

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Juan Maldonado,

Complainant

Docket # FIC 2016-0766

against

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

Respondents

September 13, 2017

The above-captioned matter was heard as a contested case on June 22, 2017, at which time the complainant and respondents appeared, stipulated to certain facts 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. By letter of complaint, dated October 24, 2016, and received on October 31, 2016, the complainant appealed to this Commission, alleging that the respondents failed to promptly provide him with copies of the records described in paragraphs 3 and 4, below, in violation of the Freedom of Information (“FOI”) Act. The complainant alleged that such delay was unreasonable and in violation of his constitutional rights.¹ In addition, at the hearing, the complainant sought civil penalties against the respondents.
3. It is found that by letter dated September 15, 2016, the complainant made a five-part request to the Hartford Police Department (“HPD”) for copies of records related to or created in the course of a certain investigation conducted by the HPD, including any and all witness

¹ In his complaint, the complainant also alleged that prison officials illegally accessed his “privileged legal correspondence.” The issue regarding whether the respondents illegally accessed privileged legal correspondence is not an issue for the Commission, and will not be further addressed herein.

statements related to or created in the course of such investigation, among other records. It is found that, although the complainant did not identify the specific case number of the investigation, he did identify a pending Superior Court case and docket number (*i.e.*, Juan Maldonado v. State of Connecticut, et.al., Docket No. HHD-CV-16 5041324-S). In addition, it is found that in his September 15th request, the complainant requested that the HPD forward the requested records to the Department of Correction located at 24 Wolcott Hill Road, Wethersfield, CT.

4. It is found that, by letter dated September 26, 2016, the HPD informed the complainant that they had identified 195 pages of documents which were responsive to the complainant's September 15th request, described in paragraph 3, above. The HPD did not claim that any documents responsive to the September 15th request were exempt from disclosure.

5. It is found that, by a separate letter dated September 26, 2016, the HPD forwarded the HPD's September 26th letter described in paragraph 4, above, along with the 195 pages of responsive documents, to Counselor Supervisor ("CS") Craig Washington, the respondents' FOI Administrator. The HPD requested that CS Washington review the HPD's September 26th response to the complainant and, if he deemed it appropriate, to forward the requested documents to the complainant.

6. It is found that by letter dated October 5, 2016, the complainant requested that CS Washington "redact all necessary information and please forward these documents to me at your earliest convenience as these documents are needed to properly prepare for hearing, litigations [sic] and trial."

7. It is found that Correctional Officer Moore, who is responsible for handling FOI requests at MacDougall-Walker Correctional Institution, twice attempted, in February 2017, to deliver the responsive records, excluding witness statements, to the complainant. It is found that the complainant first refused to accept the documents because the respondents did not provide the complainant with an itemized list of the documents being withheld and the basis for such withholding. Subsequently, the respondents informed the complainant, both orally and in writing, that the respondents were withholding 13 pages of witness statements. The respondents informed the complainant that such witness statements were not permitted inside a correctional facility and were being withheld based on safety and security concerns. It is found that the complainant was dissatisfied with such explanation and he, once again, refused to accept the documents. In addition, although not part of his original request, the complainant requested that the respondents forward the withheld records to his attorney.

8. 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.

9. 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 section 1-212.

10. 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.”

11. It is found 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., unless they are exempt from disclosure.

12. With respect to the issue of promptness, CS Washington testified, and it is found, that upon receiving the HPD’s September 26th letter and enclosed documents, as described in paragraph 5, above, he placed the review of such documents in his queue with other records requests waiting to be reviewed. It is found that CS Washington is responsible for responding to and reviewing all records requests that are submitted directly to the Department of Correction and for reviewing all records mailed to inmates from outside agencies. It is also found that CS Washington’s other responsibilities include conducting training regarding the handling of records requests, and attending and testifying regularly at hearings and meetings before the Commission.

13. It is further found, as described in paragraph 7, above, the respondents twice attempted to deliver, but the complainant refused to accept, the responsive records, excluding witness statements. It is found that the respondents provided the complainant with prompt access.

14. With respect to the 13 pages of witness statements, which were withheld from disclosure, the respondents claimed that such records were exempt pursuant to §§1-210(b)(3) and 1-210(b)(18), G.S., and that they were not required to deliver such statements to the complainant’s attorney.

15. After the hearing, pursuant to two orders of the hearing officer,² the respondents submitted 13 pages of unredacted documents to the Commission for in camera review, which are identified, on the in camera index, as signed witness statements, and have been marked as IC-2016-0766-1 through IC-2016-0766-13.

² On June 27, 2017, pursuant to an order of the hearing officer, the respondents submitted 11 pages of unredacted documents for in camera inspection. On July 17, 2017, pursuant to a second order of the hearing officer, the respondents submitted 13 pages of unredacted documents, a revised in camera Index, and an affidavit from CS Washington attesting that two documents were missing from the first in camera submission. The affidavit has been marked as Respondents’ Exhibit 2.

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

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

(18) 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....

17. It is found that the respondents had reasonable grounds to believe that disclosure of IC-2016-0766-1 through IC-2016-0766-13 may result in a safety risk, within the meaning of §1-210(b)(18), G.S. It is concluded, therefore, that such records are exempt from disclosure.³

18. The Commission further notes that the FOI Act does not require that the respondents forward the withheld records to the complainant's attorney.

19. It is concluded that the respondents did not violate the promptness and disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged by 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 13, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

³ In view of the conclusion in paragraph 17, above, there is no need to address any further exemption.

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:

JUAN MALDONADO, #236268, MacDougall Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Nancy Kase O'Brasky, Department of Correction, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission