], when modified lockdown is implemented outside normal operations of facilities. Language and criteria of modified lockdown.”
3. It is found that the respondents acknowledged the complainant's request on or about July 6, 2021, but later denied such request on or about July 19, 2021.
4. By letter of complaint filed August 6, 2021, 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.¹ The complainant also requested that the Commission issue a civil penalty against the respondents.

5. Section 1-200(5), G.S., provides:

“[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, videotaped, printed, photostated, photographed or recorded by any other method.

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 . . . (3) 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 records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. At the hearing, the respondents contended that records responsive to the request set forth in paragraph 2, above, are exempt from disclosure pursuant to §§1-210(b)(18) and 1-210(b)(18)(G), G.S. The complainant disputed this contention.

10. Pursuant to the order of the hearing officer, the respondents submitted an unredacted copy of the records responsive to the request identified in paragraph 2, above, for in camera inspection (hereinafter, the “in camera records”). The in camera records have been identified as IC-2021-0428-001 through IC-2021-0428-016. The Index to Records Submitted for In Camera Inspection describes the records claimed to be exempt as follows:

- (a) IC-2021-0428-001 through IC-2021-0428-002: Cheshire C.I. Emergency Staffing Shutdown Order (exempt from disclosure pursuant to §§1-210(b)(18) and 1-210(b)(18)(G), G.S.);

¹ In the complaint, the complainant also alleged that the respondents denied a July 16, 2021 request. However, at the hearing, the complainant withdrew his appeal with respect to the July 16, 2021 request. Therefore, allegations pertaining to the July 16, 2021 request shall not be addressed further herein.

(b) IC-2021-0428-003 through IC-2021-0428-013: Administrative Directive 7 (7.3) Emergency Plans (records referencing securing a facility) (exempt from disclosure pursuant to §1-210(b)(18), G.S.); and

(c) IC-2021-0428-014 through IC-2021-0428-016: Administrative Directive 7 (7.5) Escapes (records referencing securing a facility) (exempt from disclosure pursuant to §1-210(b)(18), G.S.).

11. 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 . Such records shall include, but are not limited to:

...

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities. . . .

12. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, Judicial District of New Britain at New Britain, Docket No. HHB-CV074015438 and CV084016766 (Nov. 3, 2008) (“Commissioner”), 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.

13. In a prior case, the Commission concluded that Administrative Directive 7.3 (IC-2021-0428-001 and IC-2021-0428-002 in this matter) was exempt from disclosure pursuant to §1-210(b)(18), G.S. In Ryan Bailey v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction, Docket #FIC 2019-0704; (Apr. 14, 2021), the respondents contended that disclosure of Administrative Directive 7.3 may create a safety risk within a correctional facility. The FOI Commission found that the respondent Commissioner had reasonable grounds to believe that disclosure of the requested records may result in a safety risk, including the risk of disorder in a correctional facility. The Commission further found that the reasons given were bona fide, and not pretextual, or irrational. The Commission therefore concluded that Administrative Directive 7.3 is exempt from disclosure

pursuant to §1-210(b)(18), G.S.

14. At the hearing in this matter, Counselor Supervisor and FOI Administrator Anthony Campanelli credibly testified that disclosure of the records responsive to the request in paragraph 2, above, may result in a safety risk within a correctional facility, including risk of escape, because such records include information about the facility's emergency procedures, including information about lockdowns and modified lockdowns; whether units are open, closed, on a lockdown or modified lockdown; how an area within a facility is secured; and staff assignment, reassignment, and staff location.

15. Based on the foregoing and a careful inspection of the in camera records, 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, and risk of escape from a correctional facility. It is further found that the reasons given by the respondents are bona fide, and not pretextual or irrational.

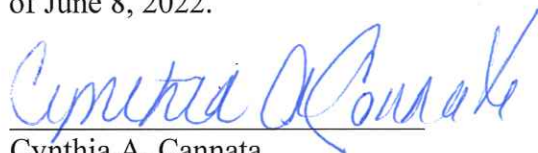
16. Accordingly, it is concluded that all of the in camera records are permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S., and additionally, that IC-2021-0428-001 through IC-2021-0428-002 are more specifically exempt pursuant to §1-210(b)(18)(G), G.S.

17. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint. Because the respondents did not violate the FOI Act as alleged in the complaint, consideration of the imposition of civil penalties is not warranted.

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 June 8, 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:

JAN M. GAWLIK, #138888, Cheshire CI, 900 Highland Avenue, Cheshire, CT 06410

ANGEL QUIROS, 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