

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Jan Gawlik,

FINAL DECISION

Complainant

against

Docket # FIC 2022-0516

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

Respondents

August 9, 2023

The above-captioned matter was heard as a contested case on May 9, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 June 30, 2022, the complainant requested that the respondents provide him with a copy of an incident report pertaining to a shake down of his cell (described as cell #7) on June 28, 2022, between 8:30 am and 1:30 pm, and any other incident reports pertaining to the complainant and North Block 1 (“June 30, 2022 request”).
3. It is found that on or about July 8, 2022, the respondents acknowledged the complainant’s request and stated that the complainant would be notified “if/when documents are available.”
4. It is further found that, two months later, by separate inmate request form dated September 6, 2022, the complainant requested that the respondents provide him with a copy of “the NB1 [North Block 1] Incident Report for the facility shakedown on June 28, 2022.” (“September 6, 2022 request”).
5. It is found that, on September 7, 2022, the respondents acknowledged the complainant’s request, but stated that “the incident is still open. Once it is closed, we will review

it to see if it can be disseminated or not.”

6. By letter of complaint filed September 23, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for incident reports pertaining to a shakedown of North Block 1 and the complainant’s cell (cell #7) in North Block 1. The complainant also requested that the Commission issue a civil penalty against the respondents.

7. With respect to the June 30, 2022 request, §1-206(b)(1), G.S., provides, in relevant part, that:

[a]ny person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. *A notice of appeal shall be filed not later than thirty days after such denial....* (emphasis added).

8. It is found that the complaint in this matter was not filed within 30 days of the alleged denial of the June 30, 2022 request, as required by §1-206(b)(1), G.S. Accordingly, it is concluded that the appeal from the denial of the June 30, 2022 request is not timely, and the Commission lacks jurisdiction to adjudicate the allegation that the June 30, 2022 request was denied.¹ Consequently, the June 30, 2022, request shall not be addressed further herein.

9. With respect to the September 6, 2022, request, §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.

10. 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 the provisions of section 1-212.

¹ Notwithstanding, the Commission notes that the respondents searched for records responsive to the request identified in paragraph 2, above, but did not locate any responsive records.

11. 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.”

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

13. It is found that on June 28, 2022, Department of Correction (“DOC”) staff conducted a random shakedown (i.e., a random search) of the complainant’s cell and North Block 1, the unit in which the complainant is housed at a DOC correctional facility. At the hearing, the complainant contended that there should be an incident report for North Block 1. The respondents contended that they do not maintain any records responsive to the complainant’s September 6, 2022 request.

14. It is found that the DOC does not generate an incident report as a result of every random shakedown that occurs within its correctional facilities. Rather, it is found that, in the case of a random shakedown, incident reports are only generated in particular instances, such as when contraband is located in a cell, or a security concern is presented as a result of a search. It is further found that, when a unit is subject to a random shakedown, as was the case with the shakedown of North Block 1 on June 28, 2022, there is no unit-wide incident report generated.

15. Although, under the facts and circumstances of this case, the respondents would not have ordinarily generated an incident report responsive to the complainant’s September 6, 2022 request described in paragraph 4, above, it is found that the respondents searched for responsive records. It is found that the respondents searched their agency-wide electronic incident report tracking system, and also searched physical files at the facility where the June 28, 2022 shakedown occurred. It is found that no responsive records were located.²

16. Citing to *Steinberg v. Taylor*, 500 F.Supp. 477 (D. Conn. 1980), the complainant also contended that the respondents should have generated an incident report in response to the unit shakedown on June 28, 2022. In *Steinberg*, the court concluded that a *receipt* must be given for any property seized as a result of a shakedown. However, in this case, the record sought is an incident report, not a receipt for seized party. Therefore, *Steinberg* is not applicable to the facts of this case.

17. In light of the foregoing, it is found that the respondents conducted a reasonable and diligent search and do not maintain records responsive to the complainant’s September 6, 2022

² The Commission notes that, throughout the hearing, the complainant argued that when the respondents initially acknowledged his September 6, 2022 request, their staff informed him that an incident was open and that, once closed, the respondents would review “it to see if it can be disseminated or not.” See paragraph 5. The complainant expressed concern that the respondents’ staff have provided conflicting responses about whether responsive records exist. While the Commission understands the complainant’s concerns in this regard, such concerns do not counter the evidence presented. During the hearing, the respondents acknowledged that there are three incident reports in their tracking system, each pertaining to an incident occurring on June 28, 2022. However, such incident reports are not responsive to the complainant’s request for “the NB1 [North Block 1] Incident Report for the facility shakedown on June 28, 2022.” Rather, the individual reports relate to inmates other than the complainant. Consequently, such reports are not responsive to the September 6, 2022 request at issue herein.

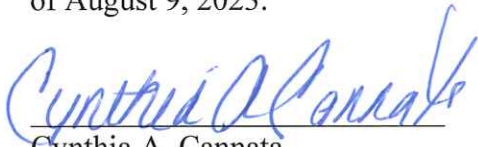
request.

18. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of the FOI Act, as alleged in the complaint. Because the respondents did not violate the FOI Act, as alleged, consideration of the imposition of a civil penalty 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 9, 2023.



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 GAWLIK, #138888, 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 Tracie C. Brown, and Attorney Jennifer Lepore, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission