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FREEDOM OF INFORMATION



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Kevin Brookman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0382

Superintendent of Schools,
Hartford Public Schools; and
Hartford Public Schools,
Respondent(s)

January 10, 2017

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 8, 2017**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE January 27, 2017**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE January 27, 2017**. PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE January 27, 2017**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Kevin Brookman
Attorney Cynthia Lauture

FIC# 2016-0382/Trans/wrbp/KKR/VDH/2017-01-10

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Kevin Brookman,

Complainant

against

Docket #FIC 2016-0382

Superintendent of Schools,
Hartford Public Schools; and
Hartford Public Schools,

Respondents

January 5, 2017

The above-captioned matter was heard as a contested case on August 3, 2016, at which time the complainant and the respondents appeared 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 May 7, 2016, the complainant requested to review “the entire personnel record of former Hartford Schools employee Eduardo Genao...includ[ing] any and all disciplinary records as well as any and all investigations and investigative reports as well as any and all complaints received against Eduardo Genao during his tenure with the Hartford Schools. Please include a detailed listing of any exemptions you may claim.”
3. It is found that the respondents conducted a search for records responsive to the request, described in paragraph 2, above, and that, by email dated May 13, 2016, the respondents informed the complainant that “[p]ursuant to your request...attached are the documents that you requested.” It is found that some of the records provided were redacted, and that the respondents did not cite any exemptions for the redactions.
4. By email dated May 25, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of all records responsive to the request, described in paragraph 2, above. The complainant also challenged the redactions and requested that the Commission conduct an in camera inspection of the records.
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, 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 (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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by the subsection shall be void.

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 the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that the respondents did not provide all responsive records to the complainant on May 13, 2016.

10. Specifically, it is found that the respondents withheld a four page statement, and failed to inform the complainant of this fact at that time. It is found that the complainant later obtained a copy of the four page statement from a “source” at city hall, and such statement was entered into evidence at the hearing in this matter (Respondents’ Exhibit 5). According to the respondents, they did not provide a copy of the four page statement to the complainant because they believed it was not responsive to the request. However, after review of such statement, it is found to be responsive to the request. Additionally, it is found that the respondents withheld two other written statements that were responsive to the request, which they later claimed they had “overlooked.” (See paragraph 37, below).

11. At the hearing in this matter, the respondents’ witness testified that there were additional records that were withheld from the complainant, and contended that such records are exempt from disclosure because they are “DCF” records.

12. The hearing officer ordered the respondents to submit all responsive records they claimed were exempt from disclosure, including an unredacted copy of the records described in paragraph 3, above, to the Commission for in camera inspection. On August 31, 2016, the respondent submitted six groups of records, along with a separate index for each group, indicating the exemption claimed for each record or portion thereof. It found that group 1 consists of the four page statement, described in paragraph 10, above (four pages); group 2 consists of eight statements (eight pages); group 3 consists of letters, complaints, and witness statements (20 pages); group 4 consists of an employment contract, resume, attendance record, applications, letters, acceptance form, and reference and verification form (17 pages);¹ group 5 consists of six evaluations (28 pages); and group 6 consists of authorization to release information, affirmative action information, income tax forms, fingerprints, notes of investigation, interview statement, instant messages, reports, and interoffice memorandum (47 pages) (together the “in camera records”). The respondents claimed, on the indexes to the in camera records, that portions of such records are exempt from disclosure pursuant to the Federal Education Rights and Privacy Act, USC §1232g(a)(4), 34 CFR Part 99.3 (“FERPA”) and §1-210(b)(17), G.S.; and §§1-210(b)(11), 1-210(b)(2), and 10-151c, G.S.

FERPA and §1-210(b)(17), G.S.

13. The respondents claimed that portions of the four page statement (group 1), described in paragraph 10, above, and portions of the Latasha Hunter statement (group 2), are exempt from disclosure pursuant to FERPA and §1-210(b)(17), G.S. The respondents also claimed that the following records are entirely exempt from disclosure pursuant to FERPA and §1-210(b)(17), G.S.: six pages of notes from December 17, 2007; twelve pages of notes from January 8, 2008; the November 15, 2007 two page interview of minor; four page print-out of instant messages; five page report of interview of students; interoffice memorandum from Top Karpeichick to Jill Cutler Hodgman, dated December 6, 2005; and the two page report from DCF interview (all in group 6).

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

15. “Education records” are defined at 20 USC §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.

16. 20 U.S.C. §1232g(b)(2), provides in relevant part that:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records

¹ Although group 4 contains many pages of records, the respondents claimed that only 17 pages, or portions thereof, are exempt from disclosure.

other than directory information, or as is permitted under paragraph (1) of this subsection unless – (A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents . . . or (B)...such information is furnished in compliance with judicial order...or lawfully issued subpoena....

17. 34 CFR §99.3 provides, in relevant part:

Personally Identifiable Information

The term includes, but is not limited to-

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

18. No evidence was offered at the hearing in this matter that any student identified in the in camera records, or any parent of such student, consented to disclosure of any of the in camera records. With regard to the four page statement (group 1), it is found that the respondents redacted certain information on the ground that such information is “personally identifiable information.”² After careful inspection of such statement, it is found that it is an “education record,” as that term is defined in 20 USC §1232g(a)(4)(A), and that the following information is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

²The respondents did not number the lines in any of the in camera records. Therefore, the hearing officer numbered the paragraphs and lines in pencil, where necessary, in order to clarify the portions of the in camera records found to be exempt from disclosure.

Page 1

line 13: word 8 through word 16;
line 19: words 12 and 19;
line 21: word 9;
line 22: word 5;
line 24: word 13;
line 25: words 22, 23 and 24;
line 26: word 1
line 30: word 5;
line 31: word 7;
line 37: word 1;
line 38: word 18.

Page 2

line 3: words 10, 17, 18, 19, and 20;
line 4: words 1 and 2;
line 5: word 4;
line 9: word 5;
line 11: entire line;
line 12: entire line;
line 13: words 1, 2 and 3;
line 16: word 9;
line 18: word 8;
lines 21 through 24: all;
line 25: word 5;
lines 26 through 28: all;
line 29: words 11 through 20;
line 33: word 4.

Page 3

line 1: words 4, 5, and 6;
line 14: words 6 and 9;
line 33: words 3 and 5;
line 35: words 11 and 16;
line 36: words 1 through 5;
line 37: words 3 through 5;
line 39: word 12;
line 40: words 14 through 17.

Page 4

line 5: word 5;
line 9: word 1;
line 10: word 4;
line 13: words 13 and 15;
line 15: word 12.

19. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the four page statement not specifically found to be exempt from disclosure in paragraph 18, above.

20. With regard to the Latasha Hunter statement (group 2), it is found that the respondents redacted the entire second paragraph on the ground that such information is “personally identifiable information.” After careful inspection of such statement, it is found that it is an “education record,” as that term is defined in 20 UCS §1232g(a)(4)(A), and that the following is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

line 5: word 12;
line 6, words 2 and 14;
line 7, word 15;
line 8, word 14.

21. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the Latasha Hunter statement not specifically found to be exempt from disclosure in paragraph 20, above.³

22. With regard to the six pages of notes from December 17, 2007 (group 6), it is found that the respondents withheld the entire document on the ground that it contains “personally identifiable information.” After careful inspection of such document, it is found that pages 1 through 4 only are “education records,” as that term is defined in 20 USC §1232g(a)(4)(A), and that the following information is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

Page 1

line 6: all;
line 9: all;
line 13: all;
line 16: word 5;
line 22: word 1;
line 25: words 4 and 5.

Page 2

line 4: word 1;
line 5: word 6.

Page 3

line 1: all;
line 2: word 5 (name)
line 4: word 3.

³Although the respondents also claimed that the students’ names referenced in the Latasha Hunter statement are exempt from disclosure pursuant to §1-210(b)(11), G.S., the Commission need not consider such claim in light of the findings in paragraph 20, above.

Page 4

line 23: words 1 and 2 (name).

23. It is further found that pages 5 and 6 of the December 17, 2007 notes are not “education records,” and it is therefore concluded that they are not exempt from disclosure pursuant to FERPA. Accordingly, it is also concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of pages 1 through 4 not specifically found to be exempt from disclosure in paragraph 22, above, and by withholding pages 5 and 6 from the complainant.

24. With regard to the 12 pages of notes from January 8, 2008 (group 6), it is found that the respondents withheld the entire document on the ground that it contains “personally identifiable information.” After careful inspection of such document, it is found that pages 2 through 7, 9, and 10 only are “education records,” as that term is defined in 20 USC §1232g(a)(4)(A), and that the following information is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

Page 2

line: 10: all;

line 14: word 3;

line 16: word 1;

line 21: word 1.

Page 3

line 2: words 2 and 5;

line 3: all;

line 4: all;

line 5: word 5;

line 8: words 5 and 6;

line 9: all;

line 13: all;

line 14: words 7 through 9;

line 16: words 5 and 6.

Page 4

line 5: word 4;

line 6: word 2.

Page 5

line 7: word 3;

line 8: all.

