

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Mr. and Mrs. Joseph Trantino,

FINAL DECISION

Complainants

Docket #FIC84-63

against

August 22, 1984

Superintendent of Schools of  
the Town of Old Saybrook, and the  
Board of Education of the Town of  
Old Saybrook,

Respondent

The above captioned matter was heard as a contested case on June 6, 1984 at which time the complainants and the respondents 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 §1-18a(a), G.S.
2. By letter dated April 8, 1984 the complainants made a request of the respondent superintendent for several documents.
3. By letter dated April 13, 1984 the respondent superintendent indicated which of the 14 items listed in the letter of request were being made available, which did not exist and which would not be made available.
4. By letter of complaint filed with the Commission on April 24, 1984 the complainants appealed the denial of access to certain of the requested documents.
5. At hearing, the complainants indicated that the items withheld by the respondents were the following:
  - a) A handbook of administrative regulations,
  - b) The employment applications of Marilyn Halbing and John E. Walsh, Sr., with the exception of information concerning marital status and maiden and husband's name.
  - c) A November 18, 1983 letter from the respondent superintendent to board of education member Catherine H. Niejadlik and a March 27, 1984 letter from Ms. Niejadlik to board of education chairman Joseph Roy.

- d) Written evaluation reports of the respondent superintendent, submitted during February and March of 1984 by the members of the respondent board.

6. The respondents claim, with respect to the handbook requested by the complainants, that no such handbook exists. Rather, a policy handbook used by the respondents contains all regulations. The complainant Joseph Trantino examined the policy handbook in the respondent superintendent's office, but maintained at hearing that the book he examined did not contain any regulations.

7. The respondents claim no exemption with respect to disclosure of the regulations contained in the policy handbook, and at hearing indicated their willingness to provide access to such regulations.

8. It is found that although the respondent superintendent did not, technically, deny access to the regulations, his failure to point out the location of the regulations was not in keeping with the spirit of the Freedom of Information Act.

9. The respondents claim that the only employment application on file with respect to Marilyn Halbing is one submitted for the job of substitute teacher. Ms. Halbing is currently employed as a tutor, serving as an assistant to teachers working with disadvantaged children.

10. The employment application contains Ms. Halbing's birthdate, birthplace, maiden name, social security number, and educational background and is kept in her personnel file.

11. The respondents do not have on file any "employment application" for John Walsh, the principal of Kathryn Goodwin School. Mr. Walsh applied for the position through a letter of application, accompanied by such documents as his resume, transcripts and references.

12. It is found that the employment application of a public employee is a public record within the meaning of §1-18a(d), G.S.

13. It is found that the fact that Ms. Halbing's application was submitted in connection with a position she no longer holds does not affect the application's character as a public record.

14. It is found that with the exception of Ms. Halbing's social security number, disclosure of the information contained in her employment application would not constitute an invasion of personal privacy within the meaning of §1-19(b)(2), G.S.

15. It is found that a request for an "employment application" with respect to Mr. Walsh is a request for his letter of application and resume, since those documents contain the type of information typically included in an employment application.

16. Mr. Walsh's resume contains information regarding his place of birth, names of family members and religious affiliation and is kept in his personnel file. The respondents claim that the references provided by Mr. Walsh were contacted at the time of his application and that such references expected confidentiality with respect to the information they provided.

17. It is found that the letter of application and resume submitted by Mr. Walsh upon applying for employment in the Old Saybrook school system constitute public records within the meaning of §1-18a(d), G.S.

18. It is also found that the claimed desire for confidentiality of Mr. Walsh's references does not affect the disclosability of his letter of application and resume.

19. It is found that with the exception of information regarding Mr. Walsh's religious affiliation, disclosure of the information contained in his letter of application and resume would not constitute an invasion of personal privacy within the meaning of §1-19(b)(2), G.S.

20. The respondent superintendent claims with respect to the letter he wrote to Ms. Niejadlik that he was not directed to write the letter, that the letter expressed his personal views rather than the views of the board of education, and that it did not relate to the conduct of the public's business.

21. The respondent superintendent was motivated to write the letter by a statement of a board member at either a meeting or a negotiation session of the respondent board, and related to the respondent superintendent's relationship with the respondent board and/or to school programs.

22. The Commission finds unpersuasive the respondent superintendent's claim that a letter written by him to a member of the respondent board on a subject which arose during a board of education meeting, containing the superintendent's comments concerning the conduct of another individual, presumably a member of the respondent board, does not relate to the conduct of the public's business. The fact that the letter was written upon the initiative of the respondent superintendent, himself a public agency within the meaning of §1-18a(a), G.S., and reflects his opinions rather than the opinions of the respondent board, does not, as the superintendent claims, remove the letter from the public domain.

