



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

Ramon Lopez,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-439

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

Respondent(s)

April 1, 2015

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, April 22, 2015**. 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 10, 2015**. 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 10, 2015**. **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 10, 2015**, 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: Ramon Lopez
James Neil, Esq., Nancy Kase O'Brasky, Esq.
cc: Craig Washington

2015-04-01/FIC# 2014-439/Trans/wrbp/KKR/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ramon Lopez,

Complainant

against

Docket #FIC 2014-439

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

Respondents

February 25, 2015

The above-captioned matter was heard as a contested case on January 30, 2015, at which time the complainant and the 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, 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 June 29, 2014, the complainant made a request to the respondents for the following:
 - a. all records regarding “prison locations” for Ramon Lopez and Manuel Rosado for their “entire incarceration” [December 1, 1993 until December 1, 2002] in the Department of Correction facilities; and
 - b. all records regarding “any transportations out of any prison facilities” by Ramon Lopez and Manuel Rosado for court trips, medical trips, funerals, etc., during the “entire incarceration” of each individual;

- c. all records regarding “attorney visits” at any DOC facility by Attorney Lawrence Hopkins to Ramon Lopez between February 2, 2002 and December 1, 2003.

3. It is found that, by letter dated July 2, 2014, the respondents acknowledged receipt of the request, described in paragraph 2, above.

4. By letter of complaint dated July 6, 2014, and filed July 10, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the request described in paragraph 2, above.

5. It is found that, by letter dated July 8, 2014, the respondents informed the complainant that:

[d]ue to safety and security issues the information you requested for another inmate cannot be released to you. To receive information regarding any transportation for yourself you must request it through the Freedom of Information Liason [sic] at CTU at CTU Headquarters 24 Wolcott Hill Rd., Wethersfield, CT 06109. In order to process your request for your attorney visits for yourself you have to give the specific dates that your attorney visited you for me to provide you with a copy. The state Freedom of Information Act does not require state agencies to create documents, answer questions or conduct research. Your movement sheet is being provided to you. These 2 pages have been redacted for safety and security concerns.

6. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. 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 1-212.

8. 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.”

9. The respondents represented at the hearing in this matter, and it is found, that in response to the request, described in paragraphs 2(a), above, for records pertaining to the complainant, they provided him with a copy of his “movement sheet,” with certain portions redacted. However, the respondents further represented that they were no longer claiming any exemption for the redacted portions of this record, and agreed to provide an unredacted copy to him.

10. In addition, the respondents claimed that the records pertaining to Mr. Rosado that are responsive to the requests, described in paragraphs 2(a) and 2(b), above, are exempt from disclosure pursuant to §1-210(b)(18), G.S., which provides that disclosure is not required of:

[r]ecords, 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... Such records shall include, but are not limited to:

(A) Security manuals, including emergency plans contained or referred to in such security manuals;

(B) Engineering and architectural drawings of correctional institutions or facilities or Whiting Forensic Division facilities;

(C) Operational specifications of security systems utilized by the Department of Correction at any correctional institution or facility or Whiting Forensic Division facilities, except that a general description of any such security system and the cost and quality of such system may be disclosed;

(D) Training manuals prepared for correctional institutions and facilities or Whiting Forensic Division facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(E) Internal security audits of correctional institutions and facilities or Whiting Forensic Division facilities;

(F) Minutes or recordings of staff meetings of the Department of Correction or Whiting Forensic Division facilities, or portions of such minutes or recordings, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(G) Logs or other documents that contain information on the movement or assignment of inmates or staff at correctional institutions or facilities; and

(H) Records that contain information on contacts between inmates, as defined in section 18-84, and law enforcement officers.

11. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, judicial district of New Britain at New Britain, Docket No. CV074015438 and CV084016766 (November 3, 2008) (2008 Conn. Super. 2724), the court concluded that the FOIC's role in reviewing the DOC Commissioner's safety risk determination is to determine "whether the [commissioner's] reasons were pretextual and not bona fide, or irrational."

12. In Commissioner, Department of Correction v. Freedom of Information Commission, Superior Court, judicial district of New Britain at New Britain, Docket No. CV106006278 (April 5, 2012), the court reversed the Commission's decision that the DOC failed to prove that disclosure of victim impact statements to the particular inmate requestor, as opposed to inmates in general, may pose a safety risk, pursuant to §1-210(b)(18), G.S. The court ruled that to satisfy their burden under the statute, the DOC need only give "reasonable reasons...drawn from observations about inmates in general, as opposed to a specific inmate making the request."

13. It is found that Mr. Rosado is presently incarcerated in a federal prison, and has not been incarcerated at a state Department of Correction ("DOC") facility since approximately 2002.

14. It is found that a "movement sheet" includes the following information: the date an inmate enters a facility, the unsentenced/accused status date, the discharge date, and the dates an inmate was transferred between facilities.

15. The respondents claimed, at the hearing in this matter, that §1-210(b)(18)(G), G.S., applies, regardless of the fact that Mr. Rosado is incarcerated in a federal prison. The respondents' witness testified that the DOC has a policy of prohibiting inmates from obtaining information about other inmates, due to safety and security concerns. The respondents' witness further testified that disclosure of records reflecting the movement of inmates discloses

information about an inmate, such as an inmate's level of violence. This in turn, may pose a safety risk if, for example, an inmate uses such information to blackmail another inmate.

16. It is concluded that the plain language of §1-210(b)(18), G.S., does not limit the Commissioner to making safety risk determinations pertaining solely to state DOC facilities.

17. It is found that, in response to the hearing officer's question regarding *how* disclosure of the movement records of Mr. Rosado to the complainant may constitute a safety risk in any correctional institution, or how such records might be used as blackmail in this particular case, it is found that the respondents' witnesses provided testimony only that, generally, inmates might use information about other inmates in a manner that may pose a safety risk.

18. Applying the legal standard set forth in the two Commissioner decisions, cited in paragraphs 11 and 12, above, it is concluded that the reasons given by the respondents at the hearing in this matter regarding disclosure of information to inmates generally, are not "pretextual," "irrational," or "unreasonable."

19. Accordingly, it is further concluded that the records, described in paragraphs 2(a) and 2(b), above, and which pertain to Mr. Rosado, are exempt from disclosure pursuant to §1-210(b)(18)(G), G.S., and that the respondents did not violate the FOI in withholding such records from the complainant.

20. With regard to the request for records, described in paragraph 2(b), above, that pertain to the complainant, and the request described in paragraph 2(c), above, the respondents acknowledged, at the hearing in this matter, that they maintain records responsive to such requests, but argued it would be overly burdensome to conduct a search for such records, and therefore, they did not do so.

21. A search for records that a public agency deems to be overly burdensome does not relieve it from its obligations under the FOI Act. Office of Corporation Counsel of the City of Danbury v. Freedom of Information Commission, Superior Court, judicial district of New Britain at New Britain, Docket No. CV126017045 (2013), citing Wilden v. Freedom of Information Commission, 56 Conn. App. 683 (2000).

22. Accordingly, it is found that the records pertaining to the complainant that are responsive to the request, described in paragraphs 2(b), above, and the records described in paragraph 2(c), above, are not exempt from disclosure on the ground that a search for such records would be overly burdensome.

23. The respondents represented, at the hearing in this matter, that they were not claiming any other exemptions for records, described in paragraph 22, above.

24. Based upon the above findings of fact in this case, it is concluded that the respondents violated the FOI Act by failing to provide the complainant with an unredacted copy of the records described in paragraph 2(a), above, that pertain to him.

25. It is further concluded that the respondents violated the FOI Act by failing to provide the complainant with copies of the records pertaining to him that are responsive to the request, described in paragraphs and 2(b), above, and with by failing to provide him with copies of the records, described in paragraph 2(c), above.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. If they have not already done so, the respondents shall, forthwith, provide the complainant with an unredacted copy of the records described in paragraph 2(a), above, that pertain to him.
2. The respondents shall, forthwith, conduct a diligent and thorough search for the records responsive to the requests described in paragraphs 2(b), pertaining to the complainant, and to the request described in paragraph 2(c), of the findings of fact, above.
3. Henceforth, the respondents shall strictly comply with the disclosure requirements of the FOI Act.



Kathleen K. Ross
As Hearing Officer