

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John Kaminski,

Complainant

against

Docket # FIC 2022-0565

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

Respondents

October 11, 2023

The above-captioned matter was heard as a contested case on September 12, 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 letter dated November 8, 2022, the complainant requested that the respondents provide him with a copy of the following records:
 - (a) Department of Correction HIPAA [Health Insurance Portability and Accountability Act] Compliant Policy;
 - (b) Identity of the HIPAA Privacy and Security Officers;
 - (c) Job description for the Privacy and Security officers required by HIPAA;

- (d) Audit reports since 2018 (as required by HIPAA);
- (e) Proof that inmate medical records that were digitized in 2018 are encrypted; and
- (f) List of all Department of Correction personnel who are authorized unfettered access to inmate medical records.

3. It is found that, by letter dated November 17, 2022, the respondents acknowledged the complainant's request.

4. By complaint filed December 5, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records.

5. 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.

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

[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.

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

8. 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.

9. At the hearing, the complainant contended that the respondents released his medical records without his consent, that by doing so the respondents did not comply with HIPAA, and therefore he requested copies of the records described in paragraph 2, above. The complainant also contended that the respondents did not provide him with any records responsive to his request.

10. At the hearing, the respondents contended that they are not a “covered entity” as defined by HIPAA regulations, and therefore do not maintain any records responsive to the request described in paragraph 2, above.¹ However, it is found that the respondents contacted their Health Services Unit, the department that would maintain such records if they existed, and the Health Services Unit staff confirmed that the respondents do not maintain any records responsive to the complainant’s request described in paragraph 2, above.

11. Because of the foregoing, it is found that the respondents do not maintain any records responsive to the complainant’s request. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

12. Notwithstanding the findings and conclusions set forth in the paragraphs above, the respondents located records that are related to their inmate medical records and privacy policies, and on or about July 11, 2023, the respondents attempted to deliver copies of such records to the complainant. However, the complainant testified that he refused to accept these records because he believed that he would be required to withdraw the complaint at issue herein in exchange for receipt of such records. The respondents disputed the complainant’s testimony and represented that they would deliver copies of these records to the complainant following the hearing.²

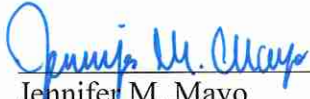
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.

¹ The Commission notes that, in prior contested cases before it, the respondents contended that they are a “covered entity” subject to the requirements of HIPAA and that certain records that they maintain are not subject to disclosure. The Commission also notes, however, that it has consistently found that the respondents have failed to prove that they are a “covered entity” subject to the requirements of HIPAA. See e.g., Stahl v. Commissioner, State of Connecticut, Department of Correction, et al., #FIC 2021-0697 (November 16, 2022); Velez v. Scott Semple, Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2017-0296 (May 23, 2018); and Vivo v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2015-192 (Feb. 24, 2016)(in each case finding that the respondents failed to prove that they constitute a “covered entity” as defined by the regulations implementing HIPAA).

² The complainant requested that the respondents provide the hearing officer with copies of such records and, by email dated and filed September 12, 2023, the respondents submitted to the Commission a copy of a memorandum from the Commissioner of the Department of Correction (advising, in relevant part, that all employees are to refer to the UConn Health Correctional Managed Health Care (“CMHC”) policies until their policies are updated and published), and several CMHC inmate health record policies. Additionally, the Commission takes administrative notice of its final decision in Kaminski v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction, Docket #FIC 2022-0343 (May 24, 2023), wherein among the requests at issue was a request for copies of the respondents’ medical policies, directives, guidelines, and/or instructions “that correspond with state/federal medical privacy mandates pertaining to inmate records” and the Commission determined that the respondents provided the complainant with copies of all records that they maintain that are responsive to such request.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 11, 2023.



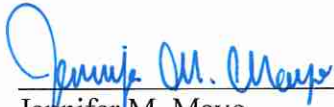
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JOHN KAMINSKI, #241124, MacDougall-Walker CI, 1153 East Street South, Suffield, CT 06080

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION;
AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o Attorney Jennifer Lepore, State of Connecticut, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Jennifer M. Mayo
Acting Clerk of the Commission