

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Victor Velasco,

Complainant

against

Docket #FIC 2021-0005

Angel Quiros, 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 July 20, 2021, at which time the complainant and the respondents appeared 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 the hearing, the complainant was incarcerated in a correctional facility of the respondents. For purposes of hearing, this matter was consolidated with Docket #FIC 2021-0006, Victor Velasco v. Angel Quiros, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, 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, by Inmate Request Forms, each dated December 9, 2020, the complainant requested copies of video recordings of the "P-Unit" on December 6, 2020, from 12:00 a.m. to 9:00 p.m., and December 7, 2020, from 4:00 p.m. to 10:00 p.m. It is also found that, by Inmate Request Form dated December 10, 2020, the complainant renewed a prior request for a copy of his "PC" (or Protective Custody) Package.
3. It is found that, by letters dated December 9, 2020, the complainant's requests for video recordings were acknowledged, and that by letters dated December 10, 2020, the respondents also advised the complainant that the video recordings had been preserved.

4. By letter dated December 24, 2020,¹ the complainant appealed to the Commission, alleging the respondents violated the Freedom of Information (“FOI”) Act by denying his December 9, 2020 and December 10, 2020 requests for public records. The complainant also requested that the Commission impose a civil penalty against the respondents.

5. It is found that, by memorandum dated December 31, 2020, the respondents notified the complainant that his requests for copies of the video recordings were denied pursuant to §1-210(b)(18), G.S.

6. It is further found that, by letter dated March 5, 2021, the respondents provided the complainant with a redacted copy of the PC package identified in paragraph 2, above, withholding from the complainant the first name of staff members who worked in a correctional facility and information pertaining to a Security Risk Group (“SRG”) classification, pursuant to §1-210(b)(18), G.S. It is further found that the respondents had previously attempted to provide such records to the complainant on or about September 11, 2020, but that the complainant would not accept receipt of such records at that time.

7. 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.²

8. 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 . . . (3) receive a copy of such records in accordance with section 1-212....

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, through June 30, 2021. Accordingly, the Commission retains jurisdiction over this appeal.

² 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.”

9. 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.”

10. It is found that the requested records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. At the hearing, the complainant disputed the respondents’ contention that the requested video recordings and information redacted from the PC Package was permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S., and further, that all responsive, non-exempt records were provided.

12. With respect to the video recordings, Counselor Supervisor (“CS”) Campanelli, the respondents’ FOI Administrator, testified that the requested footage depicts three camera angles covering the protective housing unit within a correctional facility. CS Campanelli credibly testified, and it is found, that the first camera captures the day room and cells; the second camera captures the officers’ station and several cells; and the third captures showers and cells. CS Campanelli credibly testified, and it is found, that the video footage captures over 24 hours of the day to day operations of the protective housing unit, including the movement of staff and how staff conduct business; the movement of inmates (whether random or by escort); areas of vulnerability on the unit (by revealing where no camera is directed); doors and locks. CS Campanelli also credibly testified, and it is found, that disclosure of the video recordings would create a safety risk, including the risk of escape from a correctional facility.

13. 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....

14. 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 (Nov. 3, 2008) (“Commissioner”), the court reversed the FOIC’s finding that the DOC failed to prove that disclosure of certain personnel 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.

15. After the court's decision in Commissioner, the Commission has consistently held that the Commissioner of Correction has reasonable grounds to believe that the disclosure of video recordings of the interior of correctional facilities may result in a safety risk within the meaning of §1-210(b)(18), G.S. See e.g., Robin Elliot v. Warden, State of Connecticut, Department of Correction, et. al., Docket #FIC 2008-733 (July 1, 2009); Brandon Holloway v. State of Connecticut, Department of Correction, et. al., Docket #FIC 2011-066 (Jan. 11, 2012); Ira Alston v. Commissioner, State of Connecticut, Department of Correction, et. al., Docket #2015-882 (Sept. 14, 2016); Charles Fonck, III v. Scott Semple, Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2018-0155 (Dec. 19, 2018); Seth Kerschner v. Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2018-0106 (Dec. 19, 2018); Arron McLaughlin v. Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2018-0311 (Jan. 23, 2019); Victor Velasco v. Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2018-0705 (Sept. 25, 2019); Albert Farah v. Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2020-0287 (July 28, 2021); and Victor Velasco v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2020-0294 (Sept. 8, 2021); and Victor Velasco v. Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2020-0278 (Dec. 15, 2021) (each finding that disclosure of video captured within a correctional facility may pose a safety risk and that such video is permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S.).

16. At the hearing, the complainant requested that the hearing officer order the respondents to submit the requested video recordings for in camera inspection. Specifically, the complainant contended that the hearing officer should review the video to confirm when or whether certain mail belonging to the complainant was retrieved, which he contended had an impact on a filing deadline in a separate matter. In addition, the complainant disputed the applicability of §1-210(b)(18), G.S., because CS Campanelli had not reviewed the entirety of each video recording.

17. The Supreme Court has found that “[u]nless the character of the documents in question is conceded by the parties, in camera inspection of the particular documents by the commission may be essential to the proper resolution of a dispute under the act.” Wilson v. Freedom of Information Commission, 181 Conn. 324, 340 (1980) (“Wilson”). In the instant matter, in camera review of the video recording is unnecessary because the character of the records in question is not contested. Moreover, although CS Campanelli did not view all 25 hours of the requested video footage, he testified, and it is found, that he viewed significant portions of the videos and further that the footage is of fixed angles. Thus, the videos always depict the same images, as described in paragraph 11, above. It is therefore found that disclosure of any video footage captured by cameras in the protective housing unit raises the same safety and security concerns, which are described in paragraph 11, above. As previously found by the Commission in Victor Velasco v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2020-0294 (Sept. 8, 2021), the fact that the witness did not view the entirety of the video footage requested does not invalidate the respondents' claim that disclosure would constitute a safety and security risk pursuant to §1-210(b)(18), G.S. The complainant's request for in camera inspection was therefore denied.

