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Ian Cooke,
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2016-0455

March 29, 2017

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, April 26, 2017.** 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 April 13, 2017***. 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 April 13, 2017***. **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 April 13, 2017***, 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: Ian Cooke
Attorney James Neil

FIC# 2016-0455/Trans/wrbp/KKR//VDH/2017-03-29

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Ian Cooke,

Complainant

against

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

Respondents

Report of Hearing Officer

Docket #FIC 2016-0455

March 3, 2017

The above-captioned matter was heard as a contested case on February 2, 2017, 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. FOI C, 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 3, 2016, the complainant requested from the respondents "all documents…pertaining to specific complaints of sexual harassment of staff members within [Department of Correction] facilities…between the years 2006 through 2016."

3. It is found that, by letter dated June 15, 2016, the respondents acknowledged the request, described in paragraph 2, above, and asked the complainant to clarify his request.

4. It is found that, by letter dated June 24, 2016, the complainant informed the respondents that he was seeking "staff complaints (to include but not be limited to correctional officers, administrative/support staff, education, healthcare, and any other DOC staff persons) where these staff have complained of sexual harassment from either inmates or other staff." The complainant further indicated that he was seeking "complaints, investigations, and the outcome…and any involvement from the…union…with regard to any/all of these complaints."

In addition, the complainant informed the respondents that he would accept responsive records "with personally identifying information redacted."

5. By letter dated June 20, 2016, and filed with the Commission on June 22, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his June 3, 2016 request.

6. 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.

7. 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 (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.

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

9. It is found that the respondents did not provide any responsive records to the complainant.

10. At the hearing in this matter, the respondents claimed that the records responsive to the June 3, 2016 request are personnel or similar files that are exempt from disclosure pursuant to §18-101f, G.S. That provision states, in relevant part:

> [a] personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division

> of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction or confined in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital….

11. The complainant argued, at the hearing in this matter, that not all of the records he requested fall within the non-disclosure provision in §18-101f, G.S. However, it is found that all of the requested records are "personnel" or "similar files" concerning current or former employees of the DOC, and that the complainant is an individual committed to the custody of the Commissioner of Correction.

12. The complainant also argued that §18-101f, G.S., permits the respondents to provide copies to him with personally identifying information redacted.

13. However, it is concluded that the plain language of §18-101f, G.S., requires non-disclosure to inmates of personnel, medical or similar files, and does not permit disclosure of such records with identifying information redacted.

14. Based upon the foregoing, it is concluded that the responsive records are exempt from disclosure pursuant to §18-101f, G.S., and that the respondents therefore did not violate the FOI Act, as alleged by the complainant.

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.

Kathleen K. Ross

Kathleen K. Ross
As Hearing Officer

FIC2016-00455/hor/kkr/03032017