

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Avery Church,

Complainant

against

Docket #FIC 2017-0661

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

Respondents

August 22, 2018

The above-captioned matter was heard as a contested case on July 24, 2018, 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 October 29, 2017, the complainant made a request to the respondents for records pertaining to his transfer from the state of Nevada to the state of Connecticut.
3. It is found that, by letter dated November 1, 2017, the respondents denied the request, described in paragraph 2, above.
4. By letter dated November 1, 2017, and filed with the Commission on November 3, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the request, described in paragraph 2, above.
5. Section 1-200(5), G.S., provides:

“[p]ublic 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.

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

[e]xcept 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 . . . or (3) receive a copy of such records in accordance with section 1-212.

7. It is found that the records, described in paragraph 2, above, are maintained by the respondents and are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

8. At the hearing in this matter, the respondents claimed that the requested records are exempt from disclosure pursuant to §1-210(b)(18), G.S., which states, 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 or Whiting Forensic Division facilities. Such records shall include, but are not limited to . . . (G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities

9. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, Judicial District of New Britain at New Britain, Docket No. CV-106006278-S (April 5, 2012), the court concluded that the FOI Commission’s role in reviewing the DOC commissioner’s safety risk determination is to determine only “whether the [commissioner’s] reasons were pretextual and not bona fide, or irrational.”

10. It is found that, while he was incarcerated in the state of Nevada, the complainant was stabbed by another inmate. Thereafter, pursuant to an interstate compact between the states

of Nevada and Connecticut, Nevada officials requested that the complainant be transferred to Connecticut, which request was granted, and the complainant was transferred to Connecticut. A witness for the respondents testified that the complainant was transferred to Connecticut for his own safety, and for the safety of other inmates.

11. It is found that the state of Nevada provided records regarding the complainant's transfer to the respondent department prior to the complainant's transfer to Connecticut, and that such records are the records requested by the complainant in this matter.

12. It is found that the records consist, generally, of completed forms that must be submitted with a transfer request. It is found that disclosure of the completed forms would reveal the protocol that is followed during a transfer, such as the method or means of transportation, and the number of inmates transferred. The respondents' witness testified that the requested records contain information on the movement of inmates which specifically are exempt from disclosure pursuant to §1-210(b)(18), G.S., because disclosure of this information could increase the risk of escape during the transfer of an inmate.

13. The witness further testified that disclosure of the remainder of the records would reveal information such as the inmate's security risk group classification/gang affiliation. According to the respondents' witness, any paperwork in an inmate's possession cannot be secured, and therefore, any other inmate potentially could learn of another inmate's gang affiliation if such records were disclosed; disclosure of such information may result in a safety risk to the complainant, other inmates and to the facility because rival gang members might seek retaliation based on gang affiliation.

14. The respondents' witness further testified that the requested records could not be redacted and provided to the complainant in a manner that would eliminate the safety and security risk.

15. Based upon the foregoing, it is found that respondent Commissioner has reasonable grounds to believe that disclosure of the requested records 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. It is further found that the reasons for withholding the requested records are bona fide, and not pretextual or irrational.

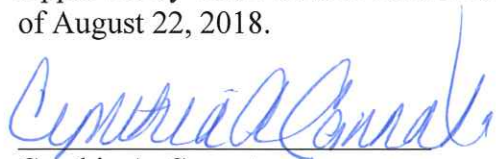
16. Based upon the foregoing, it is concluded that the requested records, described in paragraph 2, above, are exempt from disclosure pursuant to §1-210(b)(18)(G), G.S.

17. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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 August 22, 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:

AVERY CHURCH, #418945, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission