

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jeremy Steele,

Complainant

against

Docket #FIC 2017-0427

Executive Director, State of Connecticut,
University of Connecticut Health Center,
Correctional Managed Healthcare; and
State of Connecticut, University of Connecticut
Health Center, Correctional Managed Health Care,

Respondents

April 25, 2018

The above-captioned matter was heard as a contested case on December 6, 2017, at which time the complainant and 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*, 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 February 10, 2017, the complainant requested copies of certain records from the respondents. It is found that this request was identical to an earlier request he made, by letter dated December 26, 2016.
3. It is found that, by letter dated March 22, 2017, the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that they had compiled 74 pages of records responsive to such request. The respondents further informed the complainant that the cost for the copies was \$18.50, and that, upon receipt of payment, the records would be forwarded to the Freedom of Information (“FOI”) administrator for the Department of Correction (“DOC”) for review, in accordance with §1-210(c), G.S.

4. It is found that, in response to the respondents' March 22nd letter, described in paragraph 3, above, the complainant submitted an "Affidavit for Waiver of FOI Document Copy Fees," dated May 11, 2017, to the respondents, in which he averred that he was indigent and unable to pay for the copies, and requested a fee waiver.

5. It is found that, on May 24, 2017, the respondents consulted with the DOC's FOI administrator and determined that the complainant was not indigent.

6. It is found that, by letter dated June 5, 2017, the complainant again requested that the respondents provide the requested records free of charge, based on his indigence.

7. It is found that, by letter dated June 13, 2017, the respondents informed the complainant that he was not indigent under their indigency standard and that, upon payment of the cost of the copies, the requested records would be provided to the DOC's FOI administrator for review.

8. It is found that, by letter dated June 25, 2017, the complainant reiterated his records request, and again asserted that he was indigent. There is no evidence in the record that the respondents responded to the June 25th letter.

9. By letter dated July 10, 2017 and filed with the Commission on July 28, 2017, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to comply with his records request.

10. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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

12. Section 1-212(a), G.S., provides that "[t]he fee for any copy provided in accordance with the [FOI] Act:

(A) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page....

13. Section 1-212(d)(1), G.S., provides: “[t]he public agency shall waive any fee provided for in this section when...[t]he person requesting the records is an indigent individual....”

14. Since 1992, the Commission has interpreted [§1-212(d)(1), G.S.], as giving each custodial public agency the discretion to set its own standard of indigence, as long as the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner. The Commission’s interpretation was upheld by the court in May v. Freedom of Information Commission, superior court, judicial district of New Britain, CV-06-4011456 (April 30, 2007).

15. It is found that the respondents have adopted the DOC’s standard for determining whether a requestor is indigent.

16. That standard, as set forth in the DOC’s Administrative Directive 3.10, provides, in relevant part:

An inmate shall be charged twenty-five cents for each page copied. The fee shall be waived if an inmate is indigent. For copies of records pursuant to the [FOI] Act, an inmate shall be considered to be indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety (90) days preceding the receipt by the Department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request).

17. It is found that the DOC’s indigency standard previously was approved by this Commission as “objective, fair and reasonable,” insofar as it looks back in time on the inmate’s account history, i.e., Administrative Directive 3.10(1). See Junior Jumpp v. Executive Director, State of Connecticut, University of Connecticut Health Center, Correctional Managed Care, et al., Docket #FIC 2013-734 (August 13, 2014). There was no allegation in the present case that the standard was applied in a discriminatory manner.

18. It is found that the respondents received the request on or about February 17, 2017 and that 90 days preceding that date was November 17, 2016. It is found that, on many of the days during the period of time from November 17, 2017 through March 30, 2018, the complainant's trust account balance equaled or exceeded \$5.00.

19. Accordingly, it is found that the complainant was not indigent under the respondents' indigency standard, and therefore was not entitled to a fee waiver, pursuant to §1-212(d)(1), G.S.

20. Based upon the foregoing, it is concluded 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 dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 25, 2018.



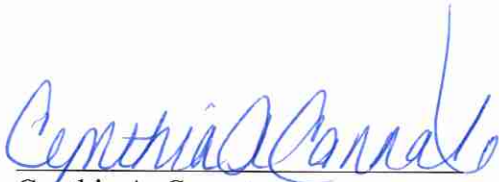
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JEREMY STEELE, #346650, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

EXECUTIVE DIRECTOR, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER, CORRECTIONAL MANAGED HEALTH CARE; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER, CORRECTIONAL MANAGED HEALTH CARE, c/o Attorney Scott Simpson, 263 Farmington Avenue, Farmington, CT 06030



Cynthia A. Cannata
Acting Clerk of the Commission