

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

David Tuttle,

Complainant

against

Docket #FIC 2017-0241

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

Respondents

February 28, 2018

The above-captioned matter was heard as contested case on October 12, 2017, and December 18, 2017, at which times 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 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 the complainant made a records request, dated March 29, 2017, for copies of all records relating to a January 2017 Security Risk Group (“SRG”) Affiliation Investigation involving the complainant (“March 29th request”).
3. It is found that, by letter dated March 30, 2017, the respondents acknowledged the March 29th request, described in paragraph 2, above, and informed the complainant that such request would be sent to the Department of Correction (“DOC”) Security Division for processing.
4. It is found that, by letter dated April 5, 2017, the respondents’ Director of Security denied the March 29th request, in part, claiming that certain responsive records were exempt from disclosure pursuant to §1-210(b)(18), G.S., because there were reasonable grounds to believe that the release of such records may result in a safety and security risk.

5. By letter dated May 2, 2017, and filed May 4, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his records request.

6. 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.

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, facsimile, electronic or certified copy of any public record.”

9. It is found that the complainant was issued a SRG Affiliation Disciplinary Report for passing a letter with SRG references under another inmate’s cell door, and, after a DOC designation hearing, was designated as a member of the gang known as the “Latin Kings.”

10. It is found that the respondents provided the complainant with all records responsive to his request, except for a letter which is still at issue in this matter. The respondents claimed that such letter is not a public record within the meaning of §1-200(5), G.S. In the alternative, the respondents claimed that the disclosure of such letter may result in a safety risk, within the meaning of §1-210(b)(18), G.S., and therefore, it is exempt from disclosure.

11. On January 19, 2018, pursuant to an order of the hearing officer, an unredacted copy of the letter at issue was submitted for in camera inspection.¹

12. At the December 18th hearing, Counselor Supervisor John Aldi, the Security Risk Group Coordinator for the DOC's Security Division, credibly testified, and it is found, that the letter at issue contains gang identifiers and information relating to the complainant's affiliation to the "Latin Kings," and that such gang related material is considered contraband under DOC Administrative Directive 6.10.

13. The Commission takes administrative notice of its decisions in Docket #FIC 2010-284, Farouh Dorlette v. Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (April 27, 2011), where eight pages of gang related materials were held to be contraband and not public records within the meaning of §1-200(5), G.S., and Docket #FIC 2008-704, Jeffrey M. Pierce v. Kenneth Butricks, Administrative Captain, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (September 23, 2009), where an inmate's address book containing pornographic pictures and the residential address of at least one employee of the DOC was held to be contraband and not a public record within the meaning §1-200(5), G.S. For a detailed discussion of the significant law enforcement and disciplinary problems caused by organized gang activity inside correctional facilities, see Docket #FIC 2010-093; John C. Barletta v. Kimberly Weir, Acting Director of Security, State of Connecticut, Department of Correction; Angel Quiros, Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (November 17, 2010). This decision details the manner in which gang related records are used for communication and the instigation of safety risk.

14. Section 18-81, G.S., provides in relevant part that:

The Commissioner of Correction shall administer, coordinate and control the operations of the department and shall be responsible for the overall supervision and direction of all institutions, facilities and activities of the department. The commissioner shall establish rules for the administrative practices and custodial and rehabilitative methods of said institutions and facilities in accordance with recognized correctional standards.

15. DOC Administrative Directive 6.10(3)(B) defines contraband as "[a]n item (1) not authorized to be in a facility, the grounds of a facility, a vehicle, a contract program area or in a[n] inmate's possession; (2) that is authorized, but used in an unauthorized or prohibited manner; (3) that is authorized, but altered; or (4) ownership cannot be established."

¹ The respondents also submitted an affidavit for in camera inspection. Such affidavit is not responsive to the complainant's request, and therefore, will not be further addressed herein.

16. DOC Administrative Directive 6.10(9) also provides that “[a]ny property found in the inmate's possession consistent with Section 3(B) of this Directive shall be considered contraband and disposed of in accordance with Section 31 of this Directive.”

17. It is concluded that, because inmates are not authorized to possess gang related materials in a correctional facility, the letter at issue is contraband pursuant to DOC Administrative Directive 6.10(3)(C).

18. It is also concluded that, based on the circumstances of this case, the letter at issue is not a public record within the meaning of §1-200(5), G.S., and consequently the respondents did not violate the FOI Act by withholding such record from the complainant.²

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 28, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

² In view of the conclusion in paragraph 18, above, there is no need to address any further exemption.

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:

DAVID TUTTLE, #224232, Worcester County Jail and HOC, 5 Paul X Tivnan Drive, West Boylston, MA 01583

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



Cynthia A. Cannata
Acting Clerk of the Commission