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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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Junior Jumpp,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-734

Executive Director, State of Connecticut,
University of Connecticut Health Center,
Correctional Managed Health Care; and State
of Connecticut, University of Connecticut Health
Center, Correctional Managed Health Care,
Respondent(s)

July 16, 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, August 13, 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 August 1, 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 August 1, 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 August 1, 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: Junior Jumpp
Stephen J. Courtney, Esq.
cc: Kristine Barone

2014-07-16/FIC# 2013-734/Trans/wrbp/LFS/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

Junior Jumpp,

Complainant

against

Docket #FIC 2013-734

Executive Director, State of Connecticut,
University of Connecticut Health Center,
Correctional Managed Health Care; and
State of Connecticut, University of Health
Center, Correctional Managed Health
Care,

Respondents

July 16, 2014

The above-captioned matter was heard as a contested case on July 11, 2014, at which time the complainant and 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. 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 on November 10, 2013, the complainant requested from the respondents copies of records indicating the names of all staff members from 2006 to 2013.
3. By letter of complaint filed November 27, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the records he requested.
4. Section 1-200(5), G.S., defines "public records" as follows:

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, ...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:

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 ... receive a copy of such records in accordance with the provisions of section 1-212.

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

7. It is concluded that the records requested by the complainant 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 did not receive the complainant's request, although the complainant addressed his request to the appropriate person. It is found that the respondents first learned of the request when they received a copy of the complainant's appeal to the Commission in March 17, 2014.

9. It is found that the respondents maintain several thousand pages of records that are responsive to the complainant's request.

10. It is found that the respondents do not wish to provide such records to the complainant free of charge, and told the complainant that they would provide the records upon receipt of his payment.

11. Section 1-212(a)(1), G.S., provides in relevant part:

...The fee for any copy provided in accordance with the Freedom of Information Act:

By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page

12. Section 1-212(d)(1), G.S., requires a public agency to waive the fee for copies of records when "[t]he person requesting the records is an indigent individual."

13. The complainant contended that he was indigent at the time of his request, and therefore was entitled to a fee waiver.

14. The term “indigent individual” is not defined in the FOI Act. However, the Commission has previously reviewed the issue of indigence in the context of §1-212(d)(1), G.S., and made clear that: “the standard for establishing one's eligibility for a waiver or reduction of the fees charged for copies of public records, is wholly within the discretion of the custodial public agency, as long as the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.” Kulick v. West Hartford, contested case docket #FIC 1991-356 (October 14, 1992).

15. It is found that the respondents apply the same standard of indigence as that employed by the Department of Correction (“DOC”).

16. It is found that DOC’s Administrative Directive 3.10 (Fees, Reimbursements and Donations), provides, in relevant part:

An inmate shall be charged twenty-five cents for each page copied. The fee shall be waived if an inmate is indigent. For copies of records pursuant to the [FOI] Act, an inmate shall be considered indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety (90) days preceding the receipt by the Department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request).

17. The Commission has approved DOC’s standard of indigence insofar as it looks at the inmate’s trust account balance as of the date of the request, and looks back in time on the inmate’s trust account history; i.e., part (1) of Administrative Directive 3.10. See Bryant Rollins v. Freedom of Information Officer, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction; Docket #FIC 2010-030 (September 22, 2010).

18. It is found that DOC’s Administrative Directive 6.10 (Inmate Property) provides, in relevant part, that “[a]n inmate shall be considered indigent when he or she has less than five dollars (\$5.00) on account at admission or when the monetary balance in his or her inmate trust account, or in any other known account, has not equaled or exceeded five dollars (\$5.00) at any time during the preceding ninety (90) days.”

19. It is found that the complainant was indigent at the time of his request; which was November 10, 2013.

20. It is found that in May 2014, the complainant was for the first time relevant to this matter no longer indigent and he continues not to be indigent according to DOC’s standard.

21. With respect to the first prong of the respondents' indigency standard, it is found that the complainant was indigent during the 90 days preceding March 17, 2014, when the respondents received his request for records.

22. It is found, therefore, that the complainant satisfied the first requirement of Administrative Directive 3.10 (see paragraph 16, above.)

23. With respect to the second prong of the respondents' standard of indigency, it is found that the respondents were prepared to fulfill the complainant's request on June 18, 2014. It is found, however, that June 18, 2014 is more than 90 days after the date of the complainant's request.

24. It is found that 90 days after the date of the complainant's request was February 8, 2014.

25. It is found that the complainant was indigent on February 8, 2014.

26. It is found, therefore, that the complainant satisfied the second requirement of Administrative Directive 3.10.

27. Although the Commission has not considered whether DOC's policy of looking forward in time at an inmate's account history (the second prong of Administrative Directive 3.10) is an objective, fair and reasonable standard, it is found in any event that the complainant in this case had no funds during the requisite time period (90 days) following his request for a fee waiver.

28. It is found that the complainant was indigent according to DOC's – and the respondents' – standard.

29. It is concluded, therefore, that the complainant was entitled to a fee waiver pursuant to §1-212(d)(1), G.S., and the respondent violated such provision by demanding a fee for copies of records.

30. At the hearing in this matter, the respondents stated that they would redact the first names of staff from any records they provided to the complainant, according to DOC policy and concerns about "safety and security."

31. It is found that the respondents failed to provide evidence to support their claimed exemption to disclosure in this case.

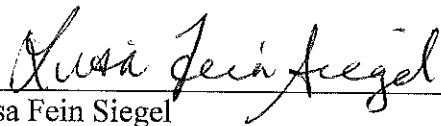
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. The respondents shall forthwith provide the complainant with unredacted copies of the records he requested, free of charge. The Commission is mindful of the estimated fee of \$1150 that the respondents would have been able to charge had the complainant not been

indigent, and suggests that perhaps the respondents may be able to satisfy the complainant's actual request with fewer printed pages.

2. The Commission is aware that the respondents will provide the copies of records to DOC, pursuant to §1-210(c), G.S. It is the responsibility of the Commissioner of DOC to determine whether there are reasonable grounds to believe that disclosure of the first name of respondents' staff would create a safety risk, within the meaning of §1-210(b)(18), G.S., and if appropriate, to redact such names from the records provided to the complainant.

3. Henceforth the respondents shall comply with the requirements of §1-212, G.S.



Lisa Fein Siegel
as Hearing Officer