

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Daly,

Complainant

Docket # FIC 2018-0189

against

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

Respondents

January 9, 2019

The above-captioned matter was heard as a contested case on September 5, 2018, 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. It is found that, by letter dated February 23, 2018, the complainant made a request to the respondents for the following:
 - [a] Any visual footage which depicts Michael Daly #14102 at the Hartford Correctional Center on 6/27/2016 between the hours of 4:00PM and 10:00PM [;] and
 - [b] A record that identifies by name and inmate number each inmate admitted to the Hartford Correctional Center on 6/27/2016.
3. It is found that, by letter dated March 7, 2018, the respondents acknowledged the complainant's request, described in paragraph 2, above, and informed him that they would notify

him of their findings. The respondents also inquired whether the requested video was captured as a result of an incident and did the complainant request for such video to be preserved.

4. It is found that, by letter dated March 13, 2018, the complainant informed the respondents that the requested video was not captured as the result of an incident, and that it would be footage from the facility cameras. The complainant also informed the respondents that he did not request that the video footage be preserved.

5. It is found that, by letter dated April 10, 2018, the complainant renewed his request, described in paragraph 2, above.

6. It is found that, by letter dated May 8, 2018, after the complaint was filed in this matter, as described in paragraph 7, below, the respondents informed the complainant that there were no documents or videos responsive to his request.

7. By letter of complaint, dated April 16, 2018, and received and filed on April 19, 2018, the complainant appealed to this Commission, alleging that the respondents denied his April 10, 2018 records request, in violation of the Freedom of Information (“FOI”) Act.

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 and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., to the extent that such records exist.

12. At the hearing in this matter, the respondents contended that the Commission does not have jurisdiction over the complaint and that a hearing in this matter was premature. The respondents contended that they had four days to respond to the complainant's April 10th request, which the complainant identified in his complaint as the request at issue, and that the complainant had not given them ample opportunity to respond to such request.

13. Section 1-206(b)(1), G.S., requires, generally, that notice of appeal must be filed with the Commission within 30 days after the denial of a request to copy or inspect records or any other right conferred by the FOI Act. Section 1-206(a), G.S., provides that a denial of a request to copy or inspect records must be made, in writing, within four business days of such request, and further provides that failure to comply with a request to copy or inspect records within four business days shall be deemed a denial.

14. It is found that, contrary to the respondents' contention, the respondents had ample opportunity to respond to the complainant's records request. The April 10, 2018 letter to the respondents simply renewed the complainant's February 23, 2018 request, which the respondents had already acknowledged and were processing.

15. It is further found that the complainant filed his complaint within 30 days of the alleged violation.

16. Accordingly, under the facts and circumstances of this case, it is concluded that the Commission has jurisdiction in this matter.

17. With respect to the request described in paragraph 2[a], above, the respondents testified that unless the complainant had made a request to preserve the video within 14 days, which the complainant acknowledged he had not done, then the video would have been taped over. The respondents further testified that they nevertheless searched for, but could not locate, any responsive videos.

18. With respect to the request described in paragraph 2[b], above, the respondents testified that due to the high volume of inmates admitted to the Hartford Correctional Center, records identifying each inmate admitted to the Correctional Center are kept in hard copy, only, and retained for a period of one year. The respondents further testified that they conducted a search for, but were unable to locate, any responsive records.

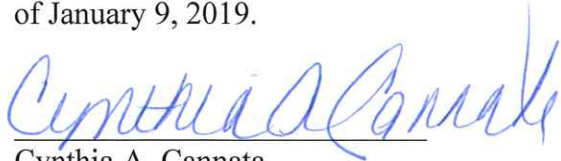
19. It is found that the respondents do not maintain the requested records.

20. It is therefore concluded that the respondents did not violate the FOI Act 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 January 9, 2019.



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:

MICHAEL DALY, #14102, 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