18. Based on the evidence presented at the hearing, it is found that the respondent Commissioner has reasonable grounds to believe that disclosure of the requested video recordings may result in a safety risk, including risk of escape, in a correctional facility. It is further found that the reasons given are bona fide, and not pretextual, or irrational.

19. Accordingly, it is concluded that the requested video recordings are permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint.

20. Next, the complainant contended that the PC Package that was provided to him was incomplete and that he objected to the redactions made to the pages that were provided by the respondents. The respondents contended that all responsive, nonexempt records they maintained were provided to the complainant.

21. CS Campanelli credibly testified that upon receipt of the request, the respondents contacted the captain of the Security Risk Group (“SRG”) Security Division Unit, and requested that a search for responsive records be conducted. It is further found that, after a reasonable and diligent search, all responsive records were identified, redacted, and provided to the complainant.

22. With respect to the redactions, the respondents withheld from the complainant the first name of any DOC staff member identified in the PC Package on the basis that such information is permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S.³

23. At the hearing, CS Campanelli credibly testified that disclosure of first name of DOC staff members would create a safety risk within the facility in that it would negate the formal relationship between the staff and inmates within the facility that is necessary to maintain order. CS Campanelli also credibly testified that disclosure would create a safety risk in that disclosure of a staff member’s first name would make such individual easily identifiable and therefore subject to possible threat, intimidation, or harassment inside or outside of the facility.

24. The Commission has previously found that the first names of DOC staff members are exempt from disclosure pursuant to §1-210(b)(18), G.S., where the Commissioner of Correction has reasonable grounds to believe that disclosure may result in a safety risk. Curt Rivard v. Jon Brighthaupt, Deputy Warden, State of Connecticut, Department of Correction, Northern Correctional Institution, et. al., Docket #FIC 2009-350 (May 12, 2010) (“Rivard”).

25. In Rivard, the Commission found that “the use of only last names creates and maintains the formal relationship between staff and inmates that is necessary to maintain order in a correctional institution or facility because the formality generates respect for a staff member and his or her authority.” The Commission further found that “if an inmate does not respect a staff member and his or her authority, he is more likely to disobey directives which may result in a safety risk...within the meaning of §1-210(b)(18), G.S.” Accordingly, the Commission concluded in Rivard that the Commissioner of Correction had reasonable grounds to believe that

³ The complainant’s request for in camera inspection of the PC package was also denied in reliance on the Supreme Court’s reasoning in Wilson.

disclosure of the first names of staff members may result in a safety risk, and that therefore, the respondents did not violate the FOI Act by withholding such information.

26. Based on the evidence presented at the hearing, it is found that the respondent Commissioner has reasonable grounds to believe that disclosure of the first names of DOC staff may result in a safety risk, including safety risk to correctional staff and their families, inside and outside of the facility. It is further found that the reasons given are bona fide, and not pretextual, or irrational.

27. Accordingly, it is concluded that the first names of DOC staff are exempt from disclosure pursuant to §1-210(b)(18), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint.

28. Finally, the respondents withheld from the complainant information in the PC package pertaining to a Security Risk Group (“SRG”) classification, contending that such information is permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S.

29. CS Campanelli credibly testified that disclosure of such information within the facility creates a safety risk in that an inmate could use the information to show affiliation or rank, and/or disclosure of SRG classification could subject an inmate to risk of harm or assault within the facility.

30. The Commission has previously found that records or information pertaining to members of an SRG is exempt from disclosure pursuant to §1-210(b)(18), G.S., where the respondents demonstrated that the Commissioner of Correction had reasonable grounds to believe that disclosure of the requested records may result in a safety risk, including the risk of harm to a person, or a disorder in a correctional institution or facility. See Calderon v. Warden, Docket #FIC-2010-047 (Nov. 17, 2010) (disclosure of information relating to SRG classification may result in safety risk and therefore is exempt from disclosure in accordance with §1-210(b)(18), G.S.), Hunnicut v. DOC, Docket #FIC 2011-164 (Dec. 14, 2011) (disclosure of a copy of a report that refers to gang affiliations may result in a safety risk and therefore is exempt from disclosure in accordance with §1-210(b)(18), G.S.); Velasco v. Deputy Warden, Docket #FIC 2011-025 (Dec. 14, 2011) (disclosure of copies of gang materials used as evidence for discipline may result in a safety risk and therefore such records are exempt from disclosure in accordance with §1-210(b)(18), G.S.); Ocasio v. DOC, Docket #2011-317 (May 9, 2012) (disclosure of copies of records used to classify complainant as a member of a SRG may pose a safety risk and therefore such records are exempt from disclosure in accordance with §1-210(b)(18), G.S.).

31. Based on the evidence presented at the hearing, it is found that the respondent Commissioner has reasonable grounds to believe that disclosure of the SRG information may result in a security safety risk, including risk within the facility and to individual inmates. It is further found that the reasons given are bona fide, and not pretextual, or irrational.

32. Accordingly, it is concluded that the requested SRG information is exempt from

disclosure pursuant to §1-210(b)(18), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint.

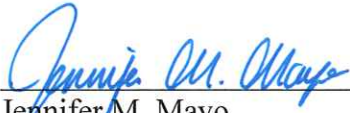
33. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

34. Because the respondents did not violate the FOI Act, the Commission need not consider the complainant's request for 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 dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 22, 2023.




Jennifer M. Mayo
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:

VICTOR VELASCO #213065, 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, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Jennifer M. Mayo
Acting Clerk of the Commission