

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Mitchell,

Complainant

against

Docket # FIC 2023-0265

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

Respondents

May 22, 2024

The above-captioned matter was heard as a contested case on November 28, 2023 and January 9, 2024, at which times 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 et al*, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

Pursuant to the Order of the Hearing Officer, on January 18, 2024, the respondents submitted an after-filed exhibit, which has been marked as Respondents' Exhibit 4: Affidavit of CS Secore (after-filed).

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 May 1, 2023, the complainant requested that the respondents provide him with copies of the complainant's "add and drop phone records" for the months of November 2022 through February 2023. It is found that the complainant also explained that he was looking for information about the numbers he added and dropped for the period identified in his request.
3. It is found that, by Inmate Request Form, dated May 2, 2023, the complainant requested that the respondents provide him with copies of the respondents' "security intel division investigations" against the complainant for 2023.
4. It is found that, by separate Inmate Request Form, dated May 2, 2023, the complainant requested that the respondents provide him with any records regarding the

Department of Correction's investigations of one of its staff members, Marybeth Moore.

5. It is found that the complainant did not receive any acknowledgement or response from the respondents regarding the requests described in paragraphs 2 through 4, above.

6. It is found that the complainant construed the lack of a response from the respondents as retaliatory, and therefore, he attempted to file a grievance for noncompliance with his requests. It is found that the respondents rejected the complainant's grievance, explaining that "FOI is not a grievable matter" and suggested that the complainant contact the FOI Administrator or the FOI Commission.

7. By complaint filed May 30, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his requests for the records described in paragraphs 2 through 4, above. The complainant also requested that the Commission impose a civil penalty against the respondents' FOI liaisons at the facility.¹

8. 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.

9. 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 ... (3) receive a copy of such records in accordance with the provisions of section 1-212.

10. 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

¹ Subsequent to the filing of the complaint in this matter, on June 29, 2023, the complainant filed a letter with the Commission providing additional information about the requests described in paragraphs 2 through 4, above. Such letter also includes reference to additional requests for a "list of all medical staff at Corrigan C.C." and "any and all transfer documents in relation to [the complainant's] transfer request out of MacDougall C.I. to Corrigan C.C." However, because the additional two requests were not fairly raised in the complaint filed in this matter, such requests will not be addressed further herein.

any public record."

11. It is concluded that the records described in paragraphs 2 through 4, above, to the extent such records exist, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

12. It is found that, on or about May 1, 2023, the complainant was transferred from MacDougall-Walker Correctional Institution to Corrigan Correctional Institution. It is found that the complainant did not know the reason for the transfer, and therefore he proceeded to make requests for records, including the requests described in paragraphs 2 through 4, above.

13. It is found that, in the months following the complainant's requests described in paragraphs 2 through 4, above, the respondents did not have any communication with the complainant regarding such requests, nor did the respondents provide the complainant with the requested records.²

14. It is found that, by Inmate Request Form dated September 1, 2023, the complainant requested that the respondents provide him with a copy of all of the FOI Act requests that he filed within Corrigan Correctional Institution for the months of May and June 2023.

15. It is found that, on or about September 18, 2023, FOI Liaison Calderon provided the complainant copies of the requests described in paragraphs 2 and 3, above. It is also found that FOI Liaison Calderon did not provide the complainant with a copy of the request described in paragraph 4, above.

16. It is found that the copy of the request, described in paragraph 2, above, included a notation from FOI Liaison Calderon that there was "nothing responsive." It is also found that, for the first time, the complainant received a copy of an acknowledgment letter, dated May 9, 2023, stating that there were no responsive records. It is found that, at that time, the complainant attempted to explain to FOI Liaison Calderon the type of records he was requesting. It is found that, thereafter, the complainant did not have any further communication with FOI Liaison Calderon regarding this request.

