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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Jose Cosme,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-045

Chief, Police Department, City of Hartford; Police Department, City of Hartford; Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction,

November 20, 2013

Respondent(s)

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 **special 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, December 18, 2013**. 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 November 29, 2013*. 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 November 29, 2013*. **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 November 29, 2013*, 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: Jose Cosme
Demar G. Osbourne, Esq.
Nancy Canney, Esq., cc: Kristine Barone

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jose Cosme,

Complainant

against

Docket #FIC 2013-045

Chief, Police Department,
City of Hartford; Police
Department, City of Hartford;
Commissioner, State of Connecticut,
Department of Correction; and
State of Connecticut,
Department of Correction,

Respondents

November 20, 2013

The above-captioned matter was heard as a contested case on September 16, 2013, at which time the complainant and the Hartford Police Department respondents appeared and presented testimony, exhibits and argument on the complaint. The hearing was continued to October 15, 2013 to permit the addition of the Department of Correction as a respondent, at which time the complainant and all of the 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.). The respondents submitted the records at issue in this case for an in camera inspection.

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 the complainant made a January 25, 2013 written request to the respondent Hartford Police Department for complete documentation concerning his two criminal convictions in 1997.
3. By letter of complaint filed January 31, 2013, the complainant appealed to the Commission, alleging that the respondent Hartford Police Department violated the Freedom of Information ("FOI") Act by failing to provide him with the copies of the records he requested.

4. It is found that the Hartford Police Department respondents provided the records responsive to the complainant's request on March 20, 2013, by delivering approximately 318 pages of records to the respondent Department of Correction for review.

5. It is found that the respondent Department of Correction, after reviewing the records, forwarded most of them to the complainant but withheld a single cassette tape and approximately 75 pages of records from the complainant. The cassette tape is a recording of dispatch calls at the Hartford Police Department. The 75 pages of withheld records fall into three categories: (1) photographs, most of crime scenes and one of a lineup; (2) one-page documents entitled "Contraband/Criminal Physical Evidence Tags"; and (3) signed witness statements.

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 (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.

8. 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."

9. 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.

10. At the request of the hearing officer, the Department of Correction respondents submitted the withheld written records to the Commission for an in camera inspection, but represented to the hearing officer that they were unable to make a copy of the cassette recording.

11. The Department of Correction respondents claim 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.

12. With respect to the single cassette recording of dispatch calls, it is found that the Department of Correction respondents have not listened to the cassette tape, but have withheld it as a matter of policy, on the grounds that any portion of any noncommercial recording might contain exempt information, and because the Department believes that it is unreasonable to have to listen to every portion of a recording.

13. While the Commission understands the Department's need to conserve its limited resources, it is nonetheless concluded that the Department's policy of withholding recordings because it does not believe it should devote the time necessary to review them is not consistent with the requirements of the FOI Act. The Commission notes that the Department did not present evidence that review of the cassette recording was more onerous than review of the 318 pages of criminal records comprising the complainant's criminal records, or that the Department had reason to believe that the contents of the cassette recording contained information exempt from disclosure pursuant to §1-210(b)(18), G.S.

14. It is therefore concluded that the Department of Correction respondents violated the FOI Act by refusing to disclose the cassette recording of Hartford Police Department dispatch calls.

15. With respect to the withheld photographs, the Department of Correction respondents offered no evidence or argument in support of their claimed exemption under §1-210(b)(18), G.S. Upon review of the in camera photographs, the Commission is also unable to discern any colorable reason why the Commissioner of Correction might believe that disclosure of the photographs, most of which are apparently pictures of a crime scene or scenes, might result in a safety risk.

16. It is therefore concluded that the Department of Correction respondents failed to prove that the withheld photographs are exempt from disclosure pursuant to §1-210(b)(18), G.S.

17. With respect to the withheld "Contraband/Criminal Physical Evidence Tags," the Department of Correction respondents offered no evidence or argument in support of their claimed exemption under §1-210(b)(18), G.S. Upon review of the documents, the Commission is also unable to discern any colorable reason why the Commissioner of Correction might believe that disclosure of them might result in a safety risk.

18. It is therefore concluded that the Department of Correction respondents failed to prove that the withheld "Contraband/Criminal Physical Evidence Tags," are exempt from disclosure pursuant to §1-210(b)(18), G.S.

19. Additionally, the Department of Correction respondents maintain that the "Contraband/Criminal Physical Evidence Tags" are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., which provides that disclosure is not required of:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of ... (E) investigatory techniques not otherwise known to the general public....

20. It is found, however, that the Department of Correction respondents offered no evidence or argument in support of their claim that the withheld "Contraband/Criminal Physical Evidence Tags" document investigatory techniques not otherwise known to the general public. On careful review of the in camera documents, the Commission takes administrative notice of the fact that the withheld "Contraband/Criminal Physical Evidence Tags" document investigatory techniques that are known to the public.

21. It is therefore concluded that the Department of Correction respondents ;failed to prove that the withheld "Contraband/Criminal Physical Evidence Tags," are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

22. With respect to the signed witness statements, the Department of Correction respondents maintain that disclosure of those records into the prison population could create a risk to the complainant, other inmates, or the general public.

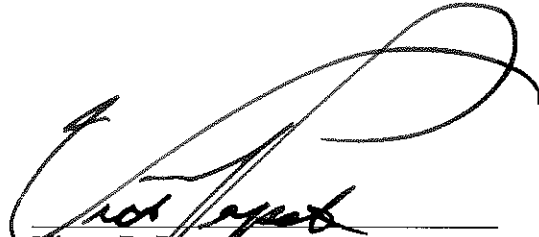
23. The Department of Correction respondents additionally maintain that the signed witness statements are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., which provides that disclosure is not required of:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of ... (C) signed statements of witnesses.

24. It is concluded that the signed witness statements are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., and that the Department of Correction respondents did not violate the FOI Act by withholding them from 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 dismissed as to the Hartford Police Department respondents.
2. The Department of Correction respondents shall forthwith provide to the complainant the withheld cassette of dispatch calls, photographs, and "Contraband/Criminal Physical Evidence Tags"
3. The Commission in this case has sought to defer to the expertise of officials of the Department of Correction in matters relating to the security of correctional institutions, and additionally has searched the entirety of the record, including the in camera records, for evidence in support of the Department's claims of exemption under §§1-210(b)(3)(E) and 1-210(b)(18), G.S. The Commission urges the Department respondents in the future to provide specific evidence and argument in support of the Department's claims of exemption.



Victor R. Ferputua
as Hearing Officer

2013-045/HOR/VRP/11192013