

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Andres Sosa,

Complainant

against

Docket # FIC 2023-0158

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

Respondents

March 27, 2024

The above-captioned matter was heard as a contested case on November 13, 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 Anthony Sinchak v. Freedom of Information Commission, Docket No. CV 03-0826293, 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 March 27, 2023, the complainant requested the following: “copies of the new criteria policy(ies) to place inmate on single cell status.”
3. It is found that, by Inmate Request Form dated March 28, 2023, the respondents informed the complainant that they do not maintain any records described in paragraph 2, above.
4. By letter of complaint, dated March 31, 2023 and filed April 6, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with access to the requested records, described in paragraph 2, above. The complainant also requested that this Commission impose civil penalties 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 the provisions of 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 that 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 in this matter, the respondents' witness, Counselor Supervisor ("CS") Stephanie Secore, testified, and it is found, that Department of Correction ("DOC") official policies and procedures are set forth in its administrative directives, unit directives and health services directives. She testified further, and it is found, that the respondents do not maintain any such directives concerning the criteria or policies for assigning inmates to single cell status.¹ CS Secore also testified, and it is found, that the FOI liaison at the Cheshire Correctional Institution spoke with medical and mental health professionals employed by the DOC as well as a deputy warden regarding the requested records who confirmed that no new policies concerning the assignment of single cell status existed.

10. CS Secore additionally testified, and it is found, that in preparing for the hearing in this matter, she contacted the correctional lieutenant for the DOC Office of Standards and Policy ("Lieutenant"), who is responsible for updating and implementing DOC administrative directives. She testified, and it is found, that the Lieutenant confirmed that no formal directives existed that describe the criteria or policies for single cell status.

11. Although the complainant challenged the respondents' claims, it is found, based upon the credible testimony of the respondents' witness, that the respondents conducted a

¹ CS Secore testified, and it is found, that single cell is the assignment of one inmate to a cell in a prison.

diligent search for the records responsive to the request described in paragraph 2, above, and that no such responsive records exist.

12. CS Secore also testified, and it is found, that the Lieutenant provided to CS Secore a memorandum issued by two DOC district administrators, dated January 10, 2023, which reiterated special circumstances, which should default to inmates having a cell partner, that were originally authored by a DOC mental health professional in 2019 (“January 10th Memorandum”).

13. At the hearing, CS Secore contended that the January 10th Memorandum was not responsive to the complainant’s request described in paragraph 2, above, because the memorandum did not constitute a DOC directive or policy. Moreover, she contended that the special circumstances described within the January 10th Memorandum were originally authored in 2019 and therefore were not “new.” CS Secore testified, and it is found, that nonetheless the respondents provided the complainant with a redacted copy of the January 10th Memorandum in advance of the hearing in this matter because such memorandum was indirectly related to the complainant’s request. CS Secore also contended that the redacted information was permissibly exempt from disclosure pursuant to §1-210(b)(18), G.S.

14. At the hearing, the complainant disputed the respondents’ contentions and challenged the redactions contained in the January 10th Memorandum. He also argued that the DOC violated the FOI Act by not providing it to him sooner.

15. On February 16, 2024, the respondents submitted an unredacted copy of the January 10th Memorandum along with an in camera index to the Commission for in camera inspection. On the in camera index, the respondents claimed that the redacted information was exempt from disclosure pursuant to §1-210(b)(18), G.S.

16. It is found that, based on the credible testimony of the respondents’ witness and a careful inspection of the in camera record, the January 10th Memorandum is not responsive to the complainant’s request described in paragraph 2, above.

17. Therefore, it is concluded that the respondents did not violate the FOI Act by failing to provide the complainant with the January 10th Memorandum promptly.

18. With respect to the respondents’ claim that the redacted information on the January 10th Memorandum is exempt from disclosure under §1-210(b)(18), G.S., such section provides, in relevant part, that disclosure is not required of “[r]ecords, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction...”²

² The Commission acknowledges that it need not address the redactions contained in the January 10th Memorandum because such memorandum is not responsive to the complainant’s request described in paragraph 2, above. Nonetheless, the Commission will do so for the sake of administrative economy, in the event that the complainant might seek to request a copy of the January 10th Memorandum in the future.

19. Section 1-210(b)(18)(G), G.S., specifically provides that disclosure is not required of “documents that contain information on the ... assignment of inmates ... at correctional institutions or facilities....”

20. The Commission’s role in reviewing the DOC Commissioner’s safety risk determination under §1-210(b)(18), G.S., is to determine “whether the [commissioner’s] reasons were pretextual and not bona fide, or irrational.” Commissioner v. Freedom of Information Commission, 46 Conn. L. Rptr. 533, 2008 WL 4926910, at *5 (Conn. Sup. Ct. Nov. 3, 2008).

21. CS Secore testified, and it is found, that the redacted information included certain special circumstances for DOC staff to consider when an inmate is celled alone, which if disclosed, may result in a safety risk because inmates could use such information to manipulate their housing assignments within the correctional system. Additionally, she testified, and it is found, that the respondents redacted the colors of certain emergency response codes used by DOC Staff because disclosure of such code colors may enable the inmates to familiarize themselves with the respondents’ emergency protocols, which may result in a safety risk.

22. The Commission takes administrative notice that, on several occasions, it has held that records concerning the assignment of inmates within correctional facilities are exempt from disclosure pursuant to §1-210(b)(18), G.S. See e.g., Joshua Smith v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2020-0212 (February 22, 2023); and David Taylor v. Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2021-0093 (February 23, 2022) (finding that criteria used to determine an inmate’s risk assessment may result in a safety risk because inmates could use such information to manipulate their housing assignment within the correctional system and thus was exempt under §1-210(b)(18), G.S.).

23. The Commission also takes administrative notice that it has held, on several occasions, that the disclosure of emergency codes and procedures may result in a safety risk pursuant to §1-210(b)(18), G.S. See e.g., Victor Velasco v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction et al., Docket #FIC 2020-0295 (October 13, 2021) (Commissioner had reasonable grounds to believe that disclosure of emergency codes may result in a safety risk pursuant to §1-210(b)(18), G.S.); Angel Caballero v. Commissioner, State of Connecticut, Department of Correction, Docket #FIC 2018-0475 (April 10, 2019) (Commissioner had reasonable grounds to believe that disclosure of emergency codes may result in a safety risk pursuant to §1-210(b)(18), G.S.).

24. It is found that the Commissioner of Correction had reasonable grounds to believe that disclosure of the information redacted on the January 10th Memorandum may result in a safety risk, including the risk of harm to a person, or a disorder in a correctional institution or facility, within the meaning of §1-210(b)(18), G.S. It is further found that the respondents’ reasons were bona fide and were not pretextual or irrational.

25. Therefore, it is found that the information redacted on the January 10th Memorandum is exempt from disclosure pursuant to §1-210(b)(18), G.S.

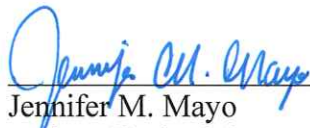
26. Based on the foregoing, it is concluded that the respondents did not violate the FOI Act by withholding the information redacted on the January 10th Memorandum from the complainant.

27. Because there is no violation in this matter, consideration of a civil penalty is not warranted.

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 March 27, 2024.



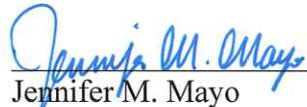
Jennifer M. Mayo
Acting Clerk of the Commission

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:

ANDRES SOSA, #260589, Cheshire Correctional Institution, 900 Highland Ave, Cheshire, CT. 06410

ANGEL QUIROS, 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