

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John Kaminski,

Complainant

against

Docket # FIC 2022-0343

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

Respondents

May 24, 2023

The above-captioned matter was heard as a contested case on January 19, 2023, at which time the complainant and the respondents appeared, 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 letter dated July 13, 2022, the complainant requested that the respondent department's Chief Medical Operations Officer, Dr. Robert Richeson, provide him with the following records:
  - (a) a complete copy of the Federal HIPAA law;
  - (b) a copy of any mirroring Connecticut statute; and
  - (c) a copy of any medical polocies (sic), directives, guidelines and /or instructions that correspond with state/federal medical records privacy mandates pertaining to inmate records.

(hereinafter "requested records").

3. It is found that, by letter dated July 14, 2022, the respondents acknowledged receipt of the request, described in paragraph 2 above, and informed the complainant that it was being reviewed and that he would hear from them when it “has been processed”.

4. It is found that by letter dated July 27, 2022, the respondents denied the request described in paragraph 2(a) and 2(b) above, claiming such request required legal research, and provided the complainant with a copy of Department of Correction Administrative Directive 8.7, Health Records Management (“DOC directive”), with respect to the request described in paragraph 2(c), above.

5. By letter of complaint, dated and filed with the Commission on August 3, 2022, the complainant appealed, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the requested records, described in paragraph 2, above.

6. 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.

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

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

9. It is concluded that the requested records, to the extent they exist, and are maintained by the respondents, are “public records” within the meaning of §§1-200(5) and 1-210(a), G.S.

10. With respect to the request described in paragraph 2(a), above, it is found that the respondents do not maintain or keep on file “the federal HIPAA law”, within the meaning of §1-210(a), G.S.

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

12. With respect to the request described in paragraph 2(b), above, at the hearing in this matter, the complainant clarified that he was requesting the Connecticut statute or law that is essentially the Connecticut version of “the federal HIPAA law”.

13. It is found that the respondents do not maintain or keep on file the Connecticut version of “the federal HIPAA law”, within the meaning of §1-210(a), G.S.

14. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

15. With respect to the request described in paragraph 2(c), above, it is found that in addition to the DOC directive provided to the complainant on July 27, 2022, and referenced in paragraph 4, above, the respondents on December 28, 2022, provided the complainant with additional policies contained in the “inmate records” section of the Health Services Unit’s policies and procedures manual.

16. It is found that the records provided to the complainant on July 27, 2022 and December 28, 2022, described in paragraph 15, above, constitute all records maintained by the respondents that are responsive to the complainant’s request, described in paragraph 2(c), above.

17. Regarding the issue of promptness, (and specifically, the five month delay between July 27, 2022, when the complainant was first provided with responsive records, and December 28, 2022, when he was provided with all remaining responsive records), the Commission has previously stated that the meaning of the word “promptly” in §1-210(a) G.S., means, “quickly and without undue delay, taking into account all of the factors presented by a particular request ... [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request. See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

18. It is found that the five month delay in providing all of the responsive records was due to the fact that the respondents were unaware that all such records had not been provided to the complainant. It is found that the respondents became aware of the lapse when they realized a complaint had been filed in this matter.

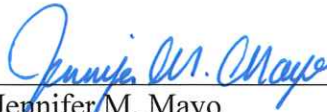
19. Upon consideration of all of the factors presented, and under the facts and circumstances of this particular case, it is found that the respondents did not provide all responsive records to the complainant, promptly.

20. Consequently, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall comply with the promptness provisions of §§ 1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 24, 2023.

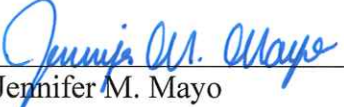
  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**JOHN KAMINSKI, #241124**, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

**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

  
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Jennifer M. Mayo  
Acting Clerk of the Commission