17. It is also found that on or about September 18, 2023, FOI Liaison Calderon provided the complainant with a copy of the request, described in paragraph 3, above, and that such copy included a notation that the request was "denied" and that "clarification [was] needed as to which incident/investigations." It is found, however, that FOI Liaison Calderon did not request any additional information or clarification from the complainant in order to comply with his request. It is further found that the complainant did not have any further communication with FOI Liaison Calderon regarding this request.

18. At the first hearing in this matter, the complainant contended that the respondents failed to provide him with copies of records responsive to the requests described in paragraphs 2

² The Commission notes that, at the hearings in this matter, the respondents introduced letters acknowledging the requests described in paragraphs 2 and 3, above. Such letters were signed by FOI Liaison Calderon. However, the complainant testified that he did not receive a copy of such letters until after the filing of the complainant in this matter. FOI Liaison Calderon did not testify in this matter and the respondents did not dispute the complainant's testimony.

through 4, above. With respect to the request described in paragraph 2, above, the complainant testified that he previously made requests for the same type of records and that the respondents have provided him with responsive records. With respect to the requests described in paragraphs 3 and 4, above, the complainant testified that he was aware that an investigation was underway and therefore responsive records should exist.

19. With respect to the request described in paragraph 2, above, it is found that FOI Liaison Calderon discussed such request with the respondents' phone monitor staff. It is further found that, based on her discussions, she concluded that there were no records responsive to the complainant's request.

20. It is found, however, that between the first and second hearings in this matter, the complainant and the FOI Administrator conferred and discussed the complainant's request, and the respondents subsequently conducted a search for responsive records. It is found that on or about January 10, 2024, the respondents provided the complainant with a copy of records responsive to the request described in paragraph 2, above, free of charge.

21. With respect to the request described in paragraph 3, above, it is found that FOI Liaison Calderon concluded that she needed additional information in order to conduct a search for responsive records. It is also found, however, that FOI Liaison Calderon did not make reasonable efforts to communicate to the complainant that she needed additional information or request that he clarify his request, in order to conduct a search for responsive records. At the hearing, the FOI Administrator testified, and it is found, that although additional information might have been helpful to perform a search, it was not necessary.

22. It is found, however, that after the respondents received notice of the complaint filed in this matter, the FOI Administrator contacted the respondents' security division, and requested that a search be conducted. It is found that the respondents were unable to locate any records responsive to the request described in paragraph 3, above, for "security division intel investigations" for the period of January 2023 through the date of the request.

23. However, it is also found that, during the conference with the complainant that occurred between the first and second hearing dates in this matter, the respondents learned that the complainant was also looking for any incident reports for the relevant time period.³ It is found that the respondents conducted a broader search and located one incident report. It is found that the respondents provided the complainant with a redacted copy of the incident report, free of charge.⁴

24. In a post-hearing submission, the complainant contended that the respondents should have located and provided copies of additional records responsive to the request described in paragraph 3, above, because there is an ongoing investigation.

³ During the hearing, CS Secore explained that not every incident report is escalated to the security intel division. "Incident reports" and records of "security intel division investigations" are not necessarily synonymous.

⁴ The complainant did not object to the respondents claims of exemption, as described in the affidavit of CS Secore. Therefore, such claims of exemption will not be addressed herein.

25. However, to the extent there is an ongoing investigation, the respondents have no legal obligation "to provide the complainant with records not yet in existence at the time of [his] request." See, e.g., Stephen Whitaker v. Boris Hutorin, Dir., Dep't of Infor. Tech., Town of Greenwich, Docket #FIC 2005-332 (June 28, 2006), and Rita M. Pacheco v. Parks and Rec. Comm'n, City of Torrington, Docket #FIC 1996-221 (Jan. 8, 1997).

26. Based on the foregoing, it is found that, with respect to the requests described in paragraphs 2 and 3, above, the respondents conducted a reasonable and diligent search and provided all responsive records they maintained at the time of each request.

27. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212, G.S., with respect to the requests described in paragraphs 2 and 3, above.

