

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Francis Barron,

Complainant

against

Docket # FIC 2018-0679

Director of Human Resources,  
Greenwich Public Schools;  
and Greenwich Public Schools,

Respondents

November 13, 2019

The above-captioned matter was heard as a contested hearing on April 12, 2019, at which time the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint.

Following the hearing in this matter, the complainant offered an after-filed exhibit. The respondents objected to admission of such exhibit on the basis of relevancy, authentication (the exhibit is an incomplete text message), and because the respondents neither maintained the document, nor had they seen it before the complainant requested its admission. The hearing officer sustained the respondents' objection and marked the exhibit for identification purposes only as complainant's after-filed exhibit B.

A Report of Hearing Officer was considered by the Commission at its meeting of September 25, 2019. At such time, the Commission returned the matter to the Hearing Officer for further review. 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, in May of 2018, the Greenwich High School varsity rugby team, accompanied by several coaches and parents, traveled to Kansas City, Missouri to participate in an athletic event, and that students and coaches were accused of consuming alcohol while on the trip. It is further found that, as a result of the allegations, the Department of Children and Families ("DCF") and the Greenwich Public Schools engaged in independent investigations.
3. It is found that by email dated October 31, 2018, the complainant made a request to the respondents for copies of:

[A]ll investigative records properly subject to disclosure under the [Freedom of Information] Act that relate in any way to the investigation of, or the complaint or allegations made against, the coaches of the Greenwich High School varsity rugby team or any other persons associated in any way with that team during calendar year 2018. My request is intended to include all communications of any kind, and all investigative materials, relating to allegations that were made, either publicly or non-publicly, with respect to the Greenwich High School varsity rugby team's trip to Kansas City, Missouri in May of 2018.

4. It is found that, by email dated October 31, 2018, the respondents acknowledged receipt of the complainant's records request and notified the complainant that they would provide responsive records.

5. By email filed November 28, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all records responsive to the request described in paragraph 3, above.

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 section 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 section 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. It is found that the records responsive to the complainants' request, as described in paragraph 3, above, are maintained or kept on file by the respondents and are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. At the hearing, the parties stipulated that the only records remaining at issue are three documents created in the course of the investigation of the events described in paragraph 2, above. The respondents contended that the records at issue are exempt from disclosure pursuant to §1-210(b)(1), G.S.

11. Section 1-210(b)(1), G.S., provides, in relevant part, that “nothing in the Freedom of Information Act shall be construed to require disclosure of . . . [p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure...”

12. In 1980, the Connecticut Supreme Court interpreted the phrase “preliminary drafts or notes.” Wilson v. Freedom of Information Commission, 181 Conn. 324 (1980). In Wilson, the Court ruled that “preliminary drafts or notes reflect that aspect of an agency’s function that precedes formal and informed decision making . . . It is records of this preliminary, deliberative and predecisional process that . . . the exemption was meant to encompass.” *Id.* at 332-33. In addition, the FOI Act also requires the public agency to determine that “the public interest in withholding such document clearly outweighs the public interest in disclosure.” *Id.* at 338-39. In conducting the balancing test, “the agency may not abuse its discretion in making the decision to withhold disclosure. The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded.” *Id.* at 339.

13. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, and added to the FOI Act the language now codified in §1-210(e)(1), G.S. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S.

14. Section 1-210(e)(1), G.S., provides, in relevant part, that “[n]otwithstanding the provisions of subdivisions (1) . . . of subsection (b) of this section, disclosure shall be required of:

Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

15. Immediately following the hearing, the respondents submitted copies of the records at issue to the Commission for in camera review. The in camera records have been marked by the Commission and are hereinafter identified as IC-2018-0679-1 through IC-2018-0679-3. The Index to the in camera records does not set forth any claim of exemption. However, the Commission will consider the argument made by the respondents at the hearing that the entirety of the records remaining at issue are exempt from disclosure pursuant to §1-210(b)(1), G.S.

