

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gregory Johnson,

Complainant

against

Docket # FIC 2023-0118

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

Respondents

March 13, 2024

The above-captioned matter was heard as a contested case on November 1, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

By order of the hearing officer, the hearing was reopened for the purpose of taking additional evidence. The reopened hearing was held on February 16, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

Following the February 16, 2024 reopened hearing, the complainant submitted certain documents as proposed after-filed exhibits. Such documents were admitted into evidence as follows:

Complainant's Exhibit C (after-filed): Certified Mail Receipts, various dates (4 pages)

Complainant's Exhibit D (after-filed): Special Request Form, April 27, 2023 (1 page)

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 et al*, 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 Inmate Request Form dated January 27, 2023, the complainant requested that the respondents provide him with copies of the following records that are at issue in this case:

- a. Emails/letters between Unit Manager Grimaldi and APRN Jean Caplan, dated September 2022; and
- b. The tracking number for video (handheld camera) of an incident that occurred on or about February 10, 2022 in the Restricted Housing Unit (“RHU”).

3. It is found that by Inmate Request Form dated February 13, 2023, the complainant requested that the respondents provide him with copies of logs of outgoing legal/privileged mail from MacDougall-Walker Correctional Institution dated August 2022 through the date of the request.

4. By letter of complaint filed March 17, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the requests described in paragraphs 2 and 3, above.¹

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:

[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 (1) inspect such records promptly during regular office or business hours ... or (3) receive a copy of such records in accordance with the provisions of section 1-212.

¹ At the hearing, the complainant also claimed that the respondents failed to comply with several other records requests that he submitted on various dates between 2021 and 2023. However, the complainant did not identify such requests in the complaint, but instead alleged generally that the respondents failed to comply with unspecified “requests dated back to around 2020 at Corrigan-Radgowski Correctional Center ..., and some at [MacDougall-Walker Correctional Institution] dated back to March 2021.” Even construing the complaint liberally in favor of the complainant, such allegations were not sufficient to put the respondents on notice that the specific requests that the complainant raised at the hearing would be at issue. See *Markley v. Department of Public Utility Control*, 301 Conn. 56, 74 (2011) (while pleadings by pro se litigants should be construed “liberally in light of the limited legal knowledge they possess ..., the right of self-representation provides no attendant license not to comply with the relevant rules of procedural and substantive law...”). Accordingly, it is concluded that such alleged violations are not at issue in this case and will not be addressed further in this decision.

7. 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.”

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

9. With respect to the request described in paragraph 2.b, above, §1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial.... For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.

10. Section 1-206(a), G.S., provides in relevant part:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

11. It is found that the complainant submitted the request described in paragraph 2.b, above, on January 27, 2023. It is further found that the complainant did not submit any follow-up correspondence or otherwise renew his request prior to filing the complaint.

12. It is found that the complainant mailed the complaint on March 13, 2023, which is 45 days after the date of the request.

13. Based on the foregoing, it is concluded that the complainant did not timely appeal the alleged denial of the request described in paragraph 2.b, above, and that the Commission therefore lacks jurisdiction to consider such request in this case.²

² Notwithstanding this conclusion, the Commission notes that the respondents presented evidence that they provided the complainant with records responsive to the request described in paragraph 2.b, above, on or about February 6, 2023.

14. With respect to the complainant's request for the September 2022 email described in paragraph 2.a, above, it is found that on February 10, 2023, the respondents initiated a request to the Bureau of Enterprise Systems and Technology ("BEST") within the Department of Administrative Services ("DAS") to search for emails responsive to the complainant's request sent or received during September 2022.³

15. It is further found that on February 20, 2023, the complainant renewed his request for the records described in paragraph 2.a, above. It is found that in such renewed request, the complainant clarified that he was seeking an email dated September 20, 2022 between Captain Grimaldi and APRN Jean Caplan.

16. It is found that on or around February 27, 2023, BEST provided the respondents with 414 pages of records potentially responsive to the complainant's request. It is further found that sometime between February 27, 2023 and March 10, 2023, the respondents provided the complainant with a copy of an email chain containing three emails responsive to the complainant's request.

17. At the February 16, 2024 reopened hearing, the respondents' FOI Administrator testified that, in preparing for the reopened hearing, she realized that the records that the respondents received from BEST contained a version of the email chain described in paragraph 16, above, which included one additional email that was not provided to the complainant. It is found that the respondents provided the complainant with a copy of such email prior to the February 16, 2024 reopened hearing.

18. Based on the foregoing, it is found that the respondents failed to provide the complainant with all records responsive to the request described in paragraph 2.a, above, promptly. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.⁴

19. With respect to the complainant's request for the outgoing privileged mail logs described in paragraph 3, above, it is found that sometime between February 27, 2023 and March 10, 2023, the respondents provided the complainant with 12 pages of records responsive to such request.

20. At the reopened hearing, the complainant claimed that the records described in paragraph 19, above, did not include all responsive records. In particular, the complainant contended that the logs provided by the respondents did not include entries for certain privileged mail that he sent during the relevant time period.

³ BEST, which has since been renamed the Bureau of Information Technology Solutions, maintains the respondents' email servers and provides information technology support and services to State of Connecticut Executive Branch agencies.

⁴ Notwithstanding this conclusion, the Commission commends the respondents for rectifying the violation promptly upon discovering the error.

21. The respondents testified, and it is found, that the respondents do not have an agency-wide policy requiring them to maintain logs of outgoing privileged mail.⁵ It is further found that the practice of logging outgoing privileged mail is not uniform across all Department of Correction facilities. It is found that the practice at MacDougall-Walker is not to log all outgoing privileged mail but, rather, to log such mail only when an inmate is charged for postage.

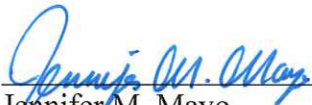
22. The respondents further testified, and it is found, that the records described in paragraph 19, above, included all of the mail logs maintained by the respondents that contained entries for privileged mail sent by the complainant during the relevant time period.

23. Based on the foregoing, it is found that the respondents provided the complainant with all records they maintain that are responsive to the request described in paragraph 3, above, and it is therefore concluded that the respondents did not violate the FOI Act with respect to such request.

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 strictly comply with the disclosure 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 March 13, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

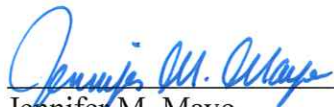
⁵ The Commission takes administrative notice of the respondents' Administrative Directive 10.7, titled "Inmate Communications."

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:

GREGORY JOHNSON, #128262, Corrigan Correctional Center, 986 Norwich-New London Turnpike, Uncasville, CT 06382

**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