

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jonathan Pelto,

Complainant

against

Docket #FIC 2015-646

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

Respondents

July 13, 2016

The above-captioned matter was heard as a contested case on April 26, 2016, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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 to the respondents, received by them on August 20, 2015, the complainant requested “[a]ll public information, data and reports concerning the 2015 SBAC test results, including the information, data and reports that local superintendents of schools can access via the State Department of Education website.”
3. It is found that, by email dated August 25, 2015, the respondents denied the request, described in paragraph 2, above, claiming such information is a “draft,” pursuant to §1-210(b)(1), G.S., and therefore is exempt from disclosure, and also claiming that the data constitutes individual student data, which is exempt from disclosure pursuant to the Family Education Rights and Privacy Act, 20 U.S.C. §1232g.
4. By email dated and filed August 27, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for the records, described in paragraph 2, above.
5. It is found that the records that are responsive to the request, described in paragraph 2, above, are identical to the records that were the subject of Docket #FIC 2015-532, Michael Savino and the Manchester Journal Inquirer v. Diana Wentzell, Commissioner, State of Connecticut, Department of Education; and State of Connecticut, Department of Education

(February 2, 2016), *appeal pending* Diana Wentzell, Commissioner, State of Connecticut, Department of Education, et al. v. Freedom of Information Commission, HHB-CV-16-6032889-S. In Savino, this Commission concluded that the aggregate district-wide test results are public records that were not exempt from disclosure pursuant to §1-210(b)(1), G.S., at the time they were requested, and that therefore the respondents violated the FOI Act by withholding such records from the complainant. The Commission further concluded that, at the time of the request, the respondents did not maintain aggregate state-wide test results, and that therefore, the respondents did not violate the FOI Act with respect to those records.

6. In the present case, the respondents claimed, at the hearing in this matter, that the aggregate district-wide test results were exempt from disclosure at the time they were requested, pursuant to §1-210(b)(1), G.S.¹ The respondents again maintained, as they did in Savino, that the aggregate state-wide test results did not exist at the time they were requested.

7. Pursuant to its regulations, and without objection from the parties, the Commission takes administrative notice of the testimony, exhibits and Final Decision in Savino. See Regulations of Connecticut State Agencies §§1-21j-37(d) and (e).

8. At the hearing in this matter, the hearing officer inquired of the complainant as to what further relief he believed the Commission could provide, in light of the fact that just two months earlier, in Savino, the Commission had concluded that the aggregate district-wide test results are public records not exempt from disclosure, and that the respondents had violated the FOI Act by withholding such records. The complainant stated that he wished to pursue his complaint because he was aware that the Savino case had been appealed, and he believed he could supplement and strengthen the record in that appeal with evidence in the present case that the respondents *intended* to violate the FOI Act. Through his questioning of the respondents' witness, at the hearing in this matter, the complainant attempted to prove that the respondents intended to violate the FOI Act, and that they maintained aggregate state-wide test results at the time he requested them.

9. However, it is concluded that intent is not a necessary element for the violation of §§1-210(a) and 1-212(a), G.S.² and no finding is hereby made with regard to the respondents' intent.

10. Based upon the evidence, testimony and Final Decision in Savino, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with a copy of the aggregate district-wide test results at the time they were requested. In addition, it is concluded that the respondents did not maintain aggregate state-wide test results at the time of the request, and that therefore, the respondents did not violate the FOI Act, as alleged, with respect to such records.

¹ In Savino, the respondents claimed that the records were not public records in the first instance, pursuant to §10-10a, G.S., and in the alternative, that even if they were public records, they were "drafts." In the present case, however, the respondents did not claim that the records are not public records.

² Although an intentional violation might, in certain instances, support the imposition of a civil penalty against the custodian or official directly responsible for such violation, the complainant did not request the imposition of a civil penalty in this case.

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

1. Forthwith, the respondents shall provide to the complainant a copy of the aggregate district-wide test results that were available to the superintendents at the time of the complainant's request in this matter.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements in §§1-210(a) and 1-212(a), G.S.

3. Enforcement of paragraph 1 of the order is stayed until resolution of the appeal in Diana Wentzell, Commissioner, State of Connecticut, Department of Education, et al. v. Freedom of Information Commission, HHB-CV-16-6032889-S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 13, 2016.

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:

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of Education; and State of Connecticut,
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Acting Clerk of the Commission