23. It is concluded that the letter from the respondent superintendent to Ms. Niejadlik, referred to at paragraph 5(c), above, is a public record within the meaning of §1-18a(d), G.S., subject to disclosure pursuant to §§1-15 and 1-19(a) G.S.

24. At hearing the respondents offered for in camera inspection the letter from Ms. Niejadlik to Mr. Roy, referred to at paragraph 5(c), above, which request was denied.

25. The respondents claim that the letter from Ms. Niejadlik to Mr. Roy was not written on board of education stationery, that Mr. Roy did not request the letter as part of any official act, that it did not express the respondent board's view on any topic, that it only expressed the opinion of one member of the respondent board, acting as an individual, and that it did not lead to agency action.

26. The respondents also claim that the letter concerned the instructional program of a student and that disclosing the letter would reveal the identity of a student and his or her parents and that such disclosure would constitute an invasion of personal privacy within the meaning of §1-19(b)(2), G.S.

27. Testimony from Ms. Niejadlik indicated that the letter was written on behalf of a parent who, Ms. Niejadlik believed, would have wanted anonymity for him or herself and his or her child. Ms. Niejadlik also indicated that the identity of the student could not be masked or deleted from the letter without rendering the letter completely meaningless.

28. It is found that records relating to the instructional program of an individual student constitute "similar files" within the meaning of §1-19(b)(2), G.S., the disclosure of which would constitute an invasion of personal privacy.

29. It is concluded that the portions of Ms. Niejadlik's letter which identify an individual student or refer to his or her instructional program are exempted from disclosure pursuant to §1-19(b)(2), G.S.

30. The respondent board claims that no formal written evaluations of the respondent superintendent were submitted in February or March of 1984.

31. It is found that at a March 6, 1984 gathering board members had before them forms submitted to them by the respondent superintendent, such forms containing lists of various performance criteria in areas such as "relationship with the board," "community relationships," "staff and personnel relationships," "educational leadership," "business and finance," and "personal qualities." The form described a numerical rating system and contained spaces for comments and/or suggestions.

32. Testimony at hearing indicated that the forms were used in an informal manner; most board members used the forms to record comments only, 3 of the 9 members did not turn the completed forms over to the chairman of the respondent board at all, and of those who did, 5 did not sign the form.

33. The chairman of the respondent board, upon collecting evaluations from the board members, turns the evaluations over to the respondent superintendent, who keeps them in a file next to his personnel file.

34. The respondent board claims that the evaluation sheets are preliminary notes, exempted from disclosure by §1-19(b)(1), G.S., that the sheets contain incomplete thoughts and personal notes that could only make sense to the writers, and that the form was used to assist board members during discussion of the respondent superintendent's evaluation.

35. It is found that the evaluation forms used by the members of the respondent board to record their comments regarding the respondent superintendent are not preliminary drafts or notes within the meaning of §1-19(b)(1), G.S. In spite of the informality surrounding the creation of these documents, the comments recorded therein represent thoughts and opinions of board members which they are prepared to present to the chairman of the respondent board and to the respondent superintendent.

36. It is also found that the respondent failed to prove that it made a determination that the public interest in withholding the evaluation sheets clearly outweighed the public interest in disclosure.

37. It is further found that the evaluations are interagency memoranda or recommendations within the meaning of §1-19(c), G.S.

38. It is concluded that the evaluation sheets in question are public records within the meaning of §1-18a(d), G.S., subject to disclosure pursuant to §§1-15, 1-19(a), and 1-19(c) G.S.

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

1. The respondents shall forthwith provide the complainants with access to inspect or copy the employment application of Ms. Marilyn Halbing and the letter of application and resume of John E. Walsh, Sr. The respondents may mask or delete from such records information relating to social security numbers and religious affiliations.

2. The respondents shall forthwith provide the complainants with access to inspect or copy the letters referred to at paragraph 5(c), above. The respondents may mask or delete from such records information which relates to or would identify an individual student or his or her instructional program.

3. The respondents shall forthwith provide the complainants with access to inspect or copy the evaluation forms referred to at paragraph 30, above.

Approved by order of the Freedom of Information Commission at its regular meeting of August 22, 1984.

  
\_\_\_\_\_  
Mary Jo Jolicoeur  
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Mr. and Mrs. Joseph Trantino,

AMENDED FINAL DECISION

Complainants

Docket #FIC84-63

against

September 12, 1984

Superintendent of Schools of  
the Town of Old Saybrook, and the  
Board of Education of the Town of  
Old Saybrook,

Respondent

The above captioned matter was heard as a contested case on June 6, 1984 at which time the complainants and the respondents 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 §1-18a(a), G.S.
2. By letter dated April 8, 1984 the complainants made a request of the respondent superintendent for several documents.
3. By letter dated April 13, 1984 the respondent superintendent indicated which of the 14 items listed in the letter of request were being made available, which did not exist and which would not be made available.
4. By letter of complaint filed with the Commission on April 24, 1984 the complainants appealed the denial of access to certain of the requested documents.
5. At hearing, the complainants indicated that the items withheld by the respondents were the following:
  - a) A handbook of administrative regulations,
  - b) The employment applications of Marilyn Halbing and John E. Walsh, Sr., with the exception of information concerning marital status and maiden and husband's name.
  - c) A November 18, 1983 letter from the respondent superintendent to board of education member Catherine H. Niejadlik and a March 27, 1984 letter from Ms. Niejadlik to board of education chairman Joseph Roy.

- d) Written evaluation reports of the respondent superintendent, submitted during February and March of 1984 by the members of the respondent board.

6. The respondents claim, with respect to the handbook requested by the complainants, that no such handbook exists. Rather, a policy handbook used by the respondents contains all regulations. The complainant Joseph Trantino examined the policy handbook in the respondent superintendent's office, but maintained at hearing that the book he examined did not contain any regulations.

7. The respondents claim no exemption with respect to disclosure of the regulations contained in the policy handbook, and at hearing indicated their willingness to provide access to such regulations.

8. It is found that although the respondent superintendent did not, technically, deny access to the regulations, his failure to point out the location of the regulations was not in keeping with the spirit of the Freedom of Information Act.

9. The respondents claim that the only employment application on file with respect to Marilyn Halbing is one submitted for the job of substitute teacher. Ms. Halbing is currently employed as a tutor, serving as an assistant to teachers working with disadvantaged children.

10. The employment application contains Ms. Halbing's birthdate, birthplace, maiden name, social security number, and educational background and is kept in her personnel file.

11. The respondents do not have on file any "employment application" for John Walsh, the principal of Kathryn Goodwin School. Mr. Walsh applied for the position through a letter of application, accompanied by such documents as his resume, transcripts and references.

12. It is found that the employment application of a public employee is a public record within the meaning of §1-18a(d), G.S.

13. It is found that the fact that Ms. Halbing's application was submitted in connection with a position she no longer holds does not affect the application's character as a public record.

14. It is found that with the exception of Ms. Halbing's social security number, and marital status, maiden name and husband's name, the latter three items of which are not here in issue, disclosure of the information contained in her employment application would not constitute an invasion of personal privacy within the meaning of §1-19(b)(2), G.S.

15. It is found that a request for an "employment application" with respect to Mr. Walsh is a request for his letter of application and resume, since those documents contain the type of information typically included in an employment application.

16. Mr. Walsh's resume contains information regarding his place of birth, names of family members and religious affiliation and is kept in his personnel file. The respondents claim that the references provided by Mr. Walsh were contacted at the time of his application and that such references expected confidentiality with respect to the information they provided.

17. It is found that the letter of application and resume submitted by Mr. Walsh upon applying for employment in the Old Saybrook school system constitute public records within the meaning of §1-18a(d), G.S.

18. It is also found that the claimed desire for confidentiality of Mr. Walsh's references does not affect the disclosability of his letter of application and resume.

19. It is found that with the exception of information regarding Mr. Walsh's religious affiliation, disclosure of the information contained in his letter of application and resume would not constitute an invasion of personal privacy within the meaning of §1-19(b)(2), G.S.

20. The respondent superintendent claims with respect to the letter he wrote to Ms. Niejadlik that he was not directed to write the letter, that the letter expressed his personal views rather than the views of the board of education, and that it did not relate to the conduct of the public's business.

21. The respondent superintendent was motivated to write the letter by a statement of a board member at either a meeting or a negotiation session of the respondent board, and related to the respondent superintendent's relationship with the respondent board and/or to school programs.

22. The Commission finds unpersuasive the respondent superintendent's claim that a letter written by him to a member of the respondent board on a subject which arose during a board of education meeting, containing the superintendent's comments concerning the conduct of another individual, presumably a member of the respondent board, does not relate to the conduct of the public's business. The fact that the letter was written upon the initiative of the respondent superintendent, himself a public agency within the meaning of §1-18a(a), G.S., and reflects his opinions rather than the opinions of the respondent board, does not, as the superintendent claims, remove the letter from the public domain.

23. It is concluded that the letter from the respondent superintendent to Ms. Niejadlik, referred to at paragraph 5(c), above, is a public record within the meaning of §1-18a(d), G.S., subject to disclosure pursuant to §§1-15 and 1-19(a) G.S.

24. At hearing the respondents offered for in camera inspection the letter from Ms. Niejadlik to Mr. Roy, referred to at paragraph 5(c), above, which request was denied.

25. The respondents claim that the letter from Ms. Niejadlik to Mr. Roy was not written on board of education stationery, that Mr. Roy did not request the letter as part of any official act, that it did not express the respondent board's view on any topic, that it only expressed the opinion of one member of the respondent board, acting as an individual, and that it did not lead to agency action.

26. The respondents also claim that the letter concerned the instructional program of a student and that disclosing the letter would reveal the identity of a student and his or her parents and that such disclosure would constitute an invasion of personal privacy within the meaning of §1-19(b)(2), G.S.

27. Testimony from Ms. Niejadlik indicated that the letter was written on behalf of a parent who, Ms. Niejadlik believed, would have wanted anonymity for him or herself and his or her child. Ms. Niejadlik also indicated that the identity of the student could not be masked or deleted from the letter without rendering the letter completely meaningless.

28. It is found that records relating to the instructional program of an individual student constitute "similar files" within the meaning of §1-19(b)(2), G.S., the disclosure of which would constitute an invasion of personal privacy.

29. It is concluded that the portions of Ms. Niejadlik's letter which identify an individual student or refer to his or her instructional program are exempted from disclosure pursuant to §1-19(b)(2), G.S.

30. The respondent board claims that no formal written evaluations of the respondent superintendent were submitted in February or March of 1984.

31. It is found that at a March 6, 1984 gathering board members had before them forms submitted to them by the respondent superintendent, such forms containing lists of various performance criteria in areas such as "relationship with the board," "community relationships," "staff and personnel relationships," "educational leadership," "business and finance," and "personal qualities." The form described a numerical rating system and contained spaces for comments and/or suggestions.

32. Testimony at hearing indicated that the forms were used in an informal manner; most board members used the forms to record comments only, 3 of the 9 members did not turn the completed forms over to the chairman of the respondent board at all, and of those who did, 5 did not sign the form.

33. The chairman of the respondent board, upon collecting evaluations from the board members, turns the evaluations over to the respondent superintendent, who keeps them in a file next to his personnel file.

34. The respondent board claims that the evaluation sheets are preliminary notes, exempted from disclosure by §1-19(b)(1), G.S., that the sheets contain incomplete thoughts and personal notes that could only make sense to the writers, and that the form was used to assist board members during discussion of the respondent superintendent's evaluation.

35. It is found that the evaluation forms used by the members of the respondent board to record their comments regarding the respondent superintendent are not preliminary drafts or notes within the meaning of §1-19(b)(1), G.S. In spite of the informality surrounding the creation of these documents, the comments recorded therein represent thoughts and opinions of board members which they are prepared to present to the chairman of the respondent board and to the respondent superintendent.

36. It is also found that the respondent failed to prove that it made a determination that the public interest in withholding the evaluation sheets clearly outweighed the public interest in disclosure.

37. It is further found that the evaluations are interagency memoranda or recommendations within the meaning of §1-19(c), G.S.

38. It is concluded that the evaluation sheets in question are public records within the meaning of §1-18a(d), G.S., subject to disclosure pursuant to §§1-15, 1-19(a), and 1-19(c) G.S.

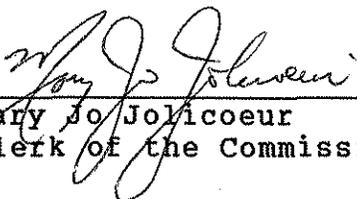
The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint.

1. The respondents shall forthwith provide the complainants with access to inspect or copy the employment application of Ms. Marilyn Halbing and the letter of application and resume of John E. Walsh, Sr. The respondents may mask or delete from such records information relating to social security numbers and religious affiliations.

2. The respondents shall forthwith provide the complainants with access to inspect or copy the letters referred to at paragraph 5(c), above. The respondents may mask or delete from such records information which relates to or would identify an individual student or his or her instructional program.

3. The respondents shall forthwith provide the complainants with access to inspect or copy the evaluation forms referred to at paragraph 31, above.

Approved by order of the Freedom of Information Commission at its regular meeting of September 12, 1984.

  
\_\_\_\_\_  
Mary Jo Jolicoeur  
Clerk of the Commission