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FREEDOM OF INFORMATION



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John Kaminski,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-867

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

Respondent(s)

May 18, 2016

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 8, 2016**. 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 27, 2016**. 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 27, 2016**. **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 May 27, 2016**, 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: John Kaminski
Attorney James Neil
cc: Craig Washington

2016-05-18/FIC# 2015-867/Trans/wrbp/VB/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

John Kaminski,

Complainant

against

Docket #FIC 2015-867

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

Respondents

April 18, 2016

The above-captioned matter was heard as a contested case on March 4, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of the March 4, 2016 hearing, this matter was consolidated with Docket #FIC 2015-869; John Kaminski v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction.

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 Anthony Sinchak v. FOIC et al., Superior Court, Judicial District of Hartford, Docket No. CV 03-0826293 (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 December 2, 2015, the complainant made a written request to the respondents for copies of specific operational standards contained within certain standards manuals published by the American Correctional Association and maintained by the respondent Department of Correction, including: (a) Standards for Adult Correctional Institutions, Fourth Edition, January 2003 - - Standard No. 4-4164, 4-4292 through 4-4294 and 4-4446; and (b) Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, June 2004 - - Standard No. 4-ALDF-2A-20, 4-ALDF-2A-21, 4-ALDF-2A-23 and 4-ALDF-2A-24.

3. By letter of complaint dated December 13, 2015 and filed on December 17, 2015, the complainant appealed to the Commission, alleging that the respondents failed to provide copies of certain records described in paragraph 2, above, in violation of the Freedom of Information Act.

4. Section 1-200(5), G.S., defines “public records or files” as:

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.

5. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

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

7. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S., and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

8. At the hearing in this matter, the complainant clarified his records request to include access to inspect responsive records.

9. The respondents conceded that the requested records described in paragraph 2, above, are maintained by the respondent Department of Correction. The respondents asserted that they are prohibited from making copies because the requested records are contained in books that are subject to the Federal Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the “Copyright Act”), which was explained to the complainant in a December 21, 2015 letter, along with the contact information for the American Correctional Association. With respect to providing the complainant with access to inspect the requested records, the respondents contended that because those records are housed at its central office, which is located in an administrative building, they cannot provide incarcerated individuals access to those records.

10. The Copyright Act governs the making of photocopies or other reproduction of copyrighted material and mandates that “the owner of copyright under this title has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” 17 U.S.C. §106.¹

11. The Copyright Act is a federal law for purposes of the federal law exemption contained in §1-210(a), G.S. See Pictometry Inter'l Corp. v. FOIC, 307 Conn. 648 (2013). In Pictometry, our Supreme Court examined the “except as otherwise provided” language in §1-210(a), G.S., and held that “to the extent that the [Freedom of Information] act and the Copyright Act impose conflicting legal obligations, the Copyright Act is a ‘federal law’ for purposes of the federal law exemption. Accordingly, although the federal law exemption does not entirely exempt copyrighted public records from the [Freedom of Information] act, it exempts them from copying provisions of the act that are inconsistent with federal copyright law.” Id., 674.

12. It is found that the American Correctional Association publishes standards manuals that detail operational practices at correctional facilities, including those manuals described in paragraph 2, above.

13. It is found that the standards manuals published by the American Correctional Association, including those described in paragraph 2, above, constitute literary works as defined under the Copyright Act and the Copyright Office, are registered with the Copyright Office and are afforded copyright protection under the Copyright Act. See 17 U.S.C. § 102(a).²

14. Consequently, it is concluded that the Copyright Act places certain limitations on the respondents’ ability to reproduce sections of the standards manuals published by the American Correctional Association, including the standards manuals described in paragraph 2, above, and/or distributing copies of such copyrighted work.³

15. It is concluded that the respondents did not violate the Freedom of Information Act when they declined to provide the complainant with copies of the records described in paragraph 2, above.

¹Protected works include literary works; see 17 U.S.C. §102(a), which include “books.” 17 U.S.C. §101. The Commission takes administrative notice of the United States Copyright Office (“Copyright Office”) website located at: <http://www.copyright.gov/eco/help-type.html> (accessed on March 8, 2016), which website includes a copyright search feature. The Copyright Office, a department of the Library of Congress, further defines literary works to include “textbooks, reference works, directories, compilations of information.”

²See footnote No. 1.

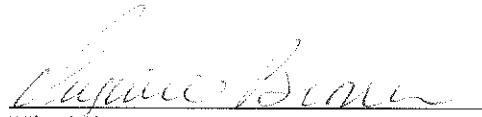
³A limitation on the exclusive use under the Copyright Act exists for certain “fair use,” which includes use of a copyrighted work by reproduction in copies for purposes such as “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.” 17 U.S.C. § 107. However, as our Supreme Court has clearly stated in Pictometry, “[n]either the commission nor this court . . . has jurisdiction to determine whether a particular use of copyrighted materials infringes on the copyright holder’s rights under federal copyright law or, instead, constitutes a fair use of the materials. Rather, that determination must be made in federal court.” Id., 682.

16. With respect to providing the complainant with access to inspect those responsive records, it is found that while there may be certain practical limits to affording incarcerated individuals with unfettered access to inspect public records that may be housed in an administrative building, nowhere in the Freedom of Information Act does it state that only certain members of the public are afforded the right to inspect public records.⁴

17. It is concluded that the respondents violated the disclosure requirements of §§1-210(a) and 1-212(a), G.S., by not providing the complainant with access to inspect those records described in paragraph 2, above.

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

1. The respondents shall forthwith provide the complainant with access to those records described in paragraph 2, above.
2. Henceforth, the respondents shall strictly adhere to the disclosure requirements of §1-210(a), G.S.


Virginia Brown
as Hearing Officer

FIC2015-867/HOR/VB/04182016

⁴The Commission acknowledges that unlike members of the public who are not incarcerated who are afforded access to records housed at the respondent Department's central office, providing those same rights to an incarcerated individual does present some unique challenges. However, the respondents must comply with the Freedom of Information Act in all respects and with respect to all members of the public - - even when it may be inconvenient to do so.