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John Kaminski,
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2016-0612

April 5, 2017

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, April 26, 2017.** 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 April 17, 2017***. 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 April 17, 2017***. **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 **fifteen (15) copies** be filed ***ON OR BEFORE April 17, 2017***, 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: John Kaminski
Attorney James Neil
cc: Craig Washington

FIC# 2016-0612/Trans/wrbp/TCB//VDH/2017-04-05

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by — Report of Hearing Officer

John Kaminski,

Complainant

against — Docket #FIC 2016-0612

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

Respondents — March 29, 2017

The above-captioned matter was heard as a contested case on March 3, 2017, 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. It is found that, on August 10, 2016, the complainant made a written request to the respondents to inspect 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 August 20, 2016 and filed on August 26, 2016, 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. 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.

5. 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.

6. 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."

7. It is found that the records described in paragraph 2, above, were the subject of the decisions in Docket #FIC 2015-867; John Kaminski v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction and Docket #FIC 2015-869; John Kaminski v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction. It is found that in those cases the complainant made a request for a copy of the same records on December 3, 2015 and it is found that, at that time, the respondents denied the request, claiming that the manuals are copyrighted materials and that, therefore, they are prohibited from copying them. The respondents also provided the complainant with the contact information for the American Correctional Association. The Commission found that the respondents maintain the manuals but dismissed the complaints after concluding that that the Copyright Act places certain limitations on the respondents' ability to reproduce the standards manuals and 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.

8. It is found, however, that pursuant to the complainant's August 10, 2016 request, the respondents actually conducted a physical search for the manuals responsive to the complainant's request and it is found that while the respondent department

maintains some manuals, it does not maintain the manuals requested by the complainant, described in paragraph 2, above.

9. It is found that, prior to the hearing in this matter, the respondents informed the complainant that they had conducted a search of all areas in which the requested records would reasonably be maintained and that the manuals are not located in such areas. At the hearing on this matter, the complainant stated that he had been told that the manuals were not maintained by the respondents but that he wanted to go forward with the hearing in order to have the respondents' state on the record that the manuals were missing.

10. It is concluded that the respondents did not violate the FOI Act by failing to provide the complainant with access to inspect the records described in paragraph 2, above.

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.

Tracie C. Brown

Attorney Tracie C. Brown
as Hearing Officer

FIC2016-0612/hor/tcb/20170329