Page 6

line 2: word 7;

line 9: word 4;

line 11: words 4 and 5;

line 13: word 3;
line 15: word 6;
line 16: word 3.

Page 7

line 4: word 2;
line 9: word 1.

Page 9

lines 1 and 2: all.

Page 10

line 20: word 5;
line 21: all.

25. It is further found that pages 1, 8, 11 and 12 of the January 8, 2008 notes are not “education records,” and it is therefore concluded that they are not exempt from disclosure pursuant to FERPA. Accordingly, it is also concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the pages 2 through 7 and 9 and 10 not specifically found to be exempt from disclosure in paragraph 24, above, and by withholding pages 1, 8, 11 and 12 from the complainant.

26. With regard to the November 15, 2007 two page interview of minor (group 6), it is found that the respondents withheld the entire document on the ground that such document contains “personally identifiable information.” After careful inspection of such document, it is found that it is an “education record,” as that term is defined in 20 USC §1232g(a)(4)(A), and that the following is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

Page 1

line 1: words 2 and 3;
line 2: word 7;
line 3: words 7 through 11;
line 5: word 1;
line 6: words 13 through 17;
line 7: all;
line 9: words 2 through 8;
line 10: words 2 through 16;
lines 11 through 15: all;
line 16: words 1, 2 and 5;
line 17: word 6;
line 18: words 3, 11, and 14;
line 20: words 1, 2 and 5;
line 21: words 3, 12 through 18;
line 22: words 1 through 3;
line 25: word 15;

line 26: words 1 through 5;
line 34: word 1;
line 37: words 2 through 18;
lines 38 through 41: all.

Page 2

line 3: words 8 through 19;
line 4: all.

27. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the November 15, 2007 two page interview of minor not specifically found to be exempt from disclosure in paragraph 26, above.

28. With regard to the four page print out of instant messages (group 6), it is found that the respondents withheld the entire document on the ground that such document contains "personally identifiable information." After careful inspection of such document, it is found that it is an "education record," as that term is defined in 20 USC §1232g(a)(4)(A), and that the following is "personally identifiable information" and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

Page 1

lines 1, 3, 5, 7 : username;
line 9: username and words 9 and 10;
lines 12 through 17: username;
line 19, 21, 24, 26, 27, 29, 33, 35 and 36: username.

Page 2

lines 2, 4, 7, 8, 10, 12, 13, 15, 17, 19, 20, 22, 24, 27, 28, 30, 31, 32 : username.

Page 3

lines 3, 4, 6, 8, 9: username;
line 10: words 3 through 5;
line 12, word 1;
lines 14 and 16: username;
line 17: username and entire line;
line 19: username and 9, 10, 17 through 20;
line 22: username and word 3;
lines 23 and 25: username;
line 27: words 2 and 3;
line 28: username and word 1;
line 29: word 1;
line 31: word 2;
lines 32 and 33: username;
line 34: word 2.

Page 4

line 2, 3, 6, 8, 11, 13, 16: username;

line 14: second username (after the word “online”);
line 15: username (after the word “back”).

29. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the four page print out of instant messages not specifically found to be exempt from disclosure in paragraph 28, above.

30. With regard to the five page report of interview of students (group 6), it is found that the respondents withheld the entire document on the ground that such document contains “personally identifiable information.” After careful inspection of such document, it is found that it is an “education record,” as that term is defined in 20 USC §1232g(a)(4)(A), and that the following is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

Page 1

line 1: words 3, 4, 6 and 7;
lines 2 through 5: all;
line 6: words 3 and 4;
line 7: words 1 and 2;
line 13: words 9 and 10;
lines 17 and 18: all;
line 20: words 1 and 2;
lines 21, beginning after the word “wanted,” through the end of line 21;
lines 22: all;
line 23: words 1 through 4;
lines 30 through 34: all;
line 42: words 15 and 16;
line 43: words 7 and 8.

Page 2

line 3: words 8 and 9;
line 4: all;
line 14: username;
line 17: words 5 and 6;
line 18: words 4 and 5;
line 19: username and word 1;
line 28: word 3 through the end of line 28;
line 29: all;
lines 30 through 34: all;
line 37: words 7, 8 and 9;
line 38: word 3.

Page 3

line 5: word 4;
line 7: words 3, 4, 6 and 7;
line 8: words 3, 4, and username;

line 9: word 2 through the end of line 9;
line 10: all;
line 14: word 6 through the end of line 14;
line 15: all;
line 16: word 12 through the end of line 16;
line 17: words 1 and 13;
line 21: all;
line 23: word 12 through the end of line 23;
line 24: words 2 and 3;
line 26: words 3 and 4;
line 31: words 10 and 11;
line 37: word 14;
line 41: words 10, 12 and 13.

Page 4

line 4: words 3, 4, 6, 7, 16, and 17;
line 6: words 10, and 14 through the end of line 6;
line 7: word 9;
line 10: word 12 through the end of line 10;
line 12: word 6;
line 21: word 1;
line 26: word 1;
line 30: words 11 through 14;
line 31: word 4;
line 34: words 3 and 4;
line 35: word 15.

Page 5

line 1: word 2;
lines 7, 10, 12, 14, 16, 18, 20, 21, 23, 25, 28, 30, and 31: username.

31. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the five page report of interview of students not specifically found to be exempt from disclosure in paragraph 30, above.

32. With regard to the interoffice memorandum from Top Karpeichik to Jill Cutler Hodgman, dated December 6, 2005 (group 6), it is found that the respondents withheld the entire document on the ground that such document contains “personally identifiable information.” After careful inspection of such document, it is found that it is an “education record,” as that term is defined in 20 USC §1232g(a)(4)(A), and that the following is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

line 6: words 15 and 16;
line 7: word 3 through the end of line 7;
line 9: words 6 and 8;

line 17: words 6 and 7;
line 20: words 8 and 17.

33. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the interoffice memorandum from Top Karpeichik to Jill Cutler Hodgman, dated December 6, 2005, not specifically found to be exempt from disclosure in paragraph 32, above.

34. With regard to the two page report from DCF interview (group 6), it is found that the respondents withheld the entire document on the ground that such document contains “personally identifiable information.” After careful inspection of such document, it is found that it is an “education record,” as that term is defined in 20 USC §1232g(a)(4)(A), and that the following is “personally identifiable information” and need not be disclosed, pursuant to §1-210(b)(17), G.S., and FERPA:

Page 1

line 1: words 1 through 3;
line 3: words 4, 18, and 21;
line 4: words 1, 11 through 14;
line 5: word 9;
line 9: word 2;
line 10: words 1 and 2;
lines 12 through 14: all;
line 15: word 1;
line 19: words 1 through 13;
line 21: words 9 and 10;
line 23: word 1;
line 33: all;
line 34: all;
line 35: words 5 through 10;
line 39: word 1;
line 43: words 1 and 2.

Page 2

line 1: words 8 through 10;
line 4: words 1 through 9;
line 9: words 1 through 5;
line 14: word 1;
line 16: words 20 and 21;
line 17: words 1 through 9;
line 20: words 1 through 5, 17 and 18;
lines 21 and 22: all;
line 23: words 14 and 15;
line 34: word 21;
line 40: words 1, 2 and 17;
line 41: words 1, 11 and 12.

35. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the portions of the two page report from DCF interview, not specifically found to be exempt from disclosure in paragraph 34, above.

§1-210(b)(11), G.S.

36. Section 1-210(b)(11), G.S., provides, in relevant part, that disclosure is not required of “[n]ames or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed” (or the consent of such student’s parent or guardian).

37. The respondents claimed that the names of students contained in the written statements of Miriam Rivera, Nancy Collier, Anne Nguyen (group 1), are exempt from disclosure pursuant to §1-210(b)(11), G.S. The respondents noted, on the index to the group 1 records, that statements of Melanie Nyquist and Roberto Guzman were “omitted in error,” and included such statements for in camera inspection. However, they claimed no exemption for such statements.

38. It is found that the statements of Rivera, Collier and Nguyen, identified in paragraph 37, above, contain the names of students enrolled in a public school. It is concluded therefore, that such names are exempt from disclosure pursuant to §1-210(b)(11), G.S.

39. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the names of students contained in the statements identified in paragraph 37, above, from the complainant. However, it is also concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the statements of Melanie Nyquist and Roberto Guzman from the complainant.

§1-210(b)(2), G.S.

40. Section 1-210(b)(2), G.S., provides that disclosure is not required of “[p]ersonnel, medical and similar files the disclosure of which would constitute an invasion of personal privacy.”

41. “When a claim for exemption is based upon §1-210(b)(2), the person claiming the exemption must meet a twofold burden of proof. First, the person claiming the exemption must establish that the files are personnel, medical or similar files. Second, the person claiming the exemption...must also prove that the disclosure of the files would constitute an invasion of personal privacy.” Rocque v. Freedom of Information Comm’n, *supra*, at 661, citing Perkins v. Freedom of Information Comm’n, 228 Conn. 158 (1993). In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that disclosure of such information would be highly offensive to a reasonable person.

