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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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Hitley Inginac,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-701

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

Respondent(s)

July 20, 2015

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 12, 2015**. 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 July 31, 2015**. 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 July 31, 2015**. **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 July 31, 2015**, 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: Hitley Inginac
James Neil, Esq.

2015-07-20/FIC# 2014-701/Trans/wrbp/CAL/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Hitley Inginac,

Complainant

against

Docket #FIC 2014-701

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

Respondents

July 20, 2015

The above-captioned matter was heard as a contested case on July 10, 2015, at which time the complainant and the 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, 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 letter dated September 18, 2014, the complainant made a request to the respondents for copies of records that detailed responses to seven questions concerning levels and risks associated with asbestos contained in the buildings at the Osborn Correctional Facility (the "requested records").
3. It is found that, by letter dated September 24, 2014, the respondents acknowledged the complainant's request.
4. By letter of complaint dated October 16, 2014, and filed on October 20, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act ("FOIA") by failing to comply with the request described in paragraph 2, above. The complaint requested the imposition of civil penalties.

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 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 1-212.

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

8. It is found that, to the extent that the respondents maintain the records described in paragraph 2, above, such records are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

9. It is found that, by letter dated November 28, 2014, the respondents denied the request for the requested records, claiming that the records were exempt from mandatory disclosure pursuant to §1-210(b)(18), G.S.

10. At the hearing, the complainant testified that he was due to be discharged from the custody of the respondent Department during the month of July 2015. Respondents’ counsel represented that the complainant was due for discharge on July 28, 2015 and that the respondent Department would be willing to provide the requested records to the complainant if he made a new request when he was no longer incarcerated. The complainant further indicated that his mailing address after discharge would be: 640 Wilson Street, Waterbury, CT 06708.

11. At the hearing, the respondents also provided sworn testimony that the disclosure of an environmental report that they maintained, concerning asbestos at the Osborn Correctional Facility (“Osborn”), to an inmate at Osborn, could be misinterpreted by many inmates, causing the risk of disorder at the facility. The complainant is incarcerated at Osborn. Captain Jeffrey Jeannotte further testified that the presence of contractors for water sampling on the grounds of Osborn had, in 2007 or 2008, caused sufficient unrest that two units of 168 prisoners each had to be locked down. On other occasions, a mere change of the menu, when the dining hall has run short of the “meal of the day”, has caused unrest. The respondents also expressed concern about the possibility of a work stoppage by inmates in the prison “shops” that supply clothing, mattresses, clean laundry and printed materials to the prison system and to external contractors.

12. Finally, at the hearing, the respondents agreed to provide a copy of the requested records to the Commission for in camera inspection. It is found that the in camera records consist of 154 pages, which are designated herein as IC 2014-701-001 through IC 2014-701-154.

13. Section 1-210(b)(18), G.S., provides, in relevant part, that “[n]othing 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 safety risks discussed at paragraph 11, above, are not at issue in this case because the complainant will no longer be an inmate by the time a disclosure is ordered. If the complainant is not discharged pursuant to the schedule discussed at paragraph 10, above, the respondents can move to modify this decision based upon changed conditions. Section 4-181a(b), G.S. Accordingly, this decision does not adjudicate the fact situation where the disclosure of the requested records would be to an inmate at a correctional facility.

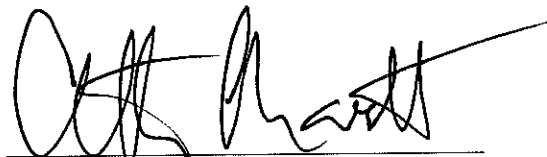
15. Based upon the evidence produced at the hearing and the in camera inspection, it is concluded that the Commissioner of Correction does not have reasonable grounds to believe that disclosure of IC 2014-701-001 through IC 2014-701-154, to the complainant after he is no longer incarcerated, may result in a safety risk, within the meaning of §1-210(b)(18), G.S.

16. It is therefore concluded that the respondents would violate the FOIA if they withheld the requested records after the complainant is discharged from the custody of the respondent Department.

17. It is also concluded that there are no grounds for the imposition of civil penalties.

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

1. The respondents shall mail the requested records to the complainant, without charge, after July 28, 2015 at: 640 Wilson Street, Waterbury, CT 06708.



Clifton A. Leonhardt
as Hearing Officer