

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Jay Hardison,

Complainant

against

Docket #FIC 2020-0006

Superintendent of Schools,
Darien Public Schools;
Board of Education,
Darien Public Schools; and
Darien Public Schools,

Respondents

January 27, 2021

The above-captioned matter was heard as a contested case on October 6, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts 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 telephonically.¹

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 July 17, 2019, the complainant requested that the respondents provide him with a copy of all records:

. . . relating to, arising out of, or connected with, the investigation of any and all matters referenced in the attached documents with Bates stamp numbers DARPO003849 and DARPO003850, including without limitation any investigation of teacher/coach Rob Trifone and/or Athletic Director Chris Manfedonia, and any/all individuals mentioned in such documents, the DAF and/or

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

the DJFL. Without limiting the generality of the foregoing, such records include:

- a. Every record included in the series of documents which includes such attached documents, and/or which includes a Bates stamp number in the format 'DARPO[xxxxxx]';
- b. Every communication and any other record which was provided, shown, or otherwise made available to, any 'Person' (as such term is defined in the federal Securities laws under 15 USC Section 77b(a)(2)), and whether such Person was among such communication's or Record's [sic] senders, receivers, courtesy copied (cc'ed), blind courtesy copied (bcc'ed), physical recipient or otherwise. Such Persons include, without limitation, the Darien Police or any individual employee and/or representative thereof, the Darien Board of Education and/or any/all individual member(s), employee(s) or representative thereof, any other political body of Darien or any individual member thereof, any state, federal or regulatory agency and any employee, member(s) or representative(s) thereof, any elected official, any other investigator, and any natural person;
- c. Summaries, reports and/or presentations (including all drafts and final versions) of any such investigations, written or prepared by any Person, and whether or not given, received or made available to any other Person;
- d. Any Records from any subsequent, secondary or further investigations which arose from, are related to, or in connection with, any subject matter discovered in the initial investigation of such documents and other evidence, whether or not such subject matter and/or subsequent investigation is related directly to the original subject matter of the initial investigation;
- e. Disciplinary Records of any individuals;
- f. Board of Education materials, resolutions, minutes, and agendas; and

g. Every Record related to, arising from, and created in connection with this FOIA request.

3. It is found that, by email dated December 6, 2019, the respondents disclosed an installment of records to the complainant in response to the request set forth in paragraph 2, above.

4. It is found that, also by email dated December 6, 2019, the complainant responded to the respondents, as follows:

Thanks for this.

I've been told, by several knowledgeable sources, and documents that indicate as well, that there is a police report the BoE received, which is responsive to my FOIA request. As this would be readily available, can you please advise on when you will send that?

Thanks.

5. It is found that, by email dated December 9, 2019, the respondents informed the complainant that, after conferring with Dr. Landon, Dr. Addley and Ms. Ochman, they determined that they did not maintain the requested police report referred to in paragraph 4, above.

6. By email dated and received January 6, 2020, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the requested records.²

7. 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.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction over this matter.

8. 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.

9. 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.”

10. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S., to the extent that such records are maintained by the respondents.

11. It is found that the complainant received 13 installments of records in response to his July 17, 2019 request. It is further found that all 13 installments of records were provided to the complainant free of charge. It is found that the respondents informed the complainant that a 14th installment of records (contained on a flash drive) had also been prepared for him; however, the complainant forgot to pick this installment up from the respondents.

12. It is found that, in the midst of receiving the installments referred to in paragraph 11, above, the complainant learned that there was a police report responsive to his request. It is found that the complainant did not receive this police report from the respondents.

13. It is found that this police report is the only matter at issue in the case.

14. It is further found that the complainant was able to obtain the police report that he sought from the respondents from another source. Accordingly, in essence, this case is about the fact that the police report, which the complainant already maintained at the time of the contested case hearing and which he submitted into evidence as “Complainant’s Exhibit B,” was not provided to him by the respondents.

15. It is found that, in the second to the last paragraph on page three, Complainant’s Exhibits B states, as follows: “On April 4th, at approximately 1200hrs, I [Officer James J. Palmieri] notified both Ellen Dunn and Elliot Landon about the conclusion and finding of my investigation.”

16. Marjorie Cion, the Director of Human Resources for the Darien Public Schools, appeared telephonically and testified on behalf of the respondents.

17. It is found that, based on Director Cion's testimony, the respondents do not maintain a copy of the requested police report and, in fact, have never *received* a copy of such report.

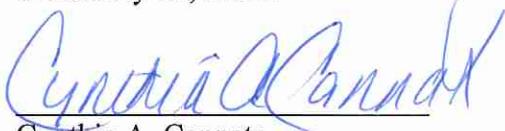
18. Specifically, it is found that Director Cion does not maintain a copy of the requested police report and has never received a copy of such report. It is further found that Director Cion confirmed that Dr. Landon, the Interim Superintendent of the Darien Public Schools for the 2018-2019 school year, that Dr. Addley, the current Superintendent of the Darien Public Schools, and that Ms. Ochman, the Chairwoman of the Board of Education, do not maintain and have never received a copy of the requested police report.

19. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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 January 27, 2021.



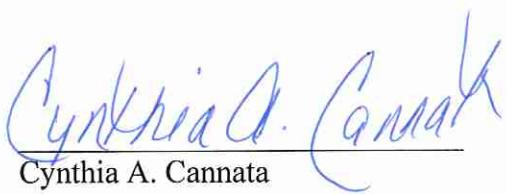
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JAY HARDISON, 11 Nearwater Lane, Darien, CT 06820

SUPERINTENDENT OF SCHOOLS, DARIEN PUBLIC SCHOOLS; BOARD OF EDUCATION, DARIEN PUBLIC SCHOOLS; AND DARIEN PUBLIC SCHOOLS,
c/o Attorney Thomas B. Mooney, Shipman & Goodwin LLP, One Constitution Plaza,
Hartford, CT 06103-1919



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