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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Melvin Sherman,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-018

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

October 22, 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, November 13, 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 November 1, 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 November 1, 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 November 1, 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: Melvin Sherman  
James Neil, Esq.  
cc: Kristine Barone

10/22/13/FIC# 2013-018/Trans/wrbp/LFS//GFD

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Melvin Sherman,

Complainant

against

Docket #FIC 2013-018

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

Respondents

October 11, 2013

The above-captioned matter was heard as a contested case on September 20, 2013, at which time the complainant and respondents appeared 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 January 1, 2013, the complainant requested records pertaining to a disciplinary report about him issued on December 13, 2012, and records pertaining to an incident occurring on February 19, 2011.
3. It is found that the respondents replied to the complainant's request on January 2, 2013.
4. By letter of complaint filed January 11, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the copies of records he requested.
5. 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.

6. 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 ... receive a copy of such records in accordance with the provisions of section 1-212.

7. 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."

8. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that the respondents provided the complainant with 33 pages of records on January 15, 2013, for which the complainant paid the statutory fee, but the complainant claims that such records are not responsive to his request, described in paragraph 2, above. In particular, the complainant sought a color photograph of his injuries sustained in the 2011 incident, unredacted statements of witnesses from both the 2011 and the 2012 incidents, and video footage, phone conversations, and an anonymous note used to support the disciplinary report against him issued on December 13, 2012.

10. It is found that the respondents provided the complainant with a black and white copy of the photograph that the complainant testified was dark and obscured his injuries. The respondents have agreed to try to create a lighter copy and if the difference is noticeable, to provide such copy to the complainant.

11. The respondents claim that §1-210(b)(18), G.S., exempts the balance of the requested records from mandatory disclosure.

12. Section 1-210(b)(18), G.S., provides:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

Records, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction...[.]

13. The respondents' witness testified that disclosure to inmates of the witness statements, including information in recorded phone conversations and the anonymous note may create a safety risk because it could lead to retaliation against witnesses for what was or was not said in the statements, phone conversations, or note.

14. It is found that the Commissioner of Correction has reasonable grounds to believe that disclosure of the records requested by the complainant may result in a safety risk, within the meaning of §1-210(b)(18), G.S. See Docket #FIC2010-670; Robin Elliott v. Deputy Warden, State of Connecticut, Department of Correction, Northern Correctional Institution; and State of Connecticut, Department of Correction (September 14, 2011).

15. It is concluded, therefore, that such records are exempt from disclosure, and the respondents did not violate the FOI Act by not providing such records to 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 dismissed.



Lisa Fein Siegel  
as Hearing Officer