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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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Thomas Brody,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-316

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

October 1, 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, October 22, 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 October 14, 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 October 14, 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 October 14, 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

W. Paradis

Acting Clerk of the Commission

Notice to: Thomas Brody
James Neil, Esq.
cc: Kristine Barone

2014-10-01/FIC# 2014-316/Trans/wrbp/LFS/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Thomas Brody,

Complainant

against

Docket #FIC 2014-316

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

Respondents

September 12, 2014

The above-captioned matter was heard as a contested case on September 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 February 27, 2014, the complainant requested records from the Hartford Police Department pertaining to certain criminal matters, including his own.
3. It is found that on April 7, 2014, the Hartford Police Department provided 29 pages of responsive records to the respondents for delivery to the complainant.
4. It is found that on April 17, 2014, the respondents notified the complainant that they were withholding two witness statements from the records that they received from the Hartford Police Department because “they pose a risk of safety and security against the other inmate involved or the facility.”
5. It is found that on May 5, 2014, the complainant sent a letter to the respondents in which he explained that he needed the withheld records because they contain exculpatory information and asked for the statutory cite of the exemption the respondents claimed.

6. It is found that on May 8, 2014, the respondents answered the complainant's letter, and enclosed a copy of the so-called "law enforcement exemption," §1-210(b)(3), G.S.

7. By letter of complaint filed May 21, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by improperly withholding the witness statements that he requested.

8. 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.

9. 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.

10. 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."

11. 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.

12. It is found that the respondents cited §1-210(b)(3), G.S., in error as the exemption they relied on to withhold the witness statements. Instead, they claimed that §1-210(b)(18), G.S., is the appropriate exemption, as alluded to in their letter to the complainant on May 8, 2014.

13. Section 1-210(b)(18), G.S., provides:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

Records, 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...[.]

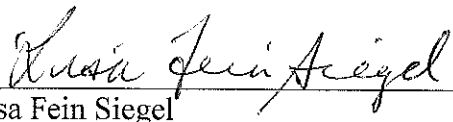
14. It is found that the respondents' FOI liaison reviewed the records, as the commissioner's delegate. It is found that her opinion, based on her years of experience with the respondents' correctional institutions, is that disclosure of the witness statements may create a safety risk. She testified that even with the redaction of names, the complainant would be able to identify the witness, elevating the risk of retaliation and other dangerous behaviors in the facility.

15. It is found that the Commissioner of Correction has reasonable grounds to believe that disclosure of the records requested by the complainant may result in a safety risk, within the meaning of §1-210(b)(18), G.S.

16. It is concluded, therefore, that such records are exempt from disclosure, and the respondents did not violate the FOI Act by not providing such records to 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.



Lisa Fein Siegel
as Hearing Officer