

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Sergio Correa,

Complainant

against

Docket # FIC 2022-0463

James Rovella, Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

September 27, 2023

The above-captioned matter was heard as a contested case on July 10, 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.).

Pursuant to the request of the hearing officer, on July 10, 2023, the respondents filed with the Commission a copy of the request for records at issue in this matter. In addition, the respondents submitted to the Commission a copy of three letters and requested that such letters be admitted as after-filed exhibits. Absent objection from the complainant, such records have been marked and admitted as follows:

Respondents' Exhibit 2 (after-filed): Request for records, dated September 20, 2022 (five pages); and

Respondents' Exhibit 3 (after-filed): Letters from the respondents to the complainant, dated May 16, 2023, June 15, 2023, and July 10, 2023 (three pages).

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 September 20, 2022, the complainant requested that the respondents provide him with copies of the following records:
 - a. Police evidence logs generated from the Connecticut State Police (“CSP”) in relation to case number 1700661493;
 - b. Reports created by CSP law enforcement personnel in relation to case number 1700661493;
 - c. Statements given to CSP law enforcement personnel in relation to case number 1700661493;
 - d. Cell phone extractions in the possession of the CSP in relation to case number 1700661493;
 - e. Recorded phone calls Ruth Correa placed while in the custody of the CSP on May 11-13, 2018;
 - f. Photographs from a Hartford license plate reader “which captured upon its lens a vehicle with CT registration AL 82421” on December 20, 2017 for case number 1700661493;
 - g. Videos from a Hartford license plate reader “which captured upon its lens a vehicle with CT registration AL 82421” on December 20, 2017 for case number 1700661493;
 - h. Videos seized, gathered, or collected from the “SANA Apartment Complex” in Hartford, CT in relation to a CSP investigation in 2017 and/or 2018;
 - i. Recorded Verbal Statements given to or recorded by CSP law enforcement personnel for case number 1700661493;
 - j. Missing person reports on Matthew G. Lindquist of 70 Kenwood Drive, Griswold, CT as part of a CSP law enforcement investigation;
 - k. Case numbers for a missing person investigation on Matthew G. Lindquist of 70 Kenwood Drive, Griswold, CT as part of a CSP law enforcement investigation;
 - l. Reports in relation to a CSP investigation for case number 1700661520;
 - m. Evidence Inventory Logs in relation to case number 1700661520;

- n. Statements in relation to a CSP investigation in case number 1700661520;
 - o. Photographs in relation to a CSP investigation in case number 1700661520;
 - p. Videos in relation to a CSP investigation in case number 1700661520; and
 - q. Social media accounts gathered, collected, in the possession of, or given to the CSP in case number 1700661493.
3. It is found that the respondents received the complainant's request on September 28, 2022.
4. By letter of complaint filed October 6, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for the records identified in paragraph 2, above. The complainant also requested that the Commission issue a civil penalty against the respondents.
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 records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, by letters dated May 16, 2023, June 15, 2023, and July 10, 2023, the respondents provided copies of responsive records to the Department of Correction pursuant to §1-210(c), G.S., to thereafter be provided to the complainant. It is further found that the respondents notified the complainant that disclosure of additional responsive records was forthcoming but that, due to the volume of records requested, full compliance with the request would require additional time.

10. It is further found that, upon receipt of the records described in paragraph 9, above, the FOI Administrator for the Department of Correction reviewed such records pursuant to §§1-210(c) and 1-210(b)(18), G.S., and thereafter made redactions before providing the records to the complainant.

11. At the hearing, the complainant contended that all of the responsive records had not been provided and he expressed frustration with the delay in disclosure. Additionally, the complainant objected to the respondents' decision to decline to provide him with copies of audio and video recordings responsive to the request described in paragraph 2, above. Finally, the complainant objected to the Department of Correction's decision to withhold certain responsive records, or portions thereof, pursuant to §1-210(b)(18), G.S.

12. The respondents contended that they have made reasonable and diligent efforts to provide responsive records to the complainant, that disclosure of responsive records was ongoing, and that they have not violated the disclosure and promptness provisions of the FOI Act.

