



# FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2012-600

Commissioner, State of Connecticut,  
Department of Correction; Warden, State of  
Connecticut, Cheshire Correctional Institution;  
and State of Connecticut, Department of  
Correction,

Respondent(s)

August 13, 2013

## 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, September 11, 2013**. 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 August 30, 2013**. 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 August 30, 2013**. **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 **fourteen (14) copies** be filed **ON OR BEFORE August 30, 2013**, 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: Abdul Mukhtaar  
James Neil, Esq.

8/13/13/FIC# 2012-600/Trans/wrbp/GFD//VDH

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Abdul Mukhtaar,

Complainant

against

Docket #FIC 2012-600

Commissioner, State of Connecticut,  
Department of Correction; Warden, State  
of Connecticut, Cheshire Correctional  
Institution; and State of Connecticut,  
Department of Correction,

Respondents

August 8, 2013

The above-captioned matter was heard as a contested case on July 26, 2013, 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. By letter dated October 17, 2012 and filed with the Commission on October 22, 2012, the complainant alleged that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with unredacted copies of the records described in paragraph 3, below.
3. It is found that, by Inmate Request Form dated September 25, 2012, the complainant renewed a prior request to the respondent's FOI Liaison at Cheshire Correctional Institution for unredacted copies "of [his] file in regards to [his] current class A ticket [for] conspiracy to convey contraband." It is also found that the complainant requested unredacted copies of all investigative reports and all confidential informants statements related to the class A ticket (the "requested records"). It is further found that the complainant agreed to pay for copies of the requested records.

4. It is found that, by letter dated September 28, 2012, the respondents acknowledged the complainant's September 25, 2012 request for records. It is also found that the respondents informed the complainant that the "incident is currently part of an ongoing investigation and cannot be produced at this time."

5. 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.

6. 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.

7. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. It is found that to the extent the respondents maintain the requested records, such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the hearing on this matter and in his post-hearing brief, the complainant contended that, while he has a copy of the class A ticket dated and issued to him by the respondents on August 31, 2012, the respondents still have not provided him with unredacted copies of the requested records related to the issuance of the ticket. The complainant also contended that the respondents should not be permitted to withhold the requested records from disclosure on the grounds that there is an "ongoing investigation" since the ticket itself states that the respondents began their investigation on November 1, 2011 and ended such investigation on August 31, 2012. The complainant further contended that he has a constitutional right to confront his accusers and to be provided with all information for and against him to aid in his defense.

10. As to the complainant's allegation that he was not provided with copies of the requested records, the respondents contended that such records are exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S., because the records pertain to safety and security information which is not made available for retention or dissemination to the inmate population. The respondents also contended that since the requested records contain information, including techniques and methods used to investigate a class A ticket for conspiracy to convey contraband, disclosure of the requested records to the inmate population would create a safety and security risk. In addition, the respondents contended that even if they were to redact portions of the requested records being withheld for safety and security reasons, the complainant would receive essentially all blank pages.

11. Section 1-210(b)(18), G.S., provides in relevant part that disclosure is not required of:

[r]ecords, 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 or Whiting Forensic Division facilities. Such records shall include, but are not limited to:

- (A) Security manuals, including emergency plans contained or referred to in such security manuals;
- (B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;
- (C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and

(H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers;

12. It is found that, on or about August 12, 2012, the intelligence unit at Cheshire Correctional Institution conducted a security and safety search of the complainant's cell ("shakedown"). It is also found that the complainant was removed from general population and held in segregation until August 31, 2012, as a result of the August 12, 2012 "shakedown." It is further found that the respondents issued the complainant a class A ticket for conspiracy to convey contraband after the August 12, 2012 "shakedown."

13. The complainant concedes, and it is found, that the requested records contain information and intelligence gathered by the respondents' intelligence unit during the investigation that led to the August 12, 2012 "shakedown." It is also found that such intelligence includes statements of facility inmates and staff, as well as statements from civilians outside of Cheshire Correctional Institution.

14. It is found that disclosure of the information contained in the requested records could provide inmates inside the facility with the respondents' techniques and methods of gathering intelligence and investigating serious offenses in facilities.

15. Based on the evidence in this case, it is found that the Commissioner of the respondent department had reasonable grounds to believe that disclosure of the requested records 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 respondent department, within the meaning of §1-210(b)(18), G.S.

16. Therefore, it is concluded that the requested records are permissibly exempt from the mandatory disclosure provisions of the FOI Act and that the respondents did not violate the FOI Act as alleged by the complainant.

17. As to the complainant's claim that he should be given access to the requested records because he has a constitutional right to confront his accusers and defend himself, §1-213(b), G.S., provides in relevant part that "[n]othing in the Freedom of Information

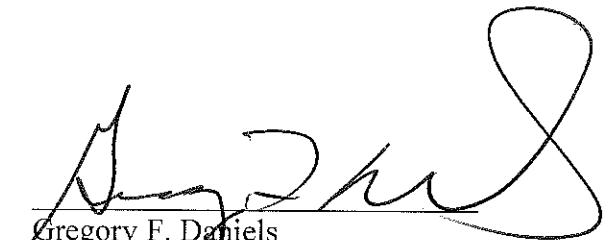
Act shall be deemed in any manner to ... limit the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state.”

18. In Chief of Police v. FOIC, 252 Conn. 377, 396 (2000), the Supreme Court concluded that “the provisions of the [FOI] act do not affect or limit discovery rights, and discovery rights do not affect or limit the provisions of the act. The two operate separately and independently.”

19. It is therefore concluded that a conclusion by the Commission that the requested records are exempt from disclosure does not affect the complainant’s rights to seek the same record under the laws of discovery in his litigation against the respondents.

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.



Gregory F. Daniels  
as Hearing Officer