

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

John Kennedy,

Complainant

against

Docket # FIC 2022-0557

Superintendent of Schools, Madison Public Schools; Madison Public Schools; Chairperson, Board of Education, Madison Public Schools; and Board of Education, Madison Public Schools,

Respondents

October 11, 2023

The above-captioned matter was heard as a contested case on March 13, 2023, at which time the complainant 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 November 17, 2022, the complainant requested that the respondents provide him with a copy of “a report … that shows the date, day of week, and arrival time to Brown [Intermediate School] for bus 16.”
3. It is found that by email dated November 19, 2022, the respondents denied the request described in paragraph 2, above.
4. By email received and filed December 1, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying the request described in paragraph 2, above.
5. Section 1-200(5), G.S., provides:

“[p]ublic 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,

videotaped, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

7. 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.”

8. It is found that Durham School Services (“Durham”) provides school bus services for the respondents. It is found that the buses utilized by Durham are equipped with GPS technology. It is further found that, upon request, Durham will provide the respondents with GPS data from a specific school bus for a specific day. However, it is found that Durham does not provide such information as a matter of course, but only in response to a specific request by the respondents.

9. It is found that, beginning in September 2022, the complainant communicated with the respondents to express concern that his son’s school bus was arriving late at school. It is further found that, on multiple occasions between October 2022 and November 2022, respondent Superintendent Dr. Craig Cooke obtained from Durham the time at which the complainant’s son’s school bus arrived at school on specific dates. It is found that Dr. Cooke provided the complainant with the information he received from Durham.

10. The respondents testified, and it is found, that they do not maintain the report requested by the complainant. It is further found that Durham also does not maintain any such report, and that such a report could not be created through an automated process. Rather, it is found that the GPS data for each day is maintained by Durham in a separate data file. It is found that, to provide the complainant with the requested report, Durham would have to provide the respondents with the data requested by the complainant for each day of the school year, and the respondents would then have to manually input such data into a spreadsheet.

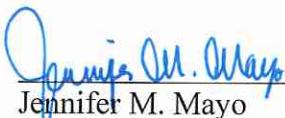
11. At the hearing, the complainant acknowledged that, to comply with his request, the respondents would have to create a report that does not exist. However, it is well established that the FOI Act does not require public agencies to create records that do not exist. See, e.g., *Albright-Lazzari v. Murphy*, 2011 WL 1886878, at \*3 (Super. Ct. April 21, 2011); *Montoya v. Superintendent of Schools, Westport Public Schools, et al.*, Docket #FIC 2019-0606, ¶10 (June 23, 2021).

12. Based on the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged by 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 dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 11, 2023.

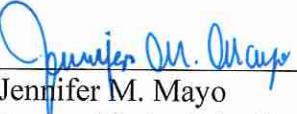
  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**JOHN KENNEDY**, 120 Squires Road, Madison, CT 06443

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

  
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Jennifer M. Mayo  
Acting Clerk of the Commission