



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Brian Niblack,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-646

Commissioner, State of Connecticut, Department of
Correction; and State of Connecticut, Department of
Correction, Cheshire Correctional Institution,
Respondent(s)

August 19, 2013

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, September 11, 2013**. 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 August 30, 2013**. 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 August 30, 2013**. **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 **fourteen (14) copies** be filed **ON OR BEFORE August 30, 2013**, 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: Brian Niblack
James Neil, Esq.
cc: Kristine Barone

8/19/13/FIC# 2012-646/Trans/wrbp/GFD//VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Brian Niblack,

Complainant

against

Docket #FIC 2012-646

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,
Cheshire Correctional Institution,

Respondents

August 16, 2013

The above-captioned matter was heard as a contested case on August 5, 2013, at which time the complainant and the 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 dated November 12, 2012 and filed with the Commission on November 15, 2012, the complainant alleged that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of all of the records described in paragraph 3, below. The complainant also requested the assessment of a \$1,000.00 civil penalty against the respondents' FOI Office located at Cheshire Correctional Institution.
3. It is found that, by Inmate Request Form dated August 20, 2012, the complainant requested from the Cheshire Correctional Institution's FOI Act Coordinator, copies of pages 1 and 2 of each of the following records related to a July 9, 2012 disciplinary report concerning the complainant:
 - a. all incident reports;
 - b. restrictive housing unit status order;
 - c. disciplinary report;

- d. disciplinary investigation report;
- e. advocate investigation report;
- f. disciplinary process summary; and
- g. all physical evidence for the July 9, 2012 disciplinary report (the "requested records").

4. It is found that, by letter dated October 11, 2012, Counselor Supervisor ("C.S.") Bouffard informed the complainant that responsive records were available for dissemination and that such records would be forwarded to the complainant upon receipt of his payment of \$2.00. It is also found that C.S. Bouffard informed the complainant that there were no documents responsive to his request for the Disciplinary Report, Disciplinary Investigator's Report, and Advocate Investigation Report, all described in paragraphs 3.c., 3.d., and 3.e., 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 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 . . . (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 "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 to the extent the respondents maintain the requested records, such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the hearing on this matter, the complainant contended that the respondents were not prompt in providing him with copies of the Incident Report and the Restrictive

Housing Unit Status Order, which are described in paragraphs 3.a. and 3.b., above, respectively. The complainant also contended that while the respondents informed him that the records described in paragraphs 3.c., 3.d., and 3.e., above, were not available, they failed to provide a response for the requested records described in paragraphs 3.f. and 3.g., above. The complainant specifically contended that the respondents did not inform him whether the Disciplinary Process Summary described in paragraph 3.f., above, existed. The complainant further contended that responsive records pertaining to physical evidence for the July 9, 2012 disciplinary report described in paragraph 3.g., above, exist, and are referenced in the incident report provided to him by the respondents. The complainant specifically contended that the respondents failed to provide him with records of physical evidence “clearly” identified as “Class A Disciplinary Report” and letter issued unit tracking number “CCI-12-192,” referenced on pages 1 and 3, respectively, of the incident report described in paragraph 3.a., above.

10. The respondents contended that the complainant had been promptly provided with all responsive disciplinary records that exist, totaling 8 pages. The respondents also contended that the disciplinary report and related records described in paragraphs 3.c. through 3.g., above, do not exist because the complainant’s ticket for security tampering was dismissed due to a process failure.

11. With respect to the complainant’s request described in paragraph 3, above, it is found that the respondents’ disciplinary officer conducted a diligent search for the requested disciplinary records.

12. It is found that the only responsive records located by the respondents’ disciplinary officer were the “Incident Report” and the “Restrictive Housing Unit Status Order” described in paragraphs 3.a. and 3.b., above.

13. It is found that the ticket issued to the complainant for security tampering was dismissed due to a process failure, prior to a disciplinary hearing on the matter.

14. It is also found that as a result of the respondents’ dismissal of such ticket, no disciplinary report was issued or retained in the complainant’s disciplinary or master file.

15. It is found that the complainant conceded that the ticket issued to him for security tampering was dismissed by the respondents. The complainant contended, that a “Class A Disciplinary Report” and letter issued unit tracking number “CCI-12-192,” referenced on pages 1 and 3, respectively, of the incident report may exist in a different file maintained by the respondents.

16. It is found, however, that the respondents reasonably understood the complainant’s request as a request for copies of disciplinary records maintained by the respondents’ disciplinary unit related to a July 9, 2012 disciplinary report written about the complainant.

17. It is also found that the disciplinary records described in paragraphs 3.c. through 3.g., above, which ordinarily would be included or attached to a disciplinary report issued by the respondents, do not exist.

18. As to the complainant's claim that the respondents' FOI Act Coordinator did not state in his October 11, 2012 letter to the complainant whether the records described in paragraphs 3.f. and 3.g., above, existed, it is found that the respondents provided all the records in their custody or control that were reasonably responsive to the complainant's request. It is also found that the "Class A Disciplinary Report" and letter issued unit tracking number "CCI-12-192," referenced on pages 1 and 3, respectively, of the incident report described in paragraph 3.a., above, do not exist except to the extent that they were referenced in the incident report provided to the complainant.

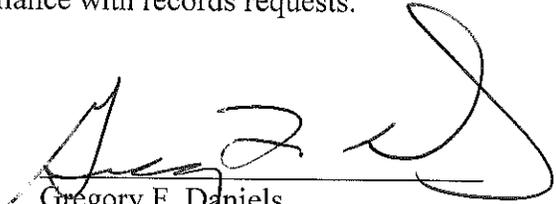
19. With regard to the complainant's claim that the respondents did not promptly respond to his request for records, it is found that the respondents received such request on August 20, 2012. It is found that the complainant received a response to his request on October 11, 2012, nearly 7 weeks later. It is found that, with no reasonable explanation for the delay, the respondents failed to promptly comply with the complainant's request.

20. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly comply with the complainant's records request.

21. Based on the facts and circumstances in this case, the Commission declines to consider the imposition of a civil penalty.

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 provisions of §§1-210(a) and 1-212(a), G.S., requiring prompt compliance with records requests.



Gregory F. Daniels
as Hearing Officer