

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joshua Smith,

Complainant

against

Docket # FIC 2020-0212

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

Respondents

February 22, 2023

The above-captioned matter was heard as a contested case on June 11, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.¹ Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.² The complainant is incarcerated at a facility administered by the respondent Department of Correction.

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, on April 2, 2020, the complainant requested in writing that the respondents provide him with a copy of "all tangible documents" generated from an infraction involving the complainant that occurred on March 18, 2020. It is found that the respondents acknowledged such request on April 6, 2020.
3. It is found that, on April 3, 2020, the complainant requested in writing that the respondents provide him with "a copy of any [and] all documents and/or e-mails from Commissioner Scott Semple to Osborn CI, Facility Administrator or Acting Facility Administrator regarding the Commissioner tracking number #48209, from October 31, 2017 to January 31, 2018". It is found that the respondents acknowledged such request on April 6, 2020.

¹ A short hearing in the above-captioned matter occurred on March 15, 2021, at which time the complainant and respondents appeared. The complainant requested a continuance, which request was granted by the hearing officer without objection. No documents or testimony were submitted in evidence at that time. Thereafter, the matter was assigned to a new hearing officer.

² On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct meetings in person.

4. It is found that, on April 6, 2020, the complainant requested in writing that the respondents provide him with “copies of all documents and or all tangible documents” generated from his chronic discipline hearing on April 2, 2020. It is found that the respondents acknowledged such request on April 9, 2020.

5. It is found that, by letter to the respondents dated May 1, 2020, the complainant attached the requests described in paragraphs 2, 3, and 4, above, and asked that the respondents inform him whether the requested records had been disclosed to the Cheshire Correctional Liaison.

6. By letter of complaint filed May 15, 2020,³ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the request described in paragraph 2, above, and included copies of all the requests described in paragraphs 2, 3, and 4, above.

7. At the time of the request, §1-200(5), G.S., provided:

“Public 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.⁴

8. Section 1-210(a), G.S., provides, in relevant part:

Except 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.

9. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

10. It is concluded that the requested records, to the extent such records exist,

³ 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 through June 30, 2021. Consequently, the Commission retains jurisdiction.

⁴ Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.” Such amendment was effective June 23, 2021.

are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

11. With respect to the request described in paragraph 3, above, it is found that the respondents provided the complainant with responsive records. At the hearing in this matter, the complainant argued that he had not received all records responsive to the request described in paragraph 3, above. The complainant contended that a letter from the Commissioner must exist because a tracking number for the complainant's original letter to the Commissioner, dated October 22, 2017 (the "October 22nd letter") exists, and that a reply letter is always drafted in response.⁵ The complainant further stated that his October 22nd letter requested "single cell" status, and that he did, in fact, receive "single cell" status at some point after the October 22nd letter was received by DOC.

12. However, based upon the credible testimony of the respondents' witness, it is found that the respondents conducted a diligent search for the requested correspondence, and that no such correspondence from the Commissioner exists.

13. It is found that the respondents provided the complainant with copies of all records they maintain that are responsive to the request described in paragraph 3, above.

14. It is found that on or about September 9, 2020, the complainant was provided with records responsive to the requests described in paragraphs 2 and 4, above. It is further found that certain information was redacted from those records prior to disclosure to the complainant.

15. At the hearing in this matter, the respondents argued that the following categories of information had been withheld pursuant to §1-210(b)(18), G.S.: Department of Correction (DOC) employee names and initials, inmate gang affiliation and intelligence information, certain medical report information, inmate identifying information, and witness statements. The respondents contended that such records are exempt from disclosure pursuant to §1-210(b)(18), G.S., in that disclosure may result in a safety or security risk inside a correctional institution.

16. The complainant disputed such contention with respect to the inmate gang affiliation and intelligence information, certain medical report information, inmate identifying information, and witness statements.

17. On June 25, 2021, pursuant to an order of the hearing officer, the respondents submitted 56 pages of unredacted records for in camera inspection, along with an in camera Index. Such records have been marked as IC-2020-0212-1 through IC-2020-0212-56. On the in camera Index, the respondents claimed that such records consist of the name and identifying number of other inmates as witnesses, the date of birth, race and housing location of other inmates, witness statements, DOC computer system coding, and emergency contact private cell phone numbers. The respondents contended that such records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(18), G.S.

⁵ At the hearing, both parties acknowledged that the October 22nd letter was entered into the record in a prior contested case hearing between these same parties, Docket #FIC 2019-0068, and the complainant then read the letter into the record in this matter.

18. 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, or as it applies to Whiting Forensic Hospital, the Commissioner of Mental Health and Addiction Services, 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 or Whiting Forensic Hospital. Such records shall include, but are not limited to:

- (A) Security manuals, including emergency plans contained or referred to in such security manuals;
- (B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Hospital facilities;
- (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Hospital facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Hospital facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (E) Internal security audits of correctional institutions and facilities or Whiting Forensic Hospital facilities;
- (F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Hospital facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and
- (H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers....

19. 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).

20. With respect to IC-2020-0212-16, IC-2020-0212-20, IC-2020-0212-26, IC-2020-0212-29, IC-2020-0212-33 through 41, IC-2020-0212-43 through 49, and IC-2020-0212-52 through 53, at the hearing, the complainant stated that he did not object to the respondents

withholding DOC staff names and initials, and therefore such redactions shall not be further addressed herein.

21. With respect to IC-2020-0212-3 (line 4), IC-2020-0212-4, IC-2020-0212-10 through 13, IC-2020-0212-14 (line 5 and lines 8 through 19), IC-2020-0212-15, IC-2020-0212-17, IC-2020-0212-19, IC-2020-0212-25, and IC-2020-0212-54 through 56, at the hearing the respondents contended that such records identify inmates as witnesses and contain detailed witness statements related to an incident involving the complainant.

22. The respondents' witness testified that disclosure of witness statements to inmates other than the witness himself creates a risk of harm to the witness, as the statement may be unfavorable to the requesting inmate, who might then have reason to harm the witness.

23. The complainant contended that the statements were made by witnesses on his behalf, were therefore not unfavorable to him, and therefore should be disclosed because there is no risk of harm to the witness.

24. The respondents' witness testified, however, that if only favorable witness statements are disclosed, and access to negative statements is denied, a requesting inmate could conclude that a statement that was withheld must be unfavorable. The respondents further contended that if they disclosed favorable witness statements, such statements may not be worded exactly as the requesting inmate demanded of the witness, which could also put the witness at risk.

25. Based upon the credible testimony of the respondents' witness and a careful in camera inspection of the records identified in paragraph 21, above, it is found that the DOC Commissioner has reasonable grounds to believe that disclosure of such records, or portions thereof, may result in a safety risk pursuant to §1-210(b)(18), G.S. It is also found that the reasons given by the respondents are bona fide, and not pretextual, or irrational.

26. It is concluded that such records are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

27. Accordingly, it is also concluded that the respondents did not violate the FOI Act by withholding the records identified in paragraph 21, above, from the complainant.

28. With respect to IC-2020-0212-3 (line 11), IC-2020-0212-27 (lines 8, 12, 13, 20, 21, 24, and 25), IC-2020-0212-28, and IC-2020-0212-50 (lines 8, 16, 20, and 21), identified on the in camera Index as "CT DOC computer codes," based upon a careful, in camera review, it is found that such records consist of the respondents' internal coding. It is further found, based upon the credible testimony of the respondents' witness, that the DOC Commissioner has reasonable grounds to believe that disclosure of such information may result in a safety risk or risk of harm to those in the facility. It is further found that the reasons given by the respondents are bona fide, and not pretextual, or irrational. It is concluded that such records are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

29. Accordingly, it is concluded that the respondents did not violate the FOI Act by withholding the records identified in paragraph 28, above, from the complainant.

30. With respect to IC-2020-0212-14 (line 6), after careful in camera inspection, it is found that the record consists of other inmate identifying information and information on the movement or assignment of inmates within the correctional facility. It is further found, based upon the credible testimony of the respondents' witness, that the DOC Commissioner has reasonable grounds to believe that disclosure of such information may result in a safety risk or risk of harm to those in the facility. It is further found that the reasons given by the respondents are bona fide, and not pretextual, or irrational. It is concluded that such records are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

31. Accordingly, it is concluded that the respondents did not violate the FOI Act by withholding the record identified in paragraph 30, above, from the complainant.

32. With respect to IC-2020-0212-27 (line 27) and IC-2020-0212-50 (line 26), identified on the in camera Index as "Emergency Contact Private Cell Phone," it is found that such records consist of emergency contact cell phone numbers. It is further found, based upon the credible testimony of the respondents' witness, that the DOC Commissioner has reasonable grounds to believe that disclosure of such information may result in a safety risk or risk of harm to individual(s) in or outside of the facility. It is further found that the reasons given by the respondents are bona fide, and not pretextual, or irrational. It is concluded that such records are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

33. Accordingly, it is concluded that the respondents did not violate the FOI Act by withholding the records identified in paragraph 32, above, from the complainant.

34. It is found that the respondents provided the complainant with copies of all non-exempt records responsive to the requests described in paragraphs 2, 3, and 4, above. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., in this matter.

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.

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:

JOSHUA SMITH, #223489, Osborn Correctional Institution, 335 Bilton Road, Somers, CT 06071

**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



Jennifer Mayo
Acting Clerk of the Commission