

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

NOTICE OF FINAL DECISION

John Kaminski,

Complainant

against

Docket #FIC 2015-869

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

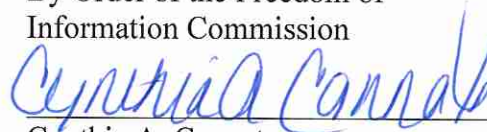
Respondents

August 26, 2016

TO: John Kaminski; Attorney James Neil, for the respondents.

This will serve as notice of the Final Decision of the Freedom of Information Commission in the above matter as provided by §4-183(c), G.S. The Commission adopted the Final Decision in the above-captioned case at its regular meeting of August 24, 2016.

By Order of the Freedom of  
Information Commission



Cynthia A. Cannata  
Acting Clerk of the Commission

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Respondents

August 24, 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 hearing, this matter was consolidated with Docket #FIC 2015-867; 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.*).

At its regular meeting on June 8, 2016, the Commission considered a Report of Hearing Officer, dated April 18, 2016 ("report"). The respondents appeared at such meeting and objected to the report, claiming it improperly addressed the allegation that the complainant was denied the right to inspect certain records, because such allegation was not fairly raised in the complaint. The Commission then voted to remand the matter back to staff for further consideration.

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 3, 2015, the complainant made a written request to

the respondents for copies of certain operational standards contained within the following standards manuals published by the American Correctional Association: (a) Standards for Administration of Correctional Agencies, Second Edition, April 1993; (b) Standards for Adult Correctional Institutions, Fourth Edition, January 2003; and (c) Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, June 2004.

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 the records described in paragraph 2, above, in violation of the Freedom of Information ("FOI") Act.

4. It is found that, by letter dated December 21, 2015, the respondents denied the request, described in paragraph 2, above, claiming that the manuals are copyrighted and that, therefore, they are prohibited from copying them. The respondents also provided the complainant with the contact information for the American Correctional Association.

5. 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.

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, (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.

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, facsimile, electronic or certified copy of any public record."

8. 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.

9. It is found that the respondents maintain the standards manuals, described in paragraph 2, above. At the hearing in this matter, the respondents claimed that they are

prohibited from copying the manuals for the complainant because such manuals are subject to the Federal Copyright Act of 1976, 17 U.S.C. § 101 et seq. (the “Copyright Act”).

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.<sup>1</sup>

11. In Pictometry Inter'l Corp. v. FOIC, 307 Conn. 648 (2013), the Supreme Court examined the “except as otherwise provided” language in §1-210(a), G.S., and held that “to the extent that the [FOI] act and the Copyright Act impose conflicting legal obligations, the Copyright Act is a ‘federal law’ for purposes of the federal law exemption contained in §1-210(a), G.S. Accordingly, although the federal law exemption does not entirely exempt copyrighted public records from the [FOI] 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 standards manuals, described in paragraph 2, above, detail operational practices at correctional facilities.

13. It is found that the standards manuals, described in paragraph 2, above, constitute literary works as defined under the Copyright Act, are registered with the Copyright Office, and are afforded copyright protection under the Copyright Act. See 17 U.S.C. § 102(a).<sup>2</sup>

14. Therefore, it is concluded that the Copyright Act places certain limitations on the respondents’ ability to reproduce the standards manuals, described in paragraph 2, above, and/or distributing copies of such copyrighted work.<sup>3</sup>

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

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<sup>1</sup>Protected 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.”

<sup>2</sup>See footnote No. 1.

<sup>3</sup>A 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.

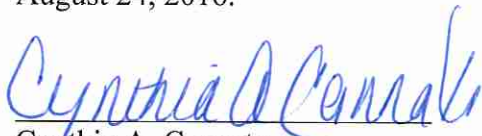
16. At the hearing in this matter, the complainant claimed, for the first time, that he also requested to inspect the records, described in paragraph 2, above, and that the respondents denied such request.

17. However, it is found that such allegation was not fairly raised in the complaint, and it is concluded, therefore, that the Commission lacks jurisdiction to address such allegation.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 24, 2016.



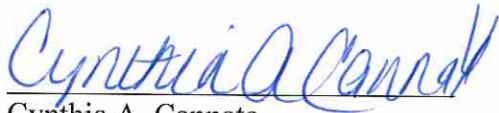
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

John Kaminski # 241124  
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 James Neil, Esq.  
24 Wolcott Hill Road  
Wethersfield, CT 06109



Cynthia A. Cannata  
Acting Clerk of the Commission