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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Ira Alston,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0270

Scott Semple, Commissioner, State of Connecticut,  
Department of Correction; and State of Connecticut,  
Department of Correction,  
Respondent(s)

October 6, 2016

### Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, November 16, 2016**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE November 4, 2016**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE November 4, 2016**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE November 4, 2016**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

W. Paradis  
Acting Clerk of the Commission

Notice to: Ira Alston  
Attorney James Neil  
cc: Craig Washington

FIC# 2016-0270/Trans/wrbp/TCB//VDH/2016-10-06

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ira Alston,

Complainant

against

Docket #FIC 2016-0270

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

Respondents

August 29, 2016

The above-captioned matter was heard as a contested case on July 25, 2016 at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC2016-0186; Ira Alston v. Scott Semple, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction.

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 February 24, 2016, the complainant made a request to the respondents for “the incident report package NCI-2015-12-042” and “the incident report package created in connection with Ira Alston 27566 in cell restraint placement on 2-5-16.”
3. By letter dated March 24, 2016 and filed on April 4, 2016, the complainant appealed to this Commission alleging that the respondents violated the FOI Act by failing

to comply with his records request. The complainant requested the imposition of a civil penalty against the respondent Commissioner.

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 that “[a]ny person applying in writing shall receive promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

8. It is found that the respondents acknowledged the complainant's request on March 1, 2016 and provided the requested records on July 12, 2016.

9. At the hearing on this matter, the complainant contended that while the respondents provided the records he requested, they did not do so promptly as the FOI Act requires, because the records were provided four months after he submitted his request.

10. The Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the record; the time constraints under which

the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

11. The respondents’ counsel argued that because of the volume of records responsive to the complainant’s request and because the respondents are required to respond to hundreds of FOI requests, four months was a reasonable time by which to comply with the complainant’s request.

12. It is found, however, that there is no evidence in the administrative record in this case to support the respondents’ counsel’s contention that the volume of records responsive to the complainant’s request was so large that four months to comply and review them was warranted. It is also found that there is no evidence in the administrative record to support the respondents’ counsel’s contention that the respondents received and complied with *hundreds* of FOI requests at any particular time or that there were so many requests before the complainant’s that the four months taken to comply with his request was reasonable.


13. It is found, therefore, that the respondents failed to prove that the four months taken to comply with the complainant’s request was prompt.<sup>1</sup>

14. It is concluded that the respondents’ provision of the requested records was not timely, and that they violated the promptness provision of §1-210(a), G.S.

15. The Commission declines to consider the imposition of a civil penalty against the named respondent in this case.

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

1. Henceforth the respondents shall strictly comply with the promptness requirements in §1-210(a), G.S.

  
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Attorney Tracie C. Brown  
as Hearing Officer

FIC2016-0270/hor/ceb/20160815

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<sup>1</sup> “[U]nsupported conclusory allegations of counsel are not evidence . . .” New Haven v. Freedom of Information Commission, 205 Conn. 767, 776, 535 A.2d 1297 (1988).