13. With respect to the complainant's contention that the Department of Correction improperly withheld responsive records, or portions thereof, pursuant to §1-210(b)(18), G.S., the process of providing records to an incarcerated person is governed by §1-210(c), G.S. Section 1-210(c), G.S., provides that a public agency must notify the Commissioner of Correction when it receives a request from a person confined in a correctional facility. The policy implementing §1-210(c), G.S., provides that records requested by an incarcerated person shall be delivered to the Department of Correction's FOI Administrator to conduct a review to determine whether such records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(18), G.S. If the Commissioner of Correction believes that the requested records are exempt from disclosure pursuant to §1-210(b)(18), G.S., the commissioner may withhold such records from such person when the records are delivered to the correctional institution. In the event that records, or portions thereof, are withheld, the FOI Administrator or designee must promptly notify the requester in writing that records were withheld and provide the reason for such withholding. An incarcerated person who believes records have been improperly withheld may file a complaint against the Department of Correction with the FOI Commission.

14. With respect to this matter, to the extent the complainant seeks to challenge the applicability of §1-210(b)(18), G.S., to the records, or portions thereof, withheld by the Department of Correction, the complainant must necessarily file a complaint against the Department of Correction in order for the Commission to adjudicate such issues.

15. With respect to the complainant's next contention that the respondents violated the FOI Act by failing to provide him with copies of audio and video recordings responsive to the request described in paragraph 2, above, the respondents' witness, a paralegal specialist, testified, and it is found, that the respondents maintain responsive audio and video recordings. It is further found, however, that the respondents have not provided such records to the complainant in accordance with §1-210(c), G.S., because the Department of Correction would not provide the complainant with a compact disc ("CD") containing responsive audio and video recordings.¹ It is further found that that the respondents asked the complainant if he could identify someone that would accept a CD on his behalf, but the complainant was unable to identify anyone to do so.

16. The respondents' decision to decline to provide responsive records for the reasons set forth in paragraph 15, above, is not sanctioned by the FOI Act. In this case, the respondents were required to comply with the disclosure provisions of §§1-210(a), 1-210(c), and 1-212(a), G.S., regardless of the Department of Correction's independent determination not to provide a CD containing responsive records to the complainant.

17. Based on the foregoing, it is found that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they failed to provide copies of the responsive audio and video recordings, described in paragraph 15, above, to the complainant, in accordance with §1-210(c), G.S.

18. With respect to the complainant's contention that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., the Commission has previously opined that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly" as used in §1-210(a), G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request." The advisory opinion goes on to describe some of the factors that should be considered, including: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

19. As already found herein at paragraph 3, above, the respondents received the complainant's request on September 28, 2022. It is found that, because of the nature of the request, the respondents assigned the request to staff in their legal affairs unit.

¹ Pursuant to its Administrative Directives, the Department of Correction may withhold a CD containing requested records from an inmate. See *Jan Gawlik v. Commissioner, State of Connecticut Department of Correction, et al.*, Docket #FIC 2020-0073 (Jan. 13, 2021). The Commission notes that the Department of Correction considers a CD or DVD contraband because it can be used as a weapon. In addition, inmates are prohibited from possessing CDs containing information they requested pursuant to the FOI Act because they do not have the means to view the information contained on CDs in their cells.

20. It is further found that, because the legal affairs unit does not maintain the records responsive to the request described in paragraph 2, above, staff requested that the respondents' reports and records unit staff conduct a search to locate responsive records. It is further found that the reports and records unit processes requests to search for records in the order in which they are received. It is further found that the records and reports unit was experiencing a backlog and delay of approximately eight months in processing requests due to the high volume of requests received, and due to staffing issues.

