

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kacey Lewis,

Complainant

against

Docket #FIC 2016-0279

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

Respondents

January 25, 2017

The above-captioned matter was heard as a contested case on November 14, 2016, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above captioned matter was consolidated with Docket # FIC 2016-0594; Kacey Lewis 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 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.).

By letter dated November 14, 2016, the respondents submitted an after-filed exhibit which has been marked as Respondents' Exhibit 1: Letter, dated November 8, 2016, from CCS Washington to Kacey Lewis, with attachments.

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 March 5, 2016, the complainant made a request to Correctional Counselor Ligon, the respondents' Freedom of Information ("FOI") Liaison at the Garner Correctional Institution, to review and inspect documents "identifiable as correspondence including electronically stored documents sent and/or received in relation to Kacey Lewis #165480 by: Correctional Counselor Corbett, Captain Morris, C.T.O. Santulli, CC Ligon, CC Marino, CSW Demerious, HSA Rick Bush, Nurse Gil Burnes, Dr. Maurice Lee, Deputy Warden Dilworth, Deputy Warden Hines, Warden Falcone, Angel Quiros, DA Lynn Millings, Director of Population Management, Craig Washington, FOI Officer, Scott Semple, Commissioner,

Kathleen Maurer, Director of Health and Addiction Services, between dates: January 25, 2016 - thru - March 5, 2016.”

3. It is found that, by letter dated March 8, 2016, Correctional Counselor Ligon acknowledged the complainant’s March 5, 2016 request, described in paragraph 2, above, and informed the complainant that he would hear back from the respondents when the documents were ready for dissemination. It is found that, prior to the filing of the complaint in this matter, Correctional Counselor Ligon forwarded the March 5th request to Counselor Supervisor Washington, the Department of Correction’s (“DOC”) FOI Administrator, for processing.

4. By letter dated March 31, 2016, and filed with the Commission on April 6, 2016, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to comply with the request, described in paragraph 2, above.

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

7. 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.”

8. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless exempt from disclosure.

9. It is found that on or about November 8, 2016, the respondents provided the complainant with approximately 21 pages of documents, including emails and attachments thereto, which were responsive to the complainant’s March 5th request. It is also found that, by letter dated November 8, 2016, Counselor Supervisor Washington informed the complainant that

DAS BEST¹ did not find any other responsive emails. It is found that the majority of the emails that were provided to the complainant were communications to and/or from three of the named individuals in the March 5th request (*i.e.*, Counselor Supervisor Washington, Correctional Counselor Ligon and Correctional Counselor Corbett).

10. At the hearing, the complainant argued that the respondents failed to make a good faith effort to search for records responsive to his March 5th request, and to provide him with all records responsive to such request. In addition, with respect to the documents which were provided as described in paragraph 9, above, the complainant contended that such documents were not provided in a prompt manner.

11. Counselor Supervisor Washington testified that upon receiving a copy of the complainant's March 5th request, he placed it in his queue with other records requests waiting to be processed. Subsequently, he submitted, per the respondents' policy for searching and retrieving emails, the March 5th request to the respondent's IT Department who then forwarded the request to BEST for processing. Counselor Supervisor Washington testified that he requested that a search be conducted of the email accounts of eleven DOC employees named in the March 5th request. He testified that three of the named individuals are not considered DOC employees (*i.e.*, Bush, Burnes and Lee), but rather employees of the University of Connecticut Health Center ("UCHC"), and DOC does not have access to their records. Counselor Supervisor Washington also testified that he requested that the complainant's name and inmate identification number be used to search for responsive records. In addition, Counselor Supervisor Washington testified that the only email accounts flagged by BEST in response to his search request were of the three DOC employees referenced in paragraph 9, above.

12. It is found that the complainant named 17 individuals in his March 5th request. It is found that, excluding the three individuals who were identified by Counselor Supervisor Washington as UCHC employees, as described in paragraph 11, above, the respondents were required to conduct a search for records sent to and/or from a total of 14 named individuals, not eleven as testified to by Counselor Supervisor Washington.

13. Based upon the facts and circumstances of this case, it is found that the respondents failed to search for and provide the complainant with all records responsive to his request described in paragraph 2, above. It is therefore concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

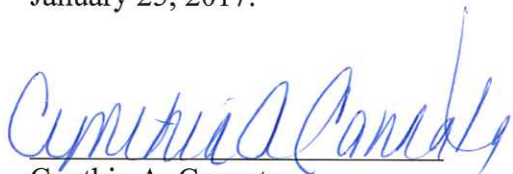
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. The respondents shall forthwith undertake a search for records responsive to the complainant's request, described in paragraph 2 of the findings, above, and provide copies of any

¹ The Commission notes that DAS BEST refers to the Bureau of Enterprise Systems & Technology within the State Department of Administrative Services. *See* <http://www.ct.gov/best/site/default.asp>.

responsive records to the complainant, free of charge. If the respondents do not locate any additional records responsive to the complainant's request, the respondents shall provide the complainant with an affidavit detailing the results of their search.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 25, 2017.



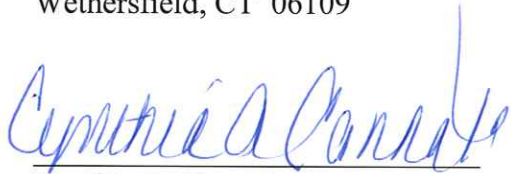
Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Kacey Lewis #165480
Corrigan-Radgowski Correctional Center
986 Norwich-New London Tpke.
Uncasville, CT 06382

Commissioner, State of Connecticut, Department of Correction;
and State of Connecticut, Department of Correction
c/o James Neil, Esq.
24 Wolcott Hill Road
Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission