



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2013-498

FOI Liaison C. Mitchell, State of Connecticut,
Department of Correction, Cheshire
Correctional Institution; Commissioner, State of
Connecticut, Department of Correction; and
State of Connecticut, Department of Correction,
Respondent(s)

May 23, 2014

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, June 11, 2014**. 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 May 30, 2014**. 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 May 30, 2014**. **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 May 30, 2014**, 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 Paradis
Acting Clerk of the Commission

Notice to: Jason Miller
James Neil, Esq.

2014-05-23/FIC# 2013-498/Trans/wrbp/MS/GFD/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jason Miller,

Complainant

against

Docket #FIC 2013-498

FOI Liaison C. Mitchell, State of
Connecticut, Department of Correction,
Cheshire Correctional Institution;
Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,

Respondents

May 23, 2014

The above-captioned matter was heard as a contested case on April 8, 2014, 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 July 30, 2013 and filed with the Commission on August 12, 2013, the complainant alleged that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with access to or copies of all of the records described in paragraph 3, below. The complainant also requested the assessment of a \$1,000.00 civil penalty against the respondents for failure to comply with the FOI Act.
3. It is found that, after making similar prior requests, beginning on September 12, 2012, by Inmate Request Form dated May 1, 2013, the complainant requested from the FOI Liaison at Garner Correctional Institution ("C.I."), Correctional Counselor ("C.C.") Perreault, information pertaining to his class A disciplinary report for conspiracy to convey contraband, including the incident report, letters, and phone records related to an August 31, 2012 incident (hereinafter "the incident").

4. It is found that, by letter dated May 7, 2013, C.C. Perreault acknowledged the complainant's May 1, 2013 request and informed the complainant that "the request [had] been forwarded to Cheshire CI FOI Liaison C.S. Bouffard." It is also found that C.C. Perreault informed the complainant that "[t]he requested information will be gathered and reviewed, [and] upon completion, [the complainant] will be responded to accordingly."

5. It is found that, by Inmate Request Form dated June 26, 2013 to C.C. Perreault, the complainant inquired about the status of his May 1, 2013 request described in paragraph 3, above.

6. It is found that, by letter dated July 15, 2013, C.C. Perreault informed the complainant that his request was forwarded to the FOI Liaison at Cheshire Correctional Institution, this time to Correctional Officer ("C.O.") Mitchell.

7. It is found that, by a subsequent letter dated August 1, 2013, C.O. Mitchell informed the complainant that the respondents were unable to locate incident reports pertaining to a Class "A" ticket for August 31, 2012 and that such records did not exist. It is also found that C.O. Mitchell informed the complainant that the respondents were unable to honor the complainant's request for recorded phone calls and letters related to the incident because such information was exempt under §1-210(b)(18), G.S., as being a safety and security risk.

8. 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.

9. 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.

10. 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.”

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

12. At the hearing on this matter, the complainant contended that, while he has a copy of the disciplinary report dated August 31, 2012 related to the class A ticket issued to him for the offense of conspiracy to convey contraband, the respondents have not provided him with all of the investigation records, including an incident report, related to the issuance of such 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 disciplinary report states that the respondents began their investigation on November 1, 2011 and ended such investigation on August 31, 2012.

13. 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.

14. 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;

15. It is found that the respondents issued the complainant a class A ticket for conspiracy to convey contraband resulting from the incident.

16. The complainant concedes, and it is found, that the requested records contain information about the incident and intelligence gathered by the respondents' intelligence unit during a ten-month investigation involving fourteen inmates suspected of conspiring to the convey drugs into the correctional facility via a correctional officer. It is also found that such information and intelligence includes statements of facility inmates and staff, as well as statements from civilians outside of Cheshire Correctional Institution.

17. 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 correctional facilities.

18. 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.

19. 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.

20. As to the complainant's claim that he should be given access to the requested records to prepare for his trial against the respondents stemming from the conspiracy to convey contraband charges, §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."


21. 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."

22. 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.

23. Based on the facts and circumstances in this case, the Commission declines to consider the imposition of a civil penalty.

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.


Commissioner Matthew Streeter
as Hearing Officer