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Clarence Patterson
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2017-0089

October 24, 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 **2:00 p.m. on Wednesday, November 15, 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 November 3, 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 November 3, 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 November 3, 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Clarennce Patterson
Attorney Nancy Canney

FIC# 2017-0089/ITRA/PSP//VDH/WRBP/2017-10-24

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by — Report of Hearing Officer

Clarence Patterson,

Complainant

against — Docket #FIC 2017-0089

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

Respondents — October 17, 2017

The above-captioned matter was heard as a contested case on August 25, 2017, at which time the complainant and 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 an Inmate Request Form, dated January 17, 2017, the complainant made a request to the respondents for the following information:

> [t]he costs of incarceration per inmate, for each jail for the year ending 2016. Example[,] Corrigan-Radgowski 68,000 dollars a year for each inmate in the year of 2016… [and] the costs per inmate for Regin [sic] C.I., J.B. Gates, C.I. and J.B. Gates Annex inmates as well as Webster C.I. for the last year that these institutions were open. Example[,] Webster C.I. closed in 2010 at the time of Webster's closing the costs of incarciration [sic] for each inmate was 36,000 dollars a year. ("January 17th request").

3. By letter dated February 2, 2017 and filed on February 10, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly comply with his January 17th request, described in paragraph 2, above.

4. Section 1-200(5), G.S., defines "public records or files" as:

> 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 . . . (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 first learned of the complainant's January 17th request when they received the docketing letters, which included a copy of such request, from the Commission on or about March 2, 2017.

9. It is found that upon receiving a copy of the January 17th request, CCS Washington, the FOI Administrator for the Department of Correction, contacted the respondents' fiscal department in an effort to locate records responsive to such request. It is found that the fiscal department provided CCS Washington with two pages of documents summarizing the inmate per capita cost (per diem amounts) for various correctional institutions based on the expenditures of the Fiscal Year Ending June 30, 2010, and June 30, 2011, respectively.

10. It is found that by letter dated May 9, 2017, CCS Washington informed the complainant that the information regarding the costs of incarceration for fiscal year 2016 had not been finalized, and therefore did not exist. CCS Washington also enclosed the documents, described in paragraph 9, above, which showed the cost of incarceration for the closed facilities. CCS Washington noted that the Niantic Annex was not a standalone facility and its costs were under the budget for York Correctional Institution.

11. It is found that the respondents attempted to deliver a copy of CCS Washington's May 9, 2017 letter, and the enclosed documents, as described in paragraphs 9 and 10, above, to the complainant, but he refused to accept such documents. The complainant claimed that the documents did not breakdown the costs "per inmate," and therefore were not responsive to his January 17th request.

12. It is found that the only records responsive to the complainant's January 17th request that existed at the time of the attempted delivery, described in paragraph 11, above, were the two documents, described in paragraphs 9 and 10, above.

13. It is also found that the FOI Act does not require public agencies to create records in response to a FOI request.

14. With respect to whether the respondents promptly provided responsive records to the complainant, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

15. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

16. At the hearing, the respondents did not provide an explanation as to why it took over two months, from the time they received a copy of the January 17th request with the docketing letters, to provide the complainant with the responsive information. Accordingly, under the facts and circumstances of this case, it is found that the respondents' response was not prompt.

17. It is concluded that the respondents violated the promptness requirements under the FOI Act in this matter.

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 provisions of §§1-210(a) and 1-212(a), G.S.

Paula S. Pearlman
as Hearing Officer

FIC/2017-0089/HOR/PSP/10172017