

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kacey Lewis,

Complainant

against

Docket #FIC 2017-0181

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

Respondents

January 24, 2018

The above-captioned matter was scheduled to be heard as a contested case on October 30, 2017, at which time the correctional facility at which the complainant was incarcerated suffered a power outage preventing the complainant from being released for his hearing. The matter was then heard as a contested case on December 14, 2017, 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. By letter of complaint filed March 27, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the Commission’s order in Docket #FIC 2016-0279, Lewis v. Department of Correction et al. (“Lewis I”).
3. The Commission takes administrative notice of its records and files in Lewis I.
4. Paragraph 2 of Lewis I recites:

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.”

5. Paragraph 12 of Lewis I recited:

It is found that the complainant named 17 individuals in his March 5th [2016] request. It is found that, excluding the three individuals who were identified by Counselor Supervisor Washington as UCHC [University of Connecticut Health Center] 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.

6. Paragraph 1 of the order in Lewis I recited:

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 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. [Emphasis added.]

7. At the hearing, the parties agreed that, of the three individuals whose emails were not searched in Lewis I, one of them was a UCHC employee, not the respondents’ employee, and that the respondents did not need to search that UCHC’s employee’s emails.

8. At the hearing, the parties agreed that the order in Lewis I required the respondents to search for emails sent or received by the two remaining employees whose emails were not searched in Lewis I.

9. The respondents did not deny that they received notice of the Commission’s Final Decision in Lewis I at or about the time of its issuance on January 30, 2017.

10. Additionally, the Commission observes that the respondents had also been notified of the Commission’s receipt of the complaint in this matter, together with a copy of the complaint, on April 11, 2017, but still took no action on the Commission’s order in Lewis I until months later.

11. It is found that the respondents did not commence a search of those two employees' emails until September 1, 2017, when the respondents received a Notice of Hearing and Order to Show cause in the instant matter.

12. It is found that the respondents then discovered a responsive email chain sometime between September 1 and November 1, 2017.

13. It is found that the respondents did not offer the email chain to the complainant until November 1, 2017, two days after the initial scheduled hearing in this matter. The respondents then offered the responsive email chain to the complainant, but only on the condition that the complainant withdraw his complaint, which the complainant declined to do.

14. The respondents attributed their delay in conducting the records search ordered in Lewis I to their heavy workload and to the matter "getting lost in the shuffle." The respondents also maintain that the email chain was difficult to locate because the subject employee used a different name than the name provided by the complainant.

15. It is found, however, that those factors do not excuse a seven to nine month delay in compliance with the Commission's order.

16. It is also concluded that the respondents' requirement in this case that the complainant withdraw his complaint in order to receive the records on November 1, 2017 was improper. The Commission's order in Lewis I was clearly unconditional. The respondents' impermissible demand for a withdrawal of the complaint resulted in an additional delay from November 1, 2017 to at least the date of the December hearing in this matter. (The email chain was offered into evidence, and subsequently was provided, at the complainant's request, to the complainant by the Commission, by depositing in the mail on December 14, 2017.)

17. It is therefore concluded that the respondents' violated the FOI Act by failing to comply with the Commission's order in Lewis I.

18. Section 1-240(b), G.S., provides:

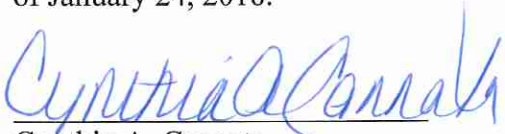
Any member of any public agency who fails to comply with an order of the Freedom of Information Commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

19. The Commission in its discretion declines to refer the respondents' failure to comply with its order for criminal prosecution. However, the Commission does not take lightly disregard of its orders, and retains the right to refer for prosecution, or to consider the imposition of civil penalties, in any future case of such disregard by the respondents.

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

1. Henceforth the respondents shall strictly comply with the orders of the Commission.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 24, 2018.



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, MacDougall Walker Correctional Center, 1153 East Street South, Southfield, CT 06080

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, c/o Attorney Nancy Canney, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission