

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Daniel Kokoszka,

Complainant

against

Docket #FIC 2023-0126

O'Donovan Murphy, Director of Judicial
Marshal Services; and Judicial Marshal
Services,

Respondents

February 14, 2024

The above-captioned matter was scheduled to be heard as a contested case on September 5, 2023, at which time the respondents appeared, but the complainant did not appear to prosecute the complaint.

A Report of Hearing Officer, dated October 2, 2023, was considered by the Commission at its regular meeting of October 26, 2023. The Report of Hearing Officer recommended dismissal of the complaint for failure to prosecute. After entertaining oral argument from the parties, the Commission remanded the case back to the hearing officer with direction that the matter be scheduled for another contested case hearing.

On December 4, 2023, this matter was scheduled to be heard as a contested case hearing, at which time the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. However, once again the complainant did not appear to prosecute the complaint. Rather than have the hearing officer issue a Second Report of Hearing Officer recommending dismissal for failure to prosecute, the respondents insisted that the contested case hearing proceed on the merits.

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 email dated November 10, 2022, the complainant sent the following request for copies of records to the respondents:
 - a. I would like all officers' names involved [-] everyone that was [there] from the lobby all the way to booking with Mr. Reilly;

- b. I would like their photos too;
- c. I would like all surveillance camera[] [footage] for the same thing in the lobby until Mr. Reilly leaves and that's video and audio [on] any camera he was on[;] I would like but especially the lobby. I would like all those for the full day not just the time we were there;
- d. I'd also like the guy at the desk who initiated everything and [Judicial Marshal] [O]aks disciplinary reports from their whole career;
- e. I would like to see what was on both of their phones for the whole day [-] messages, emails, and any 3rd party messaging apps, calls in and out, any pictures or videos taken from that whole day, social media use (sic) not just fb (sic) but any and all that pertain to me or Mr. Reilly;
- f. Any and all calls, emails, texts, web searches, any messaging apps, Facebook, or any social media activity, any pictures or video taken on November 4, 2022, by any of the Judicial Marshals or the [Chief Lady] regarding me or Tim Reilly;
- g. I would like anything that was talked about pertaining to me or Mr. Reilly on any of your phones or radios, radio communications...again I want all of this for the full day, [including] web activity and searches;
- h. Also [I] would like every officer involved (sic) and what their salary is; and
- i. All disciplinary reports for any of the Judicial Marshals that I or Mr. Reilly [interacted] with on November 4, 2022.

3. It is found that, by email dated November 14, 2022, the respondents acknowledged the complainant's request.

4. It is found that, by email dated February 23, 2023, the respondents provided responsive records to the complainant.

5. By email dated and filed March 24, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all of the requested records.

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 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.

8. 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.”

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

10. O’Donovan Murphy, the Director of Judicial Marshal Services, appeared and testified at the December 4, 2023 contested case hearing.

11. It is found that, on November 4, 2022, the complainant, along with an individual by the name of Tim Reilly, went to the New Britain courthouse and had an interaction with the judicial marshals who screen members of the public upon entry (the “November 4 incident”). It is found that, thereafter, the complainant issued the FOI request set forth in paragraph 2, above.

12. With regard to the requests set forth in paragraphs 2.a, d, h, and i, above, based upon the testimony of Director Murphy, it is found that the respondents disclosed all of the responsive records in their possession to the complainant. In this regard, it is found that, while the respondents did not maintain a record that contained “all of the officers’ names” involved in the November 4 incident, as requested in paragraph 2.a, above, and did not maintain “disciplinary reports for any of the judicial marshals” who either the complainant or Mr, Reilly interacted with on November 4, as requested in paragraph 2.i, above, they did provide the complainant with the report that was created as a result of the November 4 incident, as well as a list with all the judicial marshals’ salaries. In this regard, it is found that the respondents searched for records in their possession that would be responsive to these requests, and then disclosed all responsive records, free of charge, to the complainant.

13. It is concluded therefore that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with regard to the requests set forth in paragraphs 2.a, d, h, and i, above.

14. With regard to the request set forth in paragraph 2.c, above, as such request pertains to “audio” records, and with regard to the requests set forth in paragraphs 2.e, f, and g, above, based upon the testimony of Director Murphy, it is found that the respondents do not maintain any records responsive to these requests. In this regard, based upon the testimony of Director Murphy, it is found that the respondents’ surveillance system is not equipped with audio capability. In addition, based upon the testimony of Director Murphy, it is found that all relevant surveillance camera footage was reviewed, and it was determined that none of the judicial marshals used their personal cell phones at or around the time of the November 4 incident. Finally, based upon the testimony of Director Murphy, it is found that the judicial marshals do not have state issued cell phones.

15. It is concluded therefore that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with regard to the request set forth in 2.c, above, as such request pertains to “audio” records, or with regard to the requests set forth in paragraphs 2.e, f, and g, above.

16. The respondents contended that the records responsive to paragraph 2.b, above, and the surveillance camera footage responsive to paragraph 2.c, above, are exempt from disclosure in their entirety pursuant to §1-210(b)(19), G.S. The respondents also contended that the records responsive to paragraph 2.b, above, are exempt from disclosure in their entirety pursuant to §1-17, G.S.

17. Section 1-210(b)(19), G.S., provides, in relevant part, that the FOI Act shall not require disclosure of:

[r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk, including a risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility... Such reasonable grounds shall be determined by . . .(B) by the Chief Court Administrator with respect to records concerning the Judicial Department.

18. It is found that Director Murphy serves as the Chief Court Administrator’s designee for determinations regarding Judicial Branch security.

19. It is found that Director Murphy interpreted the request set forth in paragraph 2.b, above, to be a request for copies of the individual judicial marshals’ security badges and the remaining portion of the request set forth in paragraph 2.c, above, to be a request for surveillance video from inside the courthouse.

20. Based on the evidence at the hearing, it is found that the respondent Director had reasonable grounds to believe that the disclosure of the records referenced in paragraph 19,

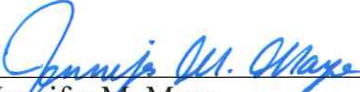
above, may result in a safety risk, including a risk of harm to people in the judicial branch or to the facility itself. It is further found that the reasons given were bona fide, and not pretextual, or irrational.

21. Accordingly, it is concluded that the security badges¹ requested in paragraph 2.b, above, and surveillance videos requested in paragraph 2.c, above, are exempt from disclosure pursuant to §1-210(b)(19), G.S. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) or 1-212(a), G.S., by declining to disclose a copy of such records to the complainant.

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 14, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

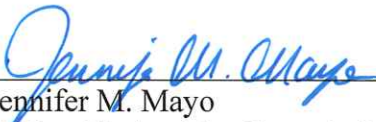
¹ Because the Commission has determined that the requested security badges are exempt pursuant to §1-210(b)(19), G.S., it need not consider the respondents' other claim of exemption with regard to such records.

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:

DANIEL KOKOSZKA, 264 Mount Hope Road #30, Mansfield, CT 06250

O'DONOVAN MURPHY, DIRECTOR OF JUDICIAL MARSHAL SERVICES; AND JUDICIAL MARSHAL SERVICES, c/o Attorney Andrei Tarutin, Judicial Branch Legal Services, 100 Washington Street, PO Box 150474, Hartford, CT 06115



Jennifer M. Mayo
Acting Clerk of the Commission