

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Norman Gaines,

Complainant

against

Docket #FIC 2017-0369

Records Liaison, 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,

Respondents

March 28, 2018

The above-captioned matter was heard as a contested case on January 31, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts 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 by letter dated June 5, 2017, the complainant made a request to the respondents for access to certain records which included his medical records pertaining to two different procedures. It is found that the complainant also requested certain policies of the respondents; records related to consults; records related to grievances; and records related to the Utilization Review System (hereinafter "other records").

3. By letter dated June 20, 2017 and filed on June 28, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his records request.

4. 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.

5. 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 (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.

6. 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.... The fee for any copy provided in accordance with the Freedom of Information Act:

(1) 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....

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

8. 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.

9. It is found that by letter dated June 19, 2017, the respondents acknowledged the complainant’s request. It is found that by letter dated July 19, 2017, the respondents informed the complainant that his medical files were available and provided him with copies of certain forms to be completed before their release. It is found that, by that same letter, the respondents informed the complainant that the other records he requested had been compiled and would be provided to him once he paid the \$68.50 fee for the copies (274 pages at \$0.25 per page).

10. It is found that the complainant completed the forms and returned them to the respondents, but as of the date of the hearing, he had not received a copy of the medical records he requested.

11. It is found that there was some confusion regarding payment for the medical records with the complainant believing that the respondents were charging him for copies of his own medical records which he also believed he was entitled to have free of charge. At the hearing on this matter, the respondents explained that they were able and willing to provide the complainant with a copy of his medical records, free of charge, and that the records would be forwarded to him forthwith.

12. It is found that any issues with respect to the complainant’s medical records were resolved at the hearing in this matter and will not be addressed further herein.

13. At the hearing on this matter, the complainant also contended that he was indigent and that he should not have been required to pay for any of the requested records.

14. It is found that, for purposes of §1-212(d)(1), G.S., the respondents have applied the same indigence standard used by the State of Connecticut Department of Correction (“DOC”) in deciding whether to waive copying fees for an inmate.

15. It is found, using the DOC standard of indigence insofar as it looks at the inmate’s trust account balance as of the date of the request, and 90 days before the request, that the complainant had more than \$5.00 in his trust account and therefore is not indigent under the DOC standard.

16. The Commission takes administrative notice of its records and files in Docket #FIC 2009-483, Rollins v. Correctional Managed Care, et al.

17. In Rollins, the Commission noted its approval of the DOC's standard insofar as it looks at the inmate's trust account balance as of the date of request and 90 days before the request. Also in Rollins, the Commission approved the respondents' adoption of that portion of the DOC's indigence standard. *See* also Docket #FIC 2013-734, Junior Jumpp v. Correctional Managed Care, et al.

18. It is concluded, therefore, that the respondents did not violate §1-212(d)(1), G.S., when they required payment for copies of the other records after applying the DOC standard for indigence.

19. Finally, the complainant contended that under the FOI Act, he has a right to inspect public records and that the respondents violated the disclosure provisions of the Act by failing to allow him access to inspect the other records.

20. As already noted, the complainant is incarcerated and therefore cannot appear at the offices of the respondents to inspect the requested records.

21. Implicit in the right to inspect records during regular office or business hours is the requirement that an individual appear during regular office or business hours at the office of the public agency at which the records are maintained in order to exercise that right. Moreover, there is nothing in the FOI Act that requires an agency to produce records at the location of the requester. Consequently, an individual's inability to exercise his right in this regard, whether it be because he is confined to a prison facility, because he is confined to a sick bed at home, or because he is unable to be excused from his job during the day, does not create a duty on the part of the public agency to bring the records to that individual so that he can exercise his right to inspect them.

22. It is concluded, therefore, that the respondents did not violate the FOI Act in this regard either.

23. The Commission takes notice and commends the respondents for their willingness, as they stated at the hearing on this matter, to review the other records to remove blank and duplicate pages in an effort to reduce the fee and to ensure that the complainant obtains only the records he actually wants.

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 March 28, 2018.



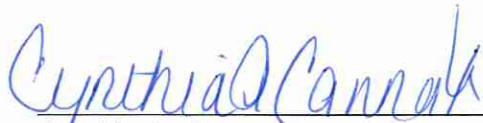
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**NORMAN GAINES, #249779**, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

**RECORDS LIAISON, 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**, 260 Farmington Avenue, Farmington, CT 06030



Cynthia A. Cannata  
Acting Clerk of the Commission