21. Notwithstanding the findings in paragraph 20, above, it is found that the legal affairs unit staff first requested that the reports and records unit conduct a search to locate records on January 3, 2023, three months after the respondents received the request, and after they received notice that the complainant filed the complaint at issue in this matter.²

22. It is found that on or about March 15, 2023, the respondents located 3,036 pages of responsive records and that such records were subsequently uploaded to an electronic system in order for the legal affairs staff to commence a review for any claim of exemption prior to disclosure. It is further found that the respondents assigned one paralegal to conduct a legal review and that the paralegal reviewed the requested records concurrent with her other job duties. It is further found that because of the nature of the records (which concern homicide and arson), the paralegal conducted a very careful review of the records. As found in paragraph 9, above, by letters dated May 16, 2023, June 15, 2023, and July 10, 2023, the respondents provided responsive records to the complainant.

23. It is found that the respondents decided to provide electronic copies of responsive records to the Department of Correction FOI Administrator via OneDrive. The Commission notes that OneDrive is a cloud-based service that allows users to share files. It is found, however, that the respondents were limited in the frequency with which they could provide records to the Department of Correction via OneDrive. It is found that the respondents waited for the Department of Correction FOI Administrator to direct them to upload additional responsive records to OneDrive when the FOI Administrator was ready to receive and review such records, regardless of how quickly the respondents had reviewed such records and were ready to provide copies to the complainant. It is further found that, at the time of the hearing in this matter, all of the records had not been provided to the complainant. It is further found that the respondents were unable to offer testimony regarding how much additional time they needed to comply fully with the complainant's request because their answer was dependent on how quickly the Department of Correction FOI Administrator would be able to review the remaining responsive records.

24. It is found that the respondents' decision to provide responsive records to the Department of Correction in the manner described in paragraph 23, above, unduly delayed disclosure in this matter. While the respondents may not have control over how quickly the Department of Correction FOI Administrator reviews and discloses records, the respondents

² The Commission acknowledges that the complainant had previously submitted to the respondents a request for records, which was received on June 16, 2022, and that on June 23, 2022, the respondents requested that a search to locate records be conducted. However, the September 20, 2022 request that is the subject of the complaint in this matter seeks records beyond that which the complainant requested in June of 2022.

have control over how quickly they transmit public records to the Department of Correction as required by §1-210(c), G.S. The respondents' decision to wait for the Department of Correction FOI Administrator to advise them to transmit responsive records is not sanctioned by the promptness requirements of the FOI Act.

25. Based upon the foregoing, it is found that the respondents failed to provide prompt access to the records described in paragraph 2, above. It is therefore concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., under the facts and circumstances of this case.

26. Notwithstanding the foregoing findings and conclusion, the Commission in its discretion declines to consider the imposition of a civil penalty against the respondents in this case. However, the Commission is concerned with the backlog and delays described by the respondents in this matter and cautions the respondents that such delays may warrant consideration of the imposition of a civil penalty in a future case before the Commission.

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

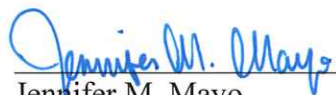
1. Forthwith, and within thirty (30) days of the date of the Notice of Final Decision in this matter, the respondents shall provide a copy of all responsive audio and video recordings to the complainant, free of charge, in accordance with §1-210(c), G.S.

2. Forthwith, the respondents shall commence a rolling production to the complainant of copies of the remaining records responsive to the request described in paragraph 2 of the findings, above, until copies of all such records have been provided to the complainant. The respondents shall complete such production no later than sixty (60) days from the date of the Notice of Final Decision in this matter. The respondents shall refrain from utilizing One Drive in the manner described in the findings set forth in paragraphs 23 and 24, above, to transmit records to the Department of Correction in accordance with §1-210(c), G.S.

3. In complying with paragraphs 1 and 2 of the order above, the respondents may withhold any responsive records, or portions thereof, that are mandatorily exempt from disclosure under the FOI Act. The complainant may file an additional appeal in the event he wishes to challenge the applicability of any such claimed exemption.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of September 27, 2023.



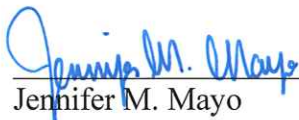
Jennifer M. Mayo
Acting Clerk of the Commission

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:

SERGIO CORREA, #351915, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

JAMES ROVELLA, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Cynthia Isales, Department of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Jennifer M. Mayo
Acting Clerk of the Commission