

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Victor Velasco,

Complainant,

against

Docket # FIC 2017-0755

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

Respondents

October 10, 2018

The above-captioned matter was heard as a contested case on August 1, 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)(A), G.S.
2. It is found that, on December 11, 2017, the complainant made a second request for a copy of a certain incident report, which he had previously requested on November 16, 2017.
3. It is found that, on December 13, 2017, the respondents replied to the complainant, and informed him that the report should be ready to provide to him by the end of the following week.
4. By letter filed December 20, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the requested records.
5. Section 1-200(5), G.S., defines “public records” as follows:

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, ...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:

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, ... 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.”

7. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that, on December 20, 2017, the respondents provided 32 pages of records responsive to the complainant’s request.

9. It is found that the respondents also withheld and redacted 42 pages of responsive records, claiming that such records are exempt from disclosure pursuant to §1-210(b)(18), G.S.

10. Section 1-210(b)(18), G.S., provides in relevant part that nothing in the FOIA shall require the disclosure of: “Records, 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 . . . 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[.]”

11. Following the hearing in this matter, the respondents submitted the undisclosed records for in camera inspection. Such records shall be referenced herein as IC-2017-0755-1 through IC-2017-0755-42.

12. The respondents claim that the undisclosed records contain information about the other inmate involved in the incident, and that disclosure of information about one inmate’s behavior, treatment, and medical information to another inmate may result in a safety risk within the correctional institution. The respondents also redacted references to emergency codes and logs.

13. It is found that the respondent Commissioner had reasonable grounds to believe that disclosure of IC-2017-0755-1 through IC-2017-0755-31 and IC-2017-0755-40 through IC-2017-0755-42 may result in a safety risk, as described in paragraph 12, above.

14. With respect to IC-2017-32 through IC-2017-0755-39, however, the respondents' Index to In Camera Records described such information as exempt because such records depict the "facility structure."

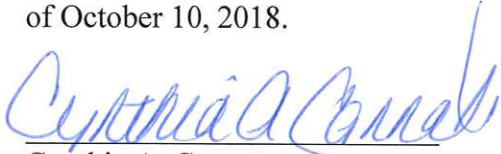
15. It is found that the respondents did not submit any evidence as to why disclosure of such information may result in a safety risk. Moreover, inspection of IC-2017-32 through IC-2017-0755-39 does not reveal why disclosure of such information may result in a safety risk. It is found that the respondents failed to prove that such records are exempt from disclosure.

16. It is found that IC-2017-32 through IC-2017-0755-39 are not exempt from disclosure and it is concluded that the respondents violated §1-210(b)(18), G.S., by failing to provide such records to the complainant.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall provide to the complainant, free of charge, the records referenced as IC-2017-32 through IC-2017-0755-39 in the findings of fact, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 10, 2018.



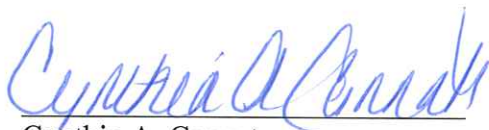
Cynthia A. Cannata
Acting Clerk of the Commission

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:

VICTOR VELASCO, #213065, Northern Correctional Institution, 287 Bilton Road, Somers, CT 06071

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Tracie C. Brown, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission