

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Stacy Morgan,

Complainant

against

Docket #FIC 2018-0174

Superintendent, Litchfield Public Schools;
and Litchfield Public Schools,

Respondents

October 24, 2018

The above-captioned matter was heard as a contested case on June 18, 2018, 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, on March 15, 2018, the complainant requested copies of a video recording of an interaction between herself and a school official in the parking area of the Litchfield Middle School at 9:30-9:45 pm on January 30, 2018. The complainant also requested all witness statements and all statements made by "Stephanie Kubisek," a school official who was the other party to the interaction.
3. It is found that, on March 16, 2018, the respondents denied the complainant's request.
4. By letter filed April 12, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide her with copies of the records she requested.
5. 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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.
6. 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, ... or (3) receive a copy of such records in accordance with section 1-212.

7. 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.

8. It is found that all the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that on January 30, 2018, at approximately 9:30 p.m., the complainant, who is a parent of a student enrolled in the Litchfield Public Schools, was parked in a parking area at the high school/middle school complex awaiting the arrival of a sports team bus. Parked next to her car was Ms. Kubisek’s car. It is found that a verbal exchange ensued when Ms. Kubisek approached her car.

10. The complainant claimed that a video camera posted at the entrance to the middle school captured the parking area where the two cars were parked.

11. The respondents claimed that they do not maintain a recording responsive to the complainant’s request, and that any recording that they do maintain is exempt from disclosure pursuant to §§1-210(b)(2), (17) and (19), G.S.

12. At the hearing in this matter, the respondents submitted a video recording on a thumb drive and other written records for in camera inspection. The written records shall be referenced herein as IC-2018-0174-1 through IC-2018-0174-5.¹

13. Upon careful inspection of the video recording, it is found that it does not depict the parking area where the two cars were parked.

14. It is found that such recording is not responsive to the complainant’s request.

15. It is found that the respondents failed to prove that they conducted a diligent search for a video recording responsive to the complainant’s request. In particular, the complainant contended that there is a camera posted under the middle school sign and that such camera would have recorded the exchange between herself and Ms. Kubisek. It is found that the respondents failed to prove that they searched for such recording.

16. With respect to the written records, referenced as IC-2018-0174-1 through IC-2018-0174-5, it is found that such records are responsive to the complainant’s request for written

¹ The hearing officer paginated the written records for ease of reference.

statements. The respondents claim such records are exempt pursuant to §1-210(b)(2), (17) and (19), G.S.

17. Section 1-210(b)(2), G.S., provides that disclosure is not required of “personnel or medical and similar files where disclosure would constitute an invasion of personal privacy.”

18. Upon careful consideration of the in camera records, it is found that such records are not personnel, medical or similar files within the meaning §1-210(b)(2), G.S.

19. Section 1-210(b)(17), G.S., provides that disclosure is not required of “Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g....”

20. Section 20 U.S.C. §1232g(b)(1) provides, in relevant part: “No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records[.]”

21. “Educational records” are defined at 20 U.S.C. §1232g(a)(4)(A) as “those records, files, documents, and other materials which (i) contain information directly related to a student and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.”

22. It is found that IC-2018-0174-1 through IC-2018-0174-5 do not contain information directly related to a student.

23. It is found, therefore, that such records are not educational records within the meaning of §1-210(b)(17), G.S.

24. It is concluded that §1-210(b)(17), G.S., does not exempt such records from disclosure.

25. Section 1-210(b)(19), G.S., provides that disclosure is not required of

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility ... Such reasonable grounds shall be determined (A) ... (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency[.]

26. It is found that the respondents submitted no evidence to support their claim that §1-210(b)(19), G.S., exempts the records from disclosure. It is found that the respondents failed to prove that §1-210(b)(19), G.S., exempts the records from disclosure.

27. It is found that the respondents failed to prove that any of the written records, referenced as IC-2018-0174-1 through IC-2018-0174-5, are exempt from disclosure.

28. It is concluded that the respondents violated the §§1-210(a) and 1-212(a), G.S., by failing to provide such records to the complainant.

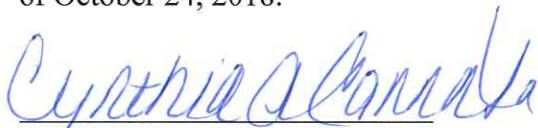
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. Forthwith, the respondents shall provide to the complainant the written statements she requested, free of charge.

2. Forthwith, the respondents shall conduct a diligent search for any video recording that depicts the parking area where the interaction at issue occurred, including any recording from a camera that may be posted under the middle school sign. If the respondents discover a video recording that depicts the incident, they shall promptly disclose such recording to the complainant, free of charge. If the respondent Superintendent does not discover a video recording responsive to the complainant's request, she shall promptly set forth the details of her search for such recording in an affidavit and provide such affidavit to the complainant.

3. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 24, 2018.



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:

STACY MORGAN, 87 Auncient Oak Road, Bethlehem, CT 06751

SUPERINTENDENT OF SCHOOLS, LITCHFIELD PUBLIC SCHOOLS; AND LITCHFIELD PUBLIC SCHOOLS, c/o Attorney Daniel P. Murphy, Kainen, Escalera & McHale, P.C., 21 Oak Street, Suite 601, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission