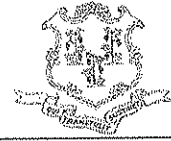


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FREEDOM OF INFORMATION



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Thomas Holmes,
Complainant(s)

against

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,
Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2011-673

September 4, 2012

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, September 12, 2012 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Thursday, September 27, 2012.**

Any brief, memorandum of law or request for additional time, as referenced in the August 17, 2012 Transmittal of Proposed Final Decision, should be received by the Commission on or before September 14, 2012.

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Thomas Holmes
James Neil, Esq.
cc: Kristine Barone

2012-09-04/FIC# 2011-673/ReschedTrans/wrbp/LFS/CAL



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Thomas Holmes,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-673

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,
Respondent(s)

August 17, 2012

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, September 12, 2012**. 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 August 31, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE August 31, 2012**. 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 **fourteen (14) copies** be filed **ON OR BEFORE August 31, 2012**, 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: Thomas Holmes
James Neil, Esq.
cc: Kristine Barone

08/17/2012/FIC# 2011-673/Trans/wrbp/LFS//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Thomas Holmes,

Complainant

against

Docket #FIC 2011-673

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

Respondents

August 6, 2012

The above-captioned matter was heard as a contested case on July 19, 2012, at which time the complainant and respondents appeared 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.).

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 on November 16, 2011, the complainant made a written request for a copy of all records relating to a search of his cell the day before, on November 15, 2011.
3. It is found that the complainant directed his request to his liaison counselor supervisor and sent a copy to the warden.
4. It is found that the warden acknowledged receipt of the complainant's request on November 18, 2011. It is found that the warden sent a copy of the acknowledgement to the deputy warden and to the complainant's counselor supervisor.
5. By letter filed December 13, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act, by failing to provide him with a copy of the records he requested.
6. 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.

7. 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 ... receive a copy of such records in accordance with the provisions of section 1-212.

8. Section 1-212(a), G.S., provides in relevant part: "Any 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, to the extent that they exist, the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that on December 3, 2011, the complainant pled guilty to the disciplinary charges against him.

11. It is found that upon the complainant's guilty plea and the resolution of the disciplinary matter, all paperwork except for the disciplinary report and the process summary was destroyed via paper shredder.

12. It is found that the particular records that the complainant sought – an anonymous note and a statement of support by another inmate – are no longer maintained by the respondents.

13. It is found, however, that at least the inmate's statement of support did exist and was maintained by the respondents at the time of the complainant's request just one day after the incident. It is found that such record or records did exist and were maintained at the time that the warden acknowledged the complainant's request and forwarded the acknowledgement to the deputy warden and the complainant's liaison counselor supervisor on November 18, 2011.

14. It is found that the respondents had notice of the complainant's request, and it is found that the respondents did not inform the complainant that by pleading guilty to the disciplinary charge, he would effectively forfeit his access rights under the FOI Act with respect to the records he requested.


15. It is found that the respondents failed to ensure the preservation of the records requested by the complainant.

16. Notwithstanding the finding in paragraph 12, above, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide the complainant with the copies of records he requested, described in paragraph 2, above.

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 provision of §§1-210(a) and 1-212(a), G.S.

2. The Commission wishes to advise the respondents that Records Retention Schedule #12-3-1 for the Department of Correction states that no records may be destroyed if there are pending or active Freedom of Information Act requests for such records.


Lisa Fein Siegel
as Hearing Officer