16. It is found that the in camera records consist of handwritten notes maintained by the respondents’ Chief Human Resource Officer pertaining to the events described in paragraph 2,

above. It is found that the Chief Human Resource Officer reported the information in the notes to DCF. It is further found that the respondents did not conduct their own investigation until after DCF concluded its investigation, and that when they did, the respondents adopted DCF's findings of fact.

17. After careful in camera inspection, it is found that the requested records are preliminary drafts or notes within the meaning of §1-210(b)(1), G.S. It is found that the in camera records are preliminary in nature in that they precede formal and informed decision making by the respondents. It is also found that the in camera records are akin to "preparatory materials" in that they preceded decision making by the respondents. See Shew v. Freedom of Information Commission, 245 Conn. 149, 164-65 (1998).

18. At the hearing, the complainant contended that there is a public interest in correcting the record regarding the events described in paragraph 2, above. The complainant contended that there is a particular parent involved who gave false reports to the respondents and that, as a result, the reputations of the coaches, rugby team members, and the high school were damaged. The complainant seeks, in part, to remedy that damage by receiving confirmation (through the records at issue) that the parent to whom he refers did in fact contact the respondents, and also confirmation as to what information that parent shared with the respondents.

19. However, it is found that the respondents made the necessary determination that "the public interest in withholding such documents clearly outweighs the public interest in disclosure," within the meaning of §1-210(b)(1), G.S. During the hearing, the respondents contended that the public interest in withholding the records at issue outweighs the public interest in disclosure because the records pertain to the investigation of an event involving high school students, and the respondents need to protect the identity of students whose parents are named in the records. It is found that disclosure of the names of parents can lead to disclosure of the names of students.<sup>1</sup> The respondents determined that this interest outweighed the complainant's stated interest in exposing the parent responsible for initiating the investigation. It is concluded the respondents' determination was reasonable and not frivolous or patently unfounded, and that the respondents did not abuse their discretion when they made such determination. See Van Norstrand v. Freedom of Information Commission, 211 Conn. 339, 344 (1989) (so long as agency does not abuse its discretion in making the necessary determination, the Commission shall not substitute its judgment in this regard).

20. It is further found, based upon a careful review of the in camera records, that such records are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions

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1. See Hartford Board of Education v. Freedom of Information Commission, et al., CV 95-0555646-S, 1997 Conn. Super. LEXIS 75, at\*6-7 (Conn. Super. Ct. Jan. 9, 1997), (case involving a separate exemption and a request for the names, addresses, and phone numbers of the parents of students in the Hartford Public School System, holding that §1-210(b)(1), G.S., permissibly prohibits the release of the parents' names because it would "inevitably lead to the disclosure of the prohibited student information in the majority of cases.")

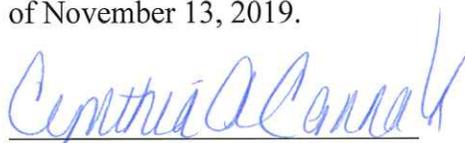
and policies are formulated, within the meaning of §1-210(e)(1), G.S.

21. It is concluded that the in camera records are exempt from mandatory disclosure by virtue of §1-210(b)(1), G.S. Accordingly, it is further concluded that the respondents did not violate the FOI Act when they declined to disclose the in camera 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 13, 2019.



Cynthia A. Cannata  
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:

**FRANCIS BARRON**, Cravath, Swaine & Moore LLP, 825 Eighth Avenue, New York, NY 10019

**DIRECTOR OF HUMAN RESOURCES, GREENWICH PUBLIC SCHOOLS; AND GREENWICH PUBLIC SCHOOLS**, c/o Attorney Abby Wadler, Greenwich Town Attorneys Office, 101 Field Point Road, Greenwich, CT 06830



Cynthia A. Cannata  
Acting Clerk of the Commission