28. With respect to the request described in paragraph 4, above, at the hearing, the respondents witness testified, and it is found, that the respondents did not receive notice of the complainant's request until the Commission informed the respondents of the complaint filed in this matter. It is also found that the complainant did not include a copy of any of his requests when he filed his complaint with the Commission, and neither the complainant nor the respondents produced a copy of the request described in paragraph 4, above, at either of the hearing dates in this matter.

29. Section 1-206(b)(1), G.S., provides, in relevant part, that "[a]ny person denied the right to inspect or copy records under 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...."

30. It is found that at the time of the complaint filed in this matter, the respondents had not received the request described in paragraph 4, above, and had not denied the complainant's request for records, or denied any other right under the FOI Act with respect to such request, within the meaning of §1-206(b)(1), G.S.

31. It is concluded, therefore, under the facts of this case, that the respondents did not violate the FOI Act with respect to the request described in paragraph 4, above.⁵

32. Finally, with respect to the contention that the respondents did not provide records in a prompt manner, this Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel

⁵ The Commission notes that the respondents concluded that the incident report responsive to the request described in paragraph 3, above, is also responsive to the request described in paragraph 4, above. During the hearing, however, the complainant pointed out that his request for investigations of Ms. Moore by the Department of Correction was not limited to the period of January 2023 through the date of his request, and queried whether the respondents maintain any investigation records for Ms. Moore prior to January 2023. The respondents acknowledged that such a broad search had not been conducted. Notwithstanding, the Commission notes that the complainant may make a new request for such records and that the complainant may file an appeal with the Commission from a denial of such request if necessary.

time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

33. At the hearing, the respondents acknowledged, and it is found, that there was a delay with respect disclosure of records responsive to the complainant's requests described in paragraphs 2 and 3, above, due to the manner in which FOI Liaison Calderon managed compliance with such requests. The respondents attributed the delay to the FOI liaison's misunderstanding of the complainant's request, described in paragraph 2, above, and erroneous conclusion that she needed additional information from the complainant before a search could be conducted for records responsive to the request described in paragraph 3, above.

34. However, with respect to the request described in paragraph 2, above, the complainant made reasonable attempts to explain to the respondents the type of records he was requesting. The respondents did not present any evidence that FOI Liaison Calderon utilized the additional information to search for and locate the records that were ultimately located by the FOI Administrator and provided to the complainant eight months after his request.

35. With respect to the request described in paragraph 3, above, as found in paragraph 21, above, FOI Liaison Calderon concluded that she needed additional information from the complainant, and therefore, no search to locate responsive records was conducted. It is found, however, that the FOI liaison did not make reasonable attempts to obtain additional information from the complainant. It is also found that the FOI liaison could have requested the assistance of the FOI Administrator to the extent she had questions about compliance with such request, but that she did not do so.

36. Based on the foregoing, it is found that the respondents failed to search for and provide the complainant with copies of all records responsive to the requests described in paragraphs 2 and 3, above, promptly.

37. It is therefore concluded that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S.

38. Notwithstanding the findings in paragraphs 33 through 36, above, and the conclusion in paragraph 37, above, it is found that the respondents ultimately provided the complainant with all records responsive to the requests described in paragraphs 2 and 3, above. It is also found that the FOI Administrator met with FOI Liaison Calderon to address the manner in which she managed the complainant's requests.

39. The FOI Administrator is encouraged to coordinate FOI Act training for the respondents' FOI liaisons and can contact the Commission's offices to arrange such a session by the Commission's staff.

40. Based on all of the foregoing, the Commission declines to consider the imposition of a civil penalty in this matter.

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 promptness 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 May 22, 2024.



Molly E. Steffes
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:

JAMES MITCHELL, #253732, Garner Correctional Institution, 50 Nunnawauk Road, Newtown, CT 06470

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

Molly E. Steffes
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Acting Clerk of the Commission