

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ian Wright,

Complainant,

against

Docket # FIC 2016-0553

Chairperson, State of Connecticut, Board of
Pardons and Paroles; and State of
Connecticut, Board of Pardons and Paroles,

Respondents

May 24, 2017

The above-captioned matter was heard as a contested case on March 16, 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)(A), G.S.
2. It is found that on June 27, 2016, the complainant requested copies of policies, procedures, or regulations for deportation parole pursuant to §54-125d, G.S.
3. It is found that on July 1, 2016, the respondents acknowledged the complainant's request.
4. By letter postmarked August 1, 2016, and filed August 2, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the requested records.
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 (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.

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 on January 11, 2017, the respondents informed the complainant by letter that the only record they maintain responsive to his request is “an agreement with Immigration and Naturalization Services (“INS”) that is no longer enforced by either agency.” It is found that the respondents also informed the complainant that “irrespective of this agreement... deportation parole is not used and has not been used at any time by the Board of Pardons and Paroles.”

10. It is found that on January 25, 2017, the respondents provided a copy of the agreement with INS and a copy of §54-125d, G.S., to the complainant.

11. Section 54-125d, G.S., provides in relevant part:

(a) The Board of Pardons and Paroles shall enter into an agreement with the United States Immigration and Naturalization Service for the deportation of parolees who are aliens as described in 8 USC 1252a(b)(2) and for whom an order of deportation has been issued pursuant to 8 USC 1252(b) or 8 USC 1252a(b).

...

(c) ... [A]ny person whose eligibility for parole is restricted under [§54-125a(b)(2), G.S.,] shall be eligible for deportation parole under this section after having served fifty per cent of the definite sentence imposed by the court.

12. Section §54-125a(b)(2), G.S., provides in relevant part:

No person convicted of any of the following offenses, which was committed on or after July 1, 1981, shall be eligible for parole ...:
(A) Capital felony..., (B) murder with special circumstances ...,
(C) felony murder ..., (D) arson murder... (E) murder... or (F)
aggravated sexual assault in the first degree...

13. It is found that §54-125d, G.S., applies to deportation parole of “aliens” convicted of offenses that are parole “restricted” pursuant to §54-125a, G.S. It is concluded that the statute was intended to permit “aliens” who served more than half of their sentence, and who otherwise would not be eligible for parole, to be paroled to a deportation detainer.

14. It is found that subsection (a) of §54-125d, G.S., refers to the agreement between INS and the respondents that was ultimately abandoned (see paragraph 9, above), after procedural and other problems with the statute and the agreement proved insurmountable.

15. It is found that the statute has never been implemented; therefore, it is found that the respondents do not maintain any policies, procedures or regulations for deportation parole. See Docket No. 2014-303, David Taylor v. Chairperson, State of Connecticut, Board of Pardons and Paroles; and State of Connecticut, Board of Pardons and Paroles (February 25, 2015) (“no records pertaining to deportations, or hearings on deportations ... because §54-125d, G.S., ... never been used”); Docket No. 2013-718, David Taylor v. Chairperson, State of Connecticut, Board of Pardons and Paroles; and State of Connecticut, Board of Pardons and Paroles (August 13, 2014).

16. The complainant cited David Bispham v. INS, 2003 WL 21497198, Civ.A. 3:03 CV58(CFD) (June 27, 2003), *Ruling on Habeas Corpus Petition*, which stated in a footnote that §54-125d, G.S., was the authority for Bispham’s parole to his INS detainer. The complainant in this case contended that since Bispham was paroled pursuant to §54-125d, G.S., the statute must have been implemented at some point and there must have been policies, procedures or regulations concerning such deportation parole.

17. As the respondents point out, however, the *Ruling* in Bispham states that Bispham was convicted of sexual assault in the first degree, which is not an offense for which parole is restricted pursuant to §54-125a, G.S. It appears that the *Ruling* in Bispham inaccurately cites §54-125d, G.S., as the basis for Bispham’s parole.

18. It is found that Bispham does not contradict the respondents’ witness’s testimony that they do not maintain any records responsive to the complainant’s request.

19. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 24, 2017.



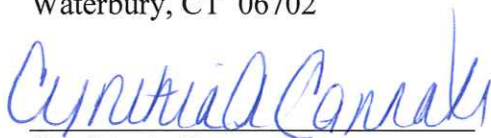
Cynthia A. Cannata
Acting Clerk of the Commission

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:

Ian Wright #286236
Cheshire Correctional Institution
900 Highland Avenue
Cheshire, CT 06410

Chairperson, State of Connecticut, Board of
Pardons and Paroles; and State of Connecticut,
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Acting Clerk of the Commission