

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Samuel Davis,

Complainant

against

Docket #FIC 2021-0014

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

Respondents

March 9, 2022

The above-captioned matter was heard as a contested case on July 22, 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 was incarcerated at a facility of the Connecticut Department of Correction.

Subsequent to the hearing in this matter, the respondents filed, without objection, an after-filed exhibit, which has been marked as Respondents' Exhibit F (after-filed): Email Exchanges between Campanelli and Testa.

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 November 5, 2020, the complainant made a request to the respondents for copies of "two documents [in] a[n] incident report #MWCI-2018-04-084. Specifically...the following: (1) Form CN 6603, Summary of Assault on Staff [and] (2) only page 25 of 27 from CN 6601 Incident Report Supplemental Pages." ("November 5th request").
3. It is found that by letter, dated November 9, 2020, the respondents' FOI Liaison at the facility at which the complainant was incarcerated (i.e., Cheshire Correctional Institution) acknowledged the complainant's November 5th request. It is found that subsequently such request was forwarded to the MacDougall-Walker Correctional Institution for processing as incident report #MWCI-2018-04-084 was located at such facility. It is further found that by

letter, dated December 1, 2020, the respondent's FOI Liaison at MacDougall-Walker Correctional Institution acknowledged receipt of the November 5th request and informed the complainant that he would be notified when such request was processed.

4. It is found that by letter dated December 9, 2020, the respondents informed the complainant that records responsive to his request were available and would be forwarded to him upon receipt of payment in the amount of \$18.50.

5. By letter received on January 7, 2021,¹ the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records described in paragraph 2, above. In addition, the complainant requested the imposition of civil penalties.

6. At the time of the request, section 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.²

7. 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....

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

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, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

² The Commission notes that section 1-200(5), G.S., was subsequently amended to include the term "videotaped". See June Sp. Sess. Public Act 21-2, §147.

9. At the hearing in this matter, Counselor Supervisor (“CS”) Anthony Campanelli, the respondents’ FOI Administrator, testified, and it is found, that upon reviewing the complaint in this matter and the November 5th request, he determined that the respondents had misinterpreted the November 5th request as a request for the entire incident report #MWCI-2018-04-084, rather than only two pages (i.e., a page numbered 25 and form CN 6603).

10. With respect to the request for a page numbered 25, CS Campanelli testified, and it is found, that certain pages of incident report #MWCI-2018-04-084 were inadvertently misnumbered by respondents’ staff, and that, therefore, no page numbered 25 exists that is responsive to the November 5th request. It is further found that the complainant has a copy of the entire incident report #MWCI-2018-04-084, albeit with redactions.

11. With respect to the requested form CN 6603, the respondents contended that such record is exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides 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....

12. The Commission’s role in reviewing the 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).

13. CS Campanelli testified that form CN 6603 provides details of an assault on a staff member and the specific injury incurred by the staff member. He testified that the disclosure of such specific information to inmates poses safety and security concerns as inmates could potentially target the staff member and impact the day-to-day duties of the staff member.

14. In addition, the Commission has previously found that the disclosure of a known injury or medical condition of a Department of Correction (“DOC”) staff member and the disclosure of descriptions and photographs of staff injuries may result in a safety risk, within the meaning of §1-210(b)(18), G.S. See Docket #FIC 2010-061; Robin Elliott v. Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (January 13, 2011). In Elliott, the DOC claimed that disclosure of medical information may result in a risk of harm because a known injury or medical condition in a staff member may make that member more vulnerable to a targeted assault by an inmate. In addition, the DOC claimed that the disclosure of descriptions and photographs of injuries to staff from the assault may empower the alleged attacker who may use the photograph to wield influence among the inmates and staff. The Commission found in Elliott that the Commissioner had reasonable grounds to believe that disclosure of such records may result in a safety risk, within the meaning of §1-210(b)(18), G.S., and concluded that such records were exempt from disclosure.

15. It is found that the respondent Commissioner has reasonable grounds to believe that the disclosure of the requested form CN 6603 may result in a safety risk in a correctional facility. It is further found that the reasons given are bona fide, and not pretextual, or irrational. Accordingly, it is concluded that the requested form CN 6603 is exempt from disclosure pursuant to §1-210(b)(18), G.S.

16. It is further concluded that the respondents did not violate the FOI Act as alleged in the complaint. Because the respondents did not violate the FOI Act, the Commission need not consider the imposition of a civil penalty.

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 March 9, 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:

SAMUEL DAVIS, #79895, Cheshire Correctional Institution, 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 Lori McCurdy, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission