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FREEDOM OF INFORMATION



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Ira Alston,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-481

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

Respondent(s)

April 6, 2016

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, April 27, 2016**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE April 15, 2016**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE April 15, 2016**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE April 15, 2016**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Ira Alston
Attorney James Neil
cc: Craig Washington

2016-04-05/FIC# 2015-481/Trans/wrbp/VRP//VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ira Alston,

Complainant

against

Docket #FIC 2015-481

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

Respondents

April 5, 2016

The above-captioned matter was heard as a contested case on November 6, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2015-510, Ira Alston v. Department of Correction et al. 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 the hearing, the respondents submitted certain of the records at issue in this case, referenced in paragraph 3.d of the findings, below, for an in camera inspection. Also after the hearing, the complainant submitted after-filed exhibits which have been marked collectively as complainant's exhibit A.

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. By letter of complaint filed July 23, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records he requested on June 30, July 1, and July 3, 2015.
3. It is found that the complainant made a June 30, 2015 request to the FOI Liaison at Northern Correctional Institution ("NCI"), Officer Ferguson, for:

- a. The work order repair sheet for the 1E South office NiceVision¹ footage security camera on 4-14-15;
- b. The NCI inmate handbook revised 2009;
- c. The NCI inmate handbook revised 2010;
- d. The attachments to NCI Unit Directive 6.5.1;
- e. The attachments to Administrative Directive 9.4; and
- f. NCI Unit Directive 9.5.1.

4. It is found that the respondents denied the portions of the request described in ¶¶3.a and 3.d, citing safety and security concerns under §1-210(b)(18), G.S.

5. It is found that that the complainant sought the work order repair sheet described in paragraph 3.a, above, because he had previously requested that the respondents preserve the security footage recorded by that camera, and been told that it could not be preserved because the camera had been repaired. The complainant sought confirmation, by the evidence of the work order repair sheet, that the repair had in fact been done, and when it had been done.

6. It is found that the respondents ultimately provided records responsive to the portion of the request described in ¶¶3.b, 3.c and 3.f, as to which the complainant did not pursue a claim of lack of promptness, although he asserted that the responses had not been timely.

7. The respondents assert, and the complainant disputes, that they previously offered him the records described in ¶3.e. In any event, the respondents pledged at the hearing that they would provide the records that day.

8. It is found that the complainant also made a July 1, 2015 request to the NCI FOI Liaison for copies of:

- a. The NCI monthly disciplinary summary, form CN 9507, for March, April, May and June, 2015; and
- b. The NCI disciplinary report log, form CN 9509, for the same months.

9. It is found that the respondents provided the disciplinary report log described in ¶7b, above, but initially denied the complainant a copy of the monthly disciplinary summaries described in ¶7a, above.

10. At the hearing, however, the respondents pledged to provide the 9507 monthly disciplinary summary to the complainant.

¹ The Commission takes administrative notice of the fact that NiceVision is surveillance video management software.

11. It is found that the complainant also made a July 3, 2015 request for copies of the incident reports, shift supervisor logbook entries, 1 East housing unit logbook entries, and shift commander logbook entries, all from June 20 through July 1, 2015, regarding the complainant's placement on "no razor" status.

12. It is found that the respondent provided the complainant with records responsive to the July 3, 2015 request described in ¶11, and that the complainant did not pursue a claim of lack of promptness in the provision of those records, although he did not believe the response to have been timely.

13. Section 1-200(5), G.S., defines "public records" as follows:

Public 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

14. Section 1-210(a), G.S., provides, in relevant part:

Except 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

15. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record."

16. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

17. With respect to the withheld policy attachments to A.D. 9.4 referenced in paragraph 3.e., above, the respondents pledged to, and did provide those documents to the complainant after the hearing on this matter.

18. It is concluded, however, that the respondents' provision of the policy attachments to A.D. 9.4 to the complainant after the hearing was not prompt.

19. It is therefore concluded that the respondents violated §1-210(a), G.S., by failing to provide the policy attachments to A.D. 9.4 to the complainant promptly upon request.

20. At the request of the hearing officer, the respondent Department of Correction submitted the records described in paragraphs 3.a and 3.d, above, for an in camera inspection.

21. The respondent Department of Correction claims that the withheld records are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides that disclosure is not required of:

Records, 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... Such records shall include, but are not limited to:

- (A) Security manuals, including emergency plans contained or referred to in such security manuals;
- (B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;
- (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;
- (F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and
- (H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers.

22. After the hearing, the respondents provided to the complainant a redacted copy of the requested work order referenced in paragraph 3.a., above, together with the corresponding incident report concerning the "recording issue" that needed to be repaired.

23. The complainant contends that the records provided to him are not all the documentation relevant to his request.

24. It is found however, that the work order is the record requested by the complainant.

25. It is concluded, however, that the respondents' provision of the work order to the complainant was not prompt.

26. It is therefore concluded that the respondents violated §1-210(a), G.S., by failing to provide the requested work order promptly upon request.

27. With respect to the withheld CN 9507 monthly disciplinary summary for March, April, May, and June 2015 described in paragraph 8.a, above, it is found that the respondents provided that record in redacted form to the complainant after the hearing.

28. It is found that the respondents redacted from the CN 9507 forms information pertaining to inmates other than the complainant.

29. It is concluded that the respondents had reasonable grounds to believe that disclosure to the complainant of disciplinary information pertaining to other inmates would constitute a safety and security risk within the meaning of §1-210(b)(18), G.S.

30. It is therefore concluded that the respondents did not violate §1-210(a), G.S., by withholding the redacted portion of the requested CN 9507 forms from the complainant.

31. It is also concluded, however, that the respondents' provision of the redacted forms was not timely, and that they violated the promptness provision of §1-210(a), G.S. by not providing the redacted records until after the hearing in this matter.

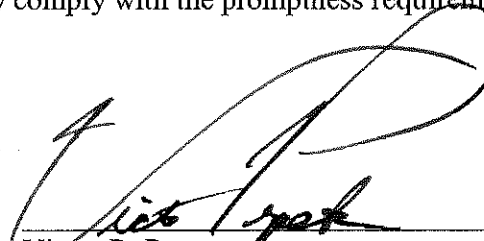
32. With respect to the withheld attachments to Unit Directive 6.5.1, referenced in paragraph 3.d, above, the respondents maintain that disclosure would constitute a security risk. Specifically, the respondents maintain that the attachments explain procedures during an emergency situation, and therefore are exempt from disclosure pursuant to §1-210(b)(18)(A), G.S.

33. After an in camera inspection, it is found that the respondents had reasonable grounds to believe that disclosure to the complainant of the security procedures described in the withheld attachments to Unit Directive 6.5.1 would constitute a safety and security risk within the meaning of §1-210(b)(18), G.S.

34. It is therefore concluded that the respondents did not violate §1-210(a), G.S., by withholding the attachments to Unit Directive 6.5.1 from the complainant.

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 in §1-210(a), G.S.



Victor R. Perpetua
as Hearing Officer