

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Osuch,

Complainant

against

Docket #FIC 2016-0380

Director, State of Connecticut,
Correctional Managed Health Care; and
State of Connecticut, Correctional
Managed Health Care,

Respondents

March 22, 2017

The above-captioned matter was heard as a contested case on October 12, 2016, 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 of complaint filed May 18, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his April 20, 2016 request to review, and if necessary copy, certain emails.
3. It is found that the complainant made a January 13, 2016 request to the respondents to review, and if necessary, copy:

Any and all emails from you [the respondents] and to you [the respondents] in regards to my mental health treatment and care, to include but not [be] limited to: Commissioners, Dr. Craig Burns, Dr. Coleman, Dr. Lawlor, Dr. Heather Gar, APRN Heather Burns, Population Management,

Warden Henry Folcone, Warden Murphy, Warden Maldonado, Deputy Warden K. Barone, Deputy Warden Bradway, H.S.A. Lightner, Dr. Kathleen Maurer.

4. It is found that the respondents acknowledged the request on January 20, 2016.
5. It is found that, by letter dated March 21, 2016, the respondents informed the complainant that they had gathered 110 pages of documents, and they would require payment in the amount of \$27.50 prior to making copies.
6. It is found that, by letter dated April 20, 2016 to the respondents, the complainant reiterated that he wished to review the records first, and only then copy them if necessary. The complainant also asserted that he was indigent, and that therefore the copying fee should be waived.
7. It is found that the complainant received neither access to inspect, nor copies of, the requested records.
8. Section 1-200(5), G.S., defines "public records" as follows:

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, ...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:

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 ... or (3) receive a copy of such records in accordance with section 1-212...
10. Section 1-212(a), G.S., provides in relevant part:

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.... The fee for any copy provided in accordance with the Freedom of Information Act:

(1) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page....

11. Additionally, §1-212(d)(1), G.S., provides: "The public agency shall waive any fee provided for in this section when: (1) The person requesting the records is an indigent individual"

12. It is concluded that the requested file is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

13. It is found that, for purposes of §1-212(d)(1), the respondents apply the same indigence standard used by the State of Connecticut Department of Correction ("DOC") in deciding whether to waive copying fees for an inmate.

14. It is found, using the DOC standard of indigence insofar as it looks at the inmate's trust account balance as of the date of the request, and 90 days before the request, that the complainant had more than \$5.00 in his trust account and therefore is not indigent under the DOC standard.

15. The complainant maintained that the respondents failed to provide any documentation of their adoption of the DOC indigence standard.

16. The Commission takes administrative notice of its records and files in Docket #FIC 2009-483, Rollins v. Correctional Managed Care, et al.

17. In Rollins the Commission noted its approval of the DOC's standard insofar as it looks at the inmate's trust account balance as of the date of request and 90 days before the request. Also in Rollins, the Commission approved the respondents' adoption of that portion of the DOC's indigence standard. See also Docket #FIC 2013-734, Junior Jupp v. Correctional Managed Care, et al.

18. It is therefore concluded that the respondents did not violate §1-212(d)(1), G.S., when they required payment for copies after applying the DOC standard.

19. However, the complainant also maintained that he was denied access to inspect the requested records.

20. The respondents claimed that the first names of their staff are exempt from disclosure.

21. It is found that the respondents failed to provide evidence, or an applicable statute, to support their claim of exemption.

22. The respondents also claimed that the requested emails contain exempt information about other inmates and their care.

23. The respondents conceded that the emails are not medical records.

24. It is found that the respondents failed to provide evidence, or an applicable statute, to support their claim of exemption.

25. However, it is also found that the complainant seeks only information about himself, not about other inmates.

26. It is therefore found that the exemption of information about other inmates and their care need not be addressed, since the complainant did not request that information, and it therefore may be redacted from any records provided for the complainant's inspection.

27. It is therefore concluded that the respondents violated §1-210(a), G.S., when they failed to make any portion of the requested records available for the complainant's inspection.

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 provide the complainant with access to inspect the requested records.

2. In complying with paragraph 1 of this order, the respondents may redact any information about other inmates and their care, since that information was not requested by the complainant.

3. The Commission notes that the respondents will necessarily provide the records to the DOC, pursuant to §1-210(c), G.S., and not directly to the complainant. It is the responsibility of the Commissioner of DOC to determine whether there are reasonable grounds to believe that disclosure of the first name of respondents' staff, or any other information in the requested emails, would create a safety risk, within the meaning of §1-210(b)(18), G.S., and if appropriate, to redact such names or information from the records provided to the complainant.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 22, 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:

David Osuch #139268
Garner Correctional Institution
50 Nunnawauk Road
Newtown, CT 06470

Director, State of Connecticut, Correctional Managed
Health Care; and State of Connecticut, Correctional
Managed Health Care
c/o Stephen R. Finucane, Esq.
Assistant Attorney General
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Cynthia A. Cannata
Acting Clerk of the Commission