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FREEDOM OF INFORMATION



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William McKinney,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-645

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

September 18, 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, October 10, 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 September 28, 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 September 28, 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 September 28, 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: William McKinney
Nicole Anker, Esq.

9/18/2012/FIC# 2011-645/Trans/wrbp/TCB//VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

William McKinney,

Complainant

against

Docket #FIC 2011-645

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

Respondents

September 18, 2012

The above-captioned matter was heard as a contested case on September 14, 2012, 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 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 letter dated November 8, 2011, the complainant made a request to the respondent Commissioner for a copy of the statement written by another inmate to the Commissioner, in which that inmate described an October 19, 2011 incident between the complainant and staff of the respondent department (hereinafter "the inmate statement").
3. It is found that the respondents denied the complainant's request by letter dated November 17, 2011, claiming that disclosure of the inmate statement would risk the safety and security of the prison.

4. It is found that by letter dated November 27, 2011 and filed on November 29, 2011, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his November 17, 2011 records request.

5. Section 1-200(5), G. S., provides:

“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, 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, printed, photostated, photographed or recorded by any other method.

6. 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.

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 found that the inmate statement is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. Section 1-210(b)(18), G.S., 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 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;

10. In Docket #CV06-4012025S, State of Connecticut, Department of Correction v. Freedom of Information Commission and Richard Quint, et al, Superior Court, J.D. of New Britain, Memorandum of Decision dated July 3, 2007 (Levine, J.), the court held that “the statutory phrases ‘reasonable grounds to believe’ and ‘may result’ establish a standard which has an inherently subjective component...” and that “...the test can ... be established only by opinion evidence.” (page 6).

11. It is found that the inmate statement describes an incident in which the complainant was allegedly beaten by staff of the respondent department.

12. The Commissioner of DOC believes that disclosure of the inmate statement would expose the complainant, and the inmate who wrote the statement, to retaliation.

13. At the hearing on this matter, the complainant contended that because the statement was in support of him, there was no reason to believe that he would seek retaliation and, further, he maintained that he was not a threat to the other inmate.

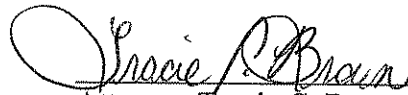
14. However, the complainant also stated at the hearing, and it is found, that the risk of retaliation could come from others sources including the staff that may have been implicated in the statement.

15. Based on the evidence in this case, it is found that the Commissioner of DOC has reasonable grounds to believe that disclosure of the requested record 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 respondent DOC, within the meaning of §1-210(b)(18), G.S.

16. Therefore, it is concluded that the inmate statement is permissibly exempt from the mandatory disclosure provisions of the FOI Act and that the respondents did not violate the FOI Act as alleged by the complainant.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.



Attorney Tracie C. Brown
as Hearing Officer