

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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David Booth

Complainant(s)
against

Notice of Meeting

Docket #FIC 2021-0423

Superintendent of Schools, Middletown Public Schools; and Middletown Public Schools

Respondent(s)

July 11, 2022

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 remotely, at the Freedom of Information Commission, 165 Capitol Avenue, Suite 1100, Hartford, CT at **2:00 p.m. on Wednesday, July 27, 2022.**

At the meeting 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 July 22, 2022.** 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.**

NOTICE: Due to public health concerns surrounding the COVID-19 pandemic the Commission meeting of July 27, 2022, will be held solely through the use of electronic equipment (remotely). Further guidance will be mailed separately regarding the dial-in procedure to follow in the event that you wish to attend, or to present oral argument at, the July 27, 2022, meeting.

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 July 22, 2022. 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 July 22, 2022**, 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

/S/ Cynthia A. Cannata
Cynthia A. Cannata
Acting Clerk of the Commission

Notice to: David Booth
Attorney Julie Jacquays

FIC# 2021-0423/ITRAV/DH/TAH/CAC/7/11/22

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Booth,

Complainant

against

Docket #FIC 2021-0423

Superintendent of Schools, Middletown
Public Schools; and Middletown Public
Schools,

Respondents

July 11, 2022

The above-captioned matter was heard as a contested case on June 7, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Spec. Sess.), as amended by §1 of Public Act No. 22-3.

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 email dated February 17, 2021, the complainant requested that the respondents provide him with copies of "all emails to and from all Board of Education members from August 1, 2020 to February 17, 2021."

3. It is found that, by email dated February 23, 2021, the respondents acknowledged the request.

4. It is found that, by email dated April 21, 2021, the complainant inquired as to the status of the request.

5. It is found that, by email dated April 29, 2021, the respondents informed the complainant that there were approximately 30,000 emails responsive to the request and the charge for the records would be .50 cents per page (which would be a total charge of \$15,000).

6. It is found that, by email dated June 8, 2021, the complainant informed the respondents that, because he was requesting electronic records, he believed that the respondents should email the requested records to him at no charge.

7. It is found that, by email dated June 17, 2021, the complainant again inquired as to the status of the requested records. It is found that, by reply email also dated June 17, the respondents informed the complainant that they intended to reach out to their attorneys sometime during the following week for guidance on processing this disclosure.

8. It is found that, by email dated June 28, 2021, the respondents informed the complainant that they would begin disclosing the requested emails on a rolling basis.

9. It is found that, by email dated July 29, 2021, the complainant renewed the request set forth in paragraph 2, above, and requested that the respondents provide the responsive records to him on a thumb drive.

10. It is found that, by email dated July 30, 2021, the respondents informed the complainant that, because the records required redactions, they were not able to transfer the responsive records to a thumb drive, and that their summer help was no longer available to assist with responding to this request.

11. By letter of complaint, dated and received August 2, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the records, described in paragraph 2, above.

12. At the time of the request, §1-200(5), G.S., provided:

“[p]ublic 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.¹

13. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept 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 ... (3) receive a copy of such records in accordance with section 1-212.

14. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

¹ Public Act 21-2 (June Sp. Sess.) amended §1-200(5), G.S., to add the word “videotaped” to the definition of public records or files. Effective June 23, 2021.

15. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

16. It is found that, from September 8, 2021 to September 17, 2021, the complainant continued to communicate with the respondents about the status of the processing of his request. It is found that on September 17, 2021, which was 212 days from the date of the request, the respondents informed the complainant that a first flash drive containing some of the requested records was ready to be picked up.

17. It is found that, on September 28, 2021 and November 15, 2021, the respondents provided additional responsive records on two additional flash drives to the complainant.

18. It is further found that the three flash drives that the respondents provided the complainant contained approximately 120 emails, some of which were redacted.

19. It is found that, by email dated November 3, 2021, the respondents informed the complainant that they were turning the processing of this request over to their attorneys, as the attorneys had a more efficient system for making redactions.

20. It is found that, between January 31, 2022 and March 18, 2022, the respondents' attorneys delivered three additional thumb drives to the complainant containing 8,200 emails, 2,800 emails and 350 emails, respectively, many of which were redacted.²

21. It is therefore found that it took the respondents 394 days from the date of the request to disclose the requested records to the complainant.

22. At the contested case hearing, the complainant stated that he was not challenging redactions to the requested records. He contended, however, that the records were not provided to him promptly.

23. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

² It is found that the respondents' original estimate of 30,000 responsive emails turned out to be very rough, as there were only approximately 11,500 responsive emails. It is also found that the respondents ultimately did not charge the complainant for the requested records.

24. The respondents contended that they processed the request in this case as promptly as they could, but they experienced several technical issues related to searching for, redacting, and disclosing the requested emails to the complainant.

25. It is found that the respondents did experience some technical issues with regard to searching for, reviewing and redacting responsive emails, including the fact that, at the time of the request, only their Director of Technology had the credentials to access the respondents' electronic email system to gather each of the nine Board of Education member's responsive emails and that, with regard to the first three disclosures, only one administrative assistant was reviewing and redacting the emails that had been gathered by the Director of Technology. It is also found that, once the respondents' attorneys took over the review and disclosure process, the Director of Technology was responsible for transmitting the responsive emails to the attorneys in a secure manner. In addition, it is found that, on or around June 8, 2021, the complainant issued a supplemental request for the emails of two additional individuals who were not members of board of education. It is found that, while the respondents did begin to process this supplemental request, the searches were not completed, as the Director of Technology ultimately determined that these individuals' responsive emails were subsumed within the emails that were responsive to the original request. It did, however, take the Director some time to come to this determination.

26. It is found, however, that the request was clear and straightforward, and sought emails for only a six month period. It is further found that, as testified to by the Director of Technology, once the parameters of the search were input into the electronic mail system, the system processed the search and captured the responsive emails and that each of the nine searches took between thirty minutes to an hour to complete.

27. Under the facts and circumstances of this case, even taking the respondents' reasons for the delay into consideration, it is found that the respondents did not provide the requested records to the complainant promptly. Accordingly, it is concluded that the respondents violated the promptness provisions of the FOI Act in this matter.

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

1. Henceforth, the respondents shall strictly comply with the promptness provisions of §§1-210(a) and 1-212(a), G.S.



Valicia Dee Harmon
as Hearing Officer

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David Booth

Complainant(s)

Against

Docket # 2021-0423

Superintendent of Schools, Middletown
Public Schools; and Middletown Public
Schools

Respondent(s)

July 12, 2022

NOTICE OF DIAL IN INFORMATION

Due to public health concerns surrounding the Covid 19 pandemic, the Commission Meeting of July 27, 2022, will be conducted remotely at 2:00 p.m.

Should you wish to attend the meeting remotely, please dial in at 1:50 p.m.

+1 860-840-2075

Conference ID: 498 049 512#