

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Christopher Peak and  
New Haven Independent,

Complainants

against

Docket #FIC 2019-0598

Superintendent of Schools,  
New Haven Public Schools; and  
New Haven Public Schools,

Respondents

August 12, 2020

The above-captioned matter was heard as a contested case on November 12, 2019, at which time the complainants and the respondents appeared, stipulated to certain facts 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 dated February 4, 2019, the complainants requested that the respondents provide them with copies of the following records: “a copy of any datasets that show which employees are currently on leave, either for administrative reasons or for medical reasons. Please include the effective date and the expected return date, where possible.”
3. It is found that, by email dated February 5, 2019, the respondents acknowledged the request, and indicated that they would review the request and comply with it “in a manner consistent with [their] obligation under the law.”
4. It is found that, by email dated March 18, 2019, the complainants contacted the respondents, requesting a status update on the processing of the February 4<sup>th</sup> request.
5. It is found that, by email dated June 20, 2019, the complainants again contacted the respondents requesting a status update on the processing of the February 4<sup>th</sup> request.
6. It is found that, by email dated August 15, 2019, the complainants resubmitted the request referenced in paragraph 2, above, to the respondents.

7. It is found that, by email dated August 15, 2019, Michael Pinto, the Chief Operating Officer of New Haven Public Schools, acknowledged the resubmitted request, indicating that he was currently on vacation and that he would follow up on the request upon his return to the office.

8. By letter dated and filed August 21, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide them with the requested records.

9. 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.

10. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

11. 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.”

12. It is found that the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

13. At the contested case hearing, the respondents moved to dismiss the complaint for not being timely filed. This issue had not been briefed and was raised for the first time at the start of the contested case hearing. The hearing officer entertained legal argument from the parties on the motion.

14. The respondents contended that, when the complainants made their request on August 15, 2019, they acknowledged the request on the same day. The respondents further

contended that, because they acknowledged the request within the four business days provided for in §1-206(a), G.S., the complainants were prohibited from filing a complaint with the Commission until the respondents provided them with a “substantive response” to the request.

15. Section 1-206(a), G.S., provides, in relevant part, as follows:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request. . . . Failure to comply with a request to so inspect copy such public record within the applicable number of business days shall be deemed a denial.

16. Section 1-206(a), G.S., is properly construed to mean that a requestor, once having made a request to a public agency for access to public records, need only wait four business days from delivering such request to the public agency before filing a complaint with the Commission; if during the four business days following the public agency’s receipt of such request, a requestor does not receive a written acknowledgment from the public agency, the requestor may file a complaint with the Commission on the fifth business day. In effect, this provision deems a public agency’s silence during the four business days following receipt of a public records request to be a constructive denial of such request. Contrary to the respondents’ contention, there is no provision in §1-206(a), G.S., requiring a complainant who receives an acknowledgement within four business days to refrain from filing a complaint with the Commission. Accordingly, the respondents’ motion to dismiss was denied at the contested case hearing.

17. It is found that, by the time of the contested case hearing on November 12, 2019, the respondents had provided the complainants with the requested records. Specifically, it is found that, by email dated October 25, 2019, the respondents forwarded the requested records to the complainants.

18. The complainants contended that the records were not provided to them promptly. The complainant noted that, up to October 22, 2018, the respondents had regularly included employees’ leave of absence information on their meeting agendas as action items so that they could discuss and vote on such matters during their public meetings. It is found that, after their October 22<sup>nd</sup> meeting, the respondents stopped including this kind of detailed leave information on their agendas. The complainants represented that they contacted the respondents multiple times (both in writing and in person) to obtain these records. The complainants further contended that, given the respondents’ familiarity with these records, it should not have taken them 71 days to comply with their FOI request.<sup>1</sup>

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<sup>1</sup> The Commission notes that, at the contested case hearing, the respondents represented that they were returning to their prior practice of including the kind of information that the complainants are requesting in this case on their meeting agendas.

19. 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.

20. The respondents testified that, during the time period when the complainants had made the requests referenced in paragraphs 2 and 6, above, they were working to resolve a backlog of FOI requests and that it was taking them longer than they had anticipated to resolve these requests, including working to resolve several of the complainants' pending requests. The respondents further testified that, also during this time period, they were experiencing turnover with several key employees as well as experiencing several medical leave issues, which created a disconnect in their process of responding to FOI requests. Finally, the respondents testified that, also during this time period, there many political and school bus issues occurring in the city.

21. Given that the complainants had requested these records twice, had followed up with the respondents on the status their requests multiple times (and never received a clear indication from the respondents on when they might expect to receive the records or why it might take longer than usual to receive the records), had expressed to the respondents the importance of obtaining these records, as well as on the facts that the respondents were familiar with these records and should have been able to gather them relatively quickly<sup>2</sup>, it is found that the respondents did not disclose the requested records to the complainants in a timely manner.

22. Accordingly, it is concluded that the respondents violated the promptness provisions of the FOI Act by taking 71 days to disclose the requested records to the complainants.

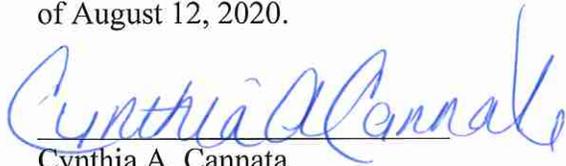
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

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

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<sup>2</sup> The respondents testified that, to the best of their knowledge, the responsive records were created by imputing information contained in the resubmitted request referenced in paragraph 6, above, into one of the City's computer systems and then downloading the responsive information into a paper record. The respondents were unable to provide any testimony with regard to how long this process took them.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 12, 2020.



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:

**CHRISTOPHER PEAK AND NEW HAVEN INDEPENDENT**, 51 Elm Street, Suite 307, New Haven, CT 06510

**SUPERINTENDENT OF SCHOOLS, NEW HAVEN PUBLIC SCHOOLS; AND NEW HAVEN PUBLIC SCHOOLS**, c/o Attorney Elias A. Alexiades, Office of the Corporation Counsel, 165 Church Street, New Haven, CT 06510



Cynthia A. Cannata  
Acting Clerk of the Commission

FIC 2019-0598/FD/CAC/8/12/2020

FIC2019-0598/HOR/VDH/5/20/2020