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Valeka Clarke,
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2016-0505

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, lst 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

W. Paradis
Acting Clerk of the Commission

Notice to: Valeka Clarke
Attorney Christopher Smedick

FIC# 2016-0505/Trans/wrbp/LFS//TCB/2017-01-10

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Valeka Clarke,

Complainant

against

Superintendent of Schools, Middletown Public Schools; and Middletown Public Schools,

Respondents

Report of Hearing Officer

Docket #FIC 2016-0505

December , 2016

The above-captioned matter was heard as a contested case on November 4, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2016-0504, Valeka Clarke v. Chairman, Juvenile Review Board, City of Middletown; Juvenile Review Board, City of Middletown; and City of Middletown; and Docket #FIC 2016-0507, Valeka Clarke v. Chief, Police Department, City of Middletown; and Police Department, City of Middletown; and City of Middletown.

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 letter dated June 14, 2016, the complainant sent a 20-part request for copies of records to the respondent Superintendent.

3. It is found that the respondents acknowledged the complainant's request by email sent on June 14, 2016.

4. It is found that on Friday, July 8, 2016, the complainant emailed the respondents and asked when the requested records would be provided to her.

5. It is found that on Monday, July 8, 2016, the Superintendent sent an email to the complainant in which she apologized for the delay, and explained, "Your list is quite extensive and we are working around summer schedules to accomplish the task. Be assured the staff continue to work on your request. I can give you an update in another two weeks on our progress."

6. It is found that on July 12, 2016, the complainant sent an email to the Superintendent in which she described the Superintendent's response to the request for records as a "reinforced patternized delay(s) which is both egregiously unethical and unacceptable."

7. By letter filed July 14, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records she requested.

8. 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.

9. 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.

10. 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.

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

12. It is found that on July 14, 2016, the Superintendent wrote to the complainant, and told her that they had records ready to give her. It is found that the Superintendent set forth the respondents' records that were responsive to each of the 20 categories of records requested. It is found that the Superintendent also informed the complainant that there were 171 pages of responsive records.

13. The complainant alleges that the respondents were not prompt in providing the requested records.

14. With regard to the question of promptness, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised

that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

15. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

16. It is found that the complainant made her request at the end of the school year, a busy time for the respondents, followed by vacation schedules during the summer weeks. It is found that some of the records were maintained in the respondents' business office, which was in the process of implementing a new financial system. It is found that the complainant's request was for 20 different categories of records.

17. It is found, under the circumstances, that the respondents complied with the complainant's request in a prompt manner, based on the Superintendent's testimony at the hearing in this matter.

18. It is concluded that the respondents did not violate the FOI Act as alleged.

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.

Lisa Fein Siegel
as Hearing Officer

2016-0505/hor/lfs/2016