

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Charles Fonck, III,

Complainant

against

Docket #FIC 2018-0155

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

Respondents

December 19, 2018

The above-captioned matter was heard as a contested case on August 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 March 5, 2018, the complainant requested from the respondents a copy of all incident, medical and investigative reports pertaining to a particular incident that occurred at the Bridgeport Correctional Center, as well as video (or photographs derived from the video) of such incident (together the "video").¹
3. By letter dated March 25, 2018, and filed with the Commission on April 2, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the request, described in paragraph 2, above. The complainant requested the imposition of a civil penalty against the respondent Commissioner.

¹ The complainant requested other records pertaining to this incident; however, the response to the request for such records was no longer at issue at the time of the hearing in this matter.

4. 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.

5. 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 . . . (3) receive a copy of such records in accordance with section 2-212.

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

7. At the hearing in this matter, the respondents’ witness, Counselor Supervisor Washington, testified that he conducted a search for all records responsive to the request for “incident, medical and investigative reports” pertaining to the incident, and that, through such search, he located certain responsive records and provided those records to the complainant. Although the complainant contended, at the hearing in this matter, that the respondents should maintain additional records, it is found that the respondents provided all responsive records to him.

8. However, it is found that the respondents did not provide the complainant with a copy of the video related to the incident. At the hearing in this matter, the respondents claimed that the video is exempt from disclosure pursuant to §1-210(b)(18), G.S. That section 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 or Whiting Forensic Division facilities.

9. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, Judicial District of New Britain at New Britain, Docket No. CV074015438 and CV084016766 (November 3, 2008), the court concluded that the FOIC's role in reviewing the DOC Commissioner's safety risk determination is to determine "whether the [commissioner's] reasons were pretextual and not bona fide, or irrational."

10. Counselor Supervisor Washington testified that the video depicts the use of force against an inmate by correctional officers. Based on such testimony, it is found that the video reveals how certain restraints are applied, the location of windows, doors, and security cameras, the areas covered and not covered by the cameras, the level of staffing, and the types of locks on the doors. He further testified that release of the video discloses the correctional facility's vulnerabilities, and that one of the major concerns with disclosing the video is the risk of escape. According to Washington, once a video is released to the public, it could end up the hands of individuals who could study the video and pass along information to an inmate that the inmate could use to escape. He further testified that, although one video in itself may not contain enough information for an inmate to plan an escape, a series of videos could be pieced together, like a mosaic, to create a complete picture of a facility's vulnerabilities.

11. Based upon the foregoing testimony, it is found that the respondent Commissioner has reasonable grounds to believe that disclosure of the requested video may result in a safety risk, including risk of escape, in a correctional facility. It is further found that the reasons given are bona fide, and not pretextual, or irrational.

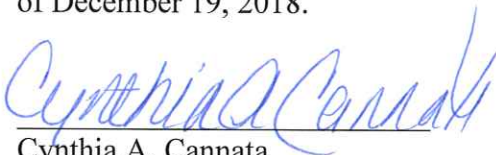
12. Accordingly, it is concluded that the video, described in paragraph 2, above, is exempt from disclosure pursuant to §1-210(b)(18)(G), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint. Because no violation was established, the Commission need not consider the request for the imposition of a civil penalty.

13. The Commission notes that the respondents attempted to accommodate the complainant by offering the complainant's attorney, who separately had requested a copy of the video on behalf of the complainant, an opportunity to view the video. However, the attorney did not respond to such offer.

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 special meeting of December 19, 2018.



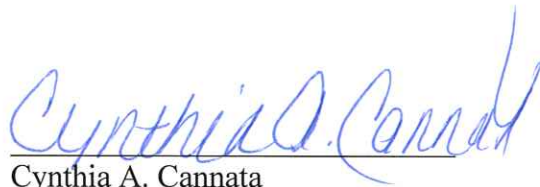
Cynthia A. Cannata
Acting Clerk of the Commission

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:

CHARLES FONCK, III, #260195, Osborn Correctional Institution, P.O. Box 100, Somers, CT 06071

SCOTT SEMPLE, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Nicole Anker and Attorney Tracie Brown, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission