

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joe Wojtas and The Day,

Complainants

against

Docket # FIC 2019-0474

Superintendent of Schools, Stonington  
Public Schools; and Stonington Public  
Schools,

Respondents

July 22, 2020

The above-captioned matter was heard as a contested case on October 25, 2019 and November 22, 2019 at which times the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2019-0493; Joe Wojtas and The Day v. Superintendent of Schools, Stonington Public Schools; and Stonington Public Schools.

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. By letter of complaint filed on August 6, 2019, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to disclose all records responsive to a January 20, 2019 request for certain public records.
3. Section 1-200(5), G.S., defines “public records or files” as follows:

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.

4. 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, (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.

5. 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.”

6. It is found 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.

7. It is found that by email dated January 20, 2019, the complainants requested the following:

- a. Attendance and payroll records for 2018-2019 school year for Timothy Chokas.
- b. Any documents that reflect Chokas’ current salary and years of service in the Stonington school system.
- c. Copies of any complaints filed against Chokas during his employment in the Stonington school system.
- d. Copies of any and all disciplinary records in his [Chokas’] personnel file.
- e. Copies of all emails sent or received by Chokas on his school-assigned email account since Jan 1, 2018.

8. It is found that the respondents replied to the complainants in a letter dated January 29, 2019. At that time, the respondents disclosed records responsive to items 7a and 7b, above. The respondents indicated that records responsive to items 7c, 7d, and 7e, above, were “not available.” The respondents informed the complainants that their search revealed approximately 23,000 email records which needed to be reviewed prior to disclosure. The respondents asked the complainants if they would narrow or otherwise revise the scope of their request in order to receive a timelier response.

9. It is found that in an email to the respondents dated January 30, 2019, the complainants revised their January 20, 2019, request by limiting the request for copies of emails sent or received by Chokas on his school email account to those sent or received since December 1, 2018.

10. It is found that on May 10, 2019, the respondents disclosed 11,050 records to the complainants. There is no evidence on the record in this matter that indicates any further communication or disclosure regarding the January 20, 2019, request was forthcoming.

11. It is found that on April 11, 2019, the complainants made a new FOI request of the respondents. Such request is the subject of Docket #FIC 2019-0493. That request was related to the January 20, 2019, request in that it included a request for similar records but also included a number of additional records.

12. It is found that on August 6, 2019, the current appeal was filed with the Commission. The complainants allege that certain records disclosed by the respondents in response to the April 11, 2019, request should have been among the records disclosed by the respondents in response to the complainants' January 20, 2019, request.

13. At the commencement of the October 25, 2019, contested case hearing, the respondents moved to dismiss the above captioned matter claiming the Commission lacked subject matter jurisdiction over the complaint. The respondents contended that the appeal filed on August 6, 2019, was untimely as it was filed more than thirty days after the respondents' May 10, 2019, response to the complainants' request. The respondents contended that the untimely appeal violates §1-206(b)(1), G.S., which requires such appeal be filed not later than thirty days after a denial and therefore deprives the Commission of subject matter jurisdiction.

14. Section 1-206(b)(1), G.S., states in relevant part:

Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken. (Emphasis added)

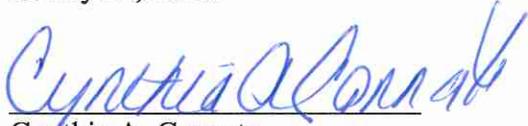
15. The only exception to the thirty-day limitation for the filing of an appeal provided for in §1-206(b)(1), G.S., is in the case of an unnoticed or secret meeting.

16. It is found that the notice of appeal in this matter was filed more than thirty days after the alleged denial of access to certain records responsive to the complainants' request. In accordance with §1-206(b)(1), G.S., when an appeal is received more than thirty days after a denial, the date filed shall be determined by the date it is postmarked. The appeal in this matter was postmarked August 2, 2019, eighty-four days after the respondents' May 10, 2019, disclosure of records. Accordingly, it is concluded that the appeal is untimely and therefore the Commission lacks subject matter jurisdiction in this matter.

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

1. The respondents' motion to dismiss is granted.
2. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 22, 2020.



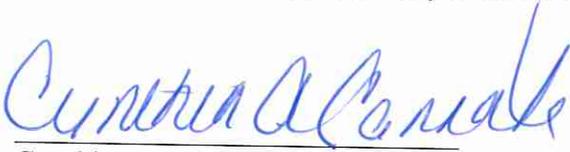
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**JOE WOJTAS AND THE DAY**, 47 Eugene O'Neill Drive, New London, CT 06320-1231

**SUPERINTENDENT OF SCHOOLS, STONINGTON PUBLIC SCHOOLS; AND STONINGTON PUBLIC SCHOOLS**, c/o Attorney Kyle A. McClain, Zangari Cohn Cuthbertson Duhl & Grello P.C., 59 Elm Street, Suite 400, New Haven, CT 06510



Cynthia A. Cannata  
Acting Clerk of the Commission