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Steven Edelman
Complainant(s)
against

Bruce Silva, Superintendent of Schools, Regional School District 19; and Regional School District 19
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0750

August 18, 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 **2:00 p.m. on Wednesday, September 13, 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 August 30, 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 August 30, 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 August 30, 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Steven Edelman
Attorney Johanna Zelman

FIC# 2016-0750/ITRA/VRP//LFS/WRBP/2017-08-18

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by | Report of Hearing Officer

Steven Edelman,

Complainant

against | Docket #FIC 2016-0750

Bruce Silva, Superintendent of Schools,
Regional School District 19; and
Regional School District 19,

Respondents | August 17, 2017

The above-captioned matter was heard as a contested case on January 12, 2017, 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. By letter of complaint filed October 25, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of public records.

3. It is found that the complainant made an August 17, 2016 request to the respondent Superintendent to "provide for my immediate personal inspection and examination all crew program accident/incident reports from 1990 to the present."

4. It is found that the complainant made a September 3, 2016 request to the respondent Superintendent to "provide for my immediate personal inspection and examination all legal bills since 2011 pertaining to matters involving Steven Edelman."

5. It is found that the complainant made an August 24, 2016 request to the respondent Superintendent:

> Please provide for my immediate personal inspection and examination all communications from 1990 to the present about crew team coaches, crew team coaching, crew team operation, crew team performance, and similar crew-related

> topics, from parties including, but not limited to, crew team participants, parents of crew team participants, guardians of crew team participants, Regional School District #19 employees, the press, and athletic organizations.
>
> This Freedom of Information request excludes records about Steven Edelman, matters relating to Steven Edelman, and performance evaluations.

6. It is found that the respondents on September 26, 2016 replied to Mr. Edelman:

> In follow-up to my prior correspondences, given the breadth of the documents that you have requested pursuant to FOIA, we will need additional time to provide you with a response. Regional School District #19 will provide you with a response on or before October 21, 2016. Our District reserves the right to inform you that [additional] time is needed, if necessary.

7. It is found that the respondent Superintendent by letter dated October 20, 2016 provided the complainant with a thumb drive containing an electronic copy of "all non-privileged legal bills requested as well as non-privileged e-mail communications that remain available and were not otherwise exempted from the FOIA."

8. It is found that the October 20, 2016 letter further asserted that the requested accident reports were all exempt from disclosure, by virtue of being student records subject to the Family Educational Rights and Privacy Act. The respondents provided no accident reports to the complainant, other than a blank form.

9. The respondents submitted for in camera inspection the records described in paragraphs 4 and 5, above.

10. 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, 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.

11. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

12. Section 1-212(a), G.S., provides in relevant part that "[a] person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

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

14. The respondents claim that the crew accident reports in their entireties are exempt from disclosure as student records protected by the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA").

15. Section 1-210(b)(17), G.S., provides that nothing in the FOI Act shall require the disclosure of: "Education records which are not subject to disclosure under the [FERPA], 20 USC 1232g."

16. "Education 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.

17. It is found that the requested crew accident reports contain information directly related to a student and are maintained by an educational agency.

18. It is concluded that the crew accident reports are "Education records" within the meaning of FERPA.

19. This Commission has concluded that 20 U.S.C. §1232g prohibits public schools that receive federal funds from disclosing information concerning a student that would personally identify that student, without the appropriate consent. See Brenda Ivory v. Vice-Principal Griswold High Sch., Griswold Pub. Sch.; and Griswold Pub. Sch., Docket #FIC 1999-306 (Jan. 26, 2000).

20. 34 C.F.R. §99.3 provides, in relevant part, as follows:

> 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.

21. It is found that the following information contained on the Accident/Injury Report Form used by the respondents is personally identifiable information:

(a) Name of injured person [i.e., the student];

(b) Date of [the student's] birth;

(c) Name of student's parent/guardian;

(d) Address [of the student's parent/guardian]

(e) List witnesses [if the witnesses are students];

22. It is found that the respondents failed to prove that the remaining information contained on the Accident/Injury Report Form used by the respondents is personally identifiable information:

(a) Student [This field contains only a year, such as "2016"]

(b) Athletic Team

(c) Employee

(d) Visitor

(e) Date of Accident

(f) Briefly describe the accident

(g) List witnesses [if the witnesses are not students];

(h) Briefly describe the injury;

(i) Was first aid required?

(j) If yes, by whom and describe the first aid;

(k) Was a physician or hospital care provided?

(l) If yes, by whom and where?

(m) Signature of person completing report and date completed;

(n) Signature of Nurse;

(o) Signature of Principal.

23. Accordingly, it is concluded that information identified in paragraph 22, above, is not exempt from public disclosure pursuant to the provisions of §1-210(b)(17), G.S., and FERPA. It is further concluded that the respondents violated the FOI Act when they failed to provide the complainant with copies of the requested accident reports with only the information described in paragraph 21, above, redacted.

24. The Commission notes that the redactions described in paragraph 21, above, are consistent with the respondents' recent past practice, in 2015, of providing redacted accident reports to the complainant.

25. With respect to the records of communications described in paragraph 5, above, the respondents again contend that the information was redacted consistent with FERPA.

26. The complainant again contends that the respondents redacted more information than necessary from the requested communications described in paragraph 5, above.

27. It is found that the requested communications contain information directly related to a student and are maintained by an educational agency.

28. It is concluded that the requested communications are "Education records" within the meaning of FERPA.

29. After careful inspection of the in camera records, it is found that the information redacted from the first four pages of communications, stamped by the respondents as RSD_EDELMANFOIA 000254, RSD19_EDELMANFOIA 001472, RSD 19_EDELMANFOIA001302, and RSD19_EDELMANFOIA 00749, is personally identifiable student information within the meaning of FERPA, and therefore permissibly exempt from disclosure.

30. It is concluded that the respondents did not violate the FOI Act by their redactions to the four pages described in paragraph 29, above.

31. It is found that the information redacted from in camera record RSD199_EDELMANFOIA000909 is more than is necessary to avoid disclosure of personally identifiable information.

32. Specifically, it is found that the only personally identifiable information contained in RSD199_EDELMANFOIA000909 is the name and email address of the student.

33. Correspondingly, it is also found that information other than the name and email address of the student that was redacted by the respondents is not personally identifiable information.

34. It is therefore concluded that the respondents violated the FOI Act by redacting information from RSD199_EDELMANFOIA000909 that is not personally identifiable information.

35. With respect to the legal bills referenced in paragraph 4, above, the respondents contend that information was redacted pursuant to "Attorney client and/or work product privileges; Conn. Gen. Stat. §1-210(b)(10); Conn. Gen. Stat. §1-210(b)(1); Conn. Gen. Stat. §1-210(b)(4); Conn. Gen. Stat. §52-146r; FIC2007-458."

36. In relevant part, §1-210(b)(10), G.S., permits the nondisclosure of "communications privileged by the attorney-client relationship…."

37. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

38. Section 52-146r(2), G.S., defines "confidential communications" as:

> all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the

> public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

39. The Supreme Court has stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra. at 149.

40. The Supreme Court has further stated that, "[i]n Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice. Olson v. Accessory Controls and Equipment Corp., et al., 254 Conn. 145, 157 (2000). As a general rule, "communications between client and attorney are privileged when made in confidence for the purpose of seeking legal advice." Id.; citation omitted. Moreover, although Connecticut courts have recognized that "statements made in the presence of third parties are usually not privileged because there is then no reasonable expectation of privacy," they have also recognized that "the presence of certain third parties . . . who are agents or employees of an attorney or client, and who are necessary to the consultation, will not destroy the privilege." Id.

41. The Commission has previously concluded:

> In the context of an attorney's billing records, the Commission notes that it is generally accepted that an attorney billing statement and time records are protected by the attorney-client privilege only to the extent that they reveal litigation strategy and/or the nature of the services performed. See Bruno v. Bruno, FA 05 40059006S, 2009 Conn. Super. LEXIS 1913 at 3 (Conn. Super. Ct. July 10, 2009). "[T]he identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege .... However, ... bills ... and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as research particular areas of law, fall within the privilege." Id. at *5.

Docket #FIC 2014-420, Suzanne Carlson et al v. East Hartford Housing Authority et al. at ¶21.

42. After a careful inspection of the in camera records, it is found that the respondents have not redacted the identity of the client, the amount of the fee, the identification of payment by case file name, or the general purpose of the work performed.

43. It is also found that the respondents have redacted the specific nature of the services provided.

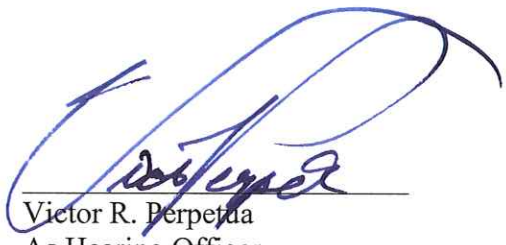
44. It is therefore concluded that the respondents reacted only information privileged by the attorney-client relationship, and thus did not violate the FOI Act as alleged.

45. In light of the conclusion in paragraph 44, above, it is unnecessary to address the respondents' additional claims of exemption for the information redacted from the requested legal bills.

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 complainant a copy of the requested crew accident reports, redacting only the personally identifiable information described in this decision at paragraph 21, above.

2. The respondents shall forthwith provide to the complainant a copy of the record described in paragraph 32, above, RSD199_EDELMANFOIA000909, with only the name and email address of the student redacted.



Victor R. Perpetua
As Hearing Officer