42. Section 1-214(b), G.S., provides, in relevant part, that:

[w]henver a public agency receives a request to inspect or copy records contained in any of its employees' personnel or medical files and similar files and the agency reasonably believes that the disclosure of such records would legally constitute an invasion of privacy, the agency shall immediately notify in writing (1) each employee concerned, provided such notice shall not be required to be in writing where impractical due to the large number of employees concerned and (2) the collective bargaining representative, if any, of each employee concerned. Nothing herein shall require an agency to withhold from disclosure the contents of personnel or medical files and similar files when it does not reasonably believe that such disclosure would legally constitute an invasion of personal privacy. (Emphasis added).

43. On the index to the in camera records, the respondents claimed that portions of each of the records in groups 3 and 4, i.e., names, addresses, dates of birth, social security numbers, and other "identifying information," are exempt from disclosure, pursuant to §1-210(b)(2), G.S. The respondents also claimed, on the index, that certain records in group 6 are entirely exempt from disclosure, pursuant to §1-210(b)(2), G.S. The respondents did not raise this exemption at the hearing in this matter, and, as detailed below, they did not they offer any evidence to prove its applicability to any of the records at issue.

44. After careful inspection of the records, described in paragraph 43, above, it is found that such records are "personnel files" of former Hartford Public Schools employee, Eduardo Genao.

45. However, it is found that the respondents offered no evidence at the hearing in this matter from which it could be found that they had a reasonable belief, under §1-214(b), G.S., that disclosure of the records, or portions thereof, described in paragraph 43, above, would legally constitute an invasion of Mr. Genao's personal privacy. It is also found that the respondents offered no evidence that they notified Mr. Genao of the request for such records.

46. Accordingly, it is concluded that the respondents violated §1-214(b), G.S.

47. Moreover, it is concluded that any privacy rights under §1-210(b)(2), G.S., belong to Mr. Genao, and not to the respondents, and that the respondents do not have standing to assert Mr. Genao's privacy rights. See, e.g., Office of Corporation Counsel of the City of Danbury v. Freedom of Information Comm'n, No. CV-12-6017045-S, 2013 WL 5289790, at *6 (Superior Court, August 23, 2013); Cindy L. Robinson v. Chief, Police Department, Town of Trumbull, Docket #FIC 2016-161 (January 16, 2016); John Smith v. Administrator, Town of Putnam, Docket #FIC 2012-564 (August 14, 2013); Kevin Litten and the Waterbury Republican-American v. Chief, Police Department, City of Torrington, Docket #FIC 2012-711

(June 26, 2013); Ken Byron and the Hartford Courant v. First Selectman, Town of Westbrook, Docket #FIC 2002-580 (September 10, 2003); Jonathan Kellogg, Trip Jennings and Waterbury Republican-American v. Chief, Police Department, Borough of Naugatuck and Rick Smolicz, Docket #FIC 2001-489 (September 25, 2002).

48. Accordingly, it is concluded that the respondents failed to prove that the records in groups 3, 4 and 6, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(2), G.S.

49. It is further concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records, or portions thereof, described in paragraph 48, above, except for social security numbers, which the Commission consistently has held need not be disclosed.

§10-151c, G.S.

50. Section 10-151c, G.S., provides, in relevant part:

Any records maintained or kept on file by...any local or regional board of education that are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210, provided that any teacher may consent in writing to the release of such teacher's records by the department or a board of education....For the purposes of this section, "teacher" includes each certified professional employee below the rank of superintendent employed by a board of education in a position requiring a certificate issued by the State Board of Education.

51. The respondents claimed that all of the records in group 5 are exempt from disclosure pursuant to §10-151c, G.S. After careful inspection of such records, it is found that they are records of teacher performance and evaluation, within the meaning of §10-151c, G.S.

52. It is found that there is no evidence in the record that Mr. Genao, the subject of the records, described in paragraph 51, above, consented to the release of such records.

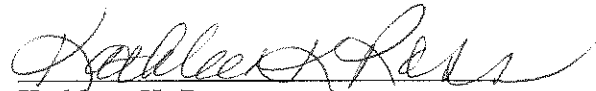
53. Based upon the foregoing, it is concluded that the records, described in paragraph 51, above, are exempt from disclosure pursuant to §10-151c, G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), by withholding such records from the complainant.

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 a copy of the in camera records to the complainant, free of charge.

2. In complying with paragraph 1 of the order, above, the respondents may redact the information identified in paragraphs 18, 20, 22, 24, 26, 28, 30, 32, 34, and 38, above, and may withhold the records identified in paragraph 51, above, in their entirety.

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



Kathleen K. Ross
as Hearing Officer

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