

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Mario J. Piazza,

FINAL DECISION

Complainant

Docket #FIC83-252

against

April 25, 1984

New Britain Board of Education
of the City and Town of New Britain

Respondent

The above captioned matter was heard as a contested case on February 24, 1984 at which time the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of section 1-18a(a), G.S.

2. On April 20, 1983 the complainant filed a complaint with the Commission alleging that the respondent had denied him access to records relating to the complainant's application for the position of language arts coordinator.

3. On June 23, 1983 the Commission held a hearing on the complainant's complaint, FIC#83-46 Mario Piazza v. Board of Education of the City of New Britain. On October 26, 1983 the Commission issued a Final Decision ordering disclosure of letters of reference submitted to the respondent in connection with the complainant's application for the position of language arts coordinator.

4. By letter of complaint filed with the Commission on December 27, 1983 the complainant, through his counsel, alleged that as of December 20, 1983 the records ordered disclosed by the Commission in its decision in FIC#83-46 had not been provided. The complainant requested that the Commission impose a civil penalty against the respondent pursuant to §1-21i(b), G.S.

5. The records in question were received by the complainant on January 17, 1984.

6. The respondent claims that the decision not to appeal the Commission's decision was reached in the first week of December, 1983, but that it took no action to release the documents because it was waiting to hear from its attorney, Russell Post. However, Mr. Post became ill and did not communicate to the respondent that the records should be released.

7. It is found that the respondent's failure to comply promptly with the October 26, 1983 decision of the Commission in FIC#83-46 was without reasonable grounds.

8. The respondent also claims that the imposition of a civil penalty is only appropriate where documents are being withheld, and that since the records have been provided, no civil penalty may be imposed.

9. §1-21i(b) provides that the Commission


upon the finding that a denial of any right created by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-1 to 1-21k, inclusive, was without reasonable ground may, in its discretion, impose a civil penalty. (emphasis added)

10. The respondent's claim regarding the imposition of a civil penalty is, therefore, unpersuasive.

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

1. Pursuant to §1-21i(b), G.S. the respondent board of education is hereby ordered to appear before the designated Hearing Officer in the above matter on May 21, 1984 at 10:00 a.m. in the Freedom of Information hearing room, 30 Trinity Street, Hartford, CT for the purpose of showing cause why a civil penalty ought not be imposed pursuant to such section.

Approved by order of the Freedom of Information Commission at its regular meeting of April 25, 1984.



Mary Jo Jolicoeur
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Mario J. Piazza,

FINAL DECISION
Supplemental Report
of Hearing Officer

Complainant

Docket #FIC83-252

against

July 25, 1984

New Britain Board of
Education of the City and
Town of New Britain

By final decision in the above-captioned case, rendered at a regular meeting held on April 25, 1984, the Commission ordered the respondent board to appear on May 21, 1984 before the undersigned hearing officer for the purpose of conducting a hearing pursuant to §1-21i(b), G.S., to determine whether a civil penalty against the respondent board should be assessed and if so, in what amount. Accordingly, a hearing was held on that date, at which time the respondent board appeared and offered testimony, evidence and argument on the issue of a civil penalty.

After consideration of the entire record, the following facts are found:

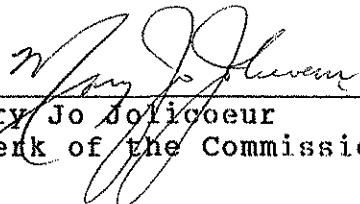
1. Paragraphs 1 through 10 of the findings contained in the final decision adopted by the Commission in the above-captioned case at its April 25, 1984 meeting are hereby incorporated as if fully set forth herein.
2. At hearing, counsel for the road board appeared and explained that the respondent board's failure to provide the complainant with a copy of the letter ordered disclosed by the Commission was the result of a series of misunderstandings, and was not a deliberate attempt to obstruct access.
3. It is found that at the termination of the appeal period which followed the Commission's final decision in the above matter, counsel for the respondent board advised Assistant Superintendent Bernardoni that the letter should be released to the complainant, Mr. Bernardoni, believing that the complainant would come by to pick up a copy, did not take any action to forward the document.
4. Approximately one month later, counsel for the complainant made an inquiry as to why the record had not been released, at which point Mr. Bernardoni was out due to illness.
5. Finally, counsel for the respondent became aware that the complainant had not yet received the record, and asked Mr. Bernardoni to forward a copy directly to the Commission.

6. The respondent board emphasized at hearing that the delay between the Commission's final decision and receipt of the record by the complainant was the result of a series of misunderstandings, not design. The complainant did not appear to argue the issue of the civil penalty.

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

1. Based upon the representations of the respondent board on May 21, 1984, the Commission hereby declines to impose a civil penalty in the exercise of its sound discretion.

Approved by order of the Freedom of Information Commission at its regular meeting of July 25, 1984.



Mary Jo Jolicœur
Clerk of the Commission