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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Michael Guadarrama
Complainant(s)
against

Notice of Meeting

Docket #FIC 2023-0616

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

August 27, 2024

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.

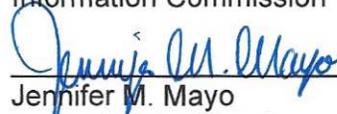
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, September 11, 2024.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 September 4, 2024.** 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 September 4, 2024.** 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 September 4, 2024** 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



Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Michael Guadarrama
Attorney Sarah Gleason

FIC# 2023-0616/ITRA/VDH//RB/JMM/2024-08-27

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Michael Guadarrama,

Complainant

against

Docket #FIC 2023-0616

Superintendent of Schools,
Westport Public Schools;
and Westport Public Schools;

Respondents

August 23, 2024

The above-captioned matter was heard as a contested case on May 1, 2024, 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, by email dated October 22, 2023, the complainant requested that the respondents provide him with access to records contained within the School Messenger application used by Westport Public Schools to send email communications and notices to Westport parents. Specifically, the complainant requested that the respondents provide him with a "user activity dataset from School Messenger between August 1, 2022 [and] October 15, 2023, in an Excel spreadsheet format." The complainant indicated that the spreadsheet should include the following fields:
 - a. User name;
 - b. User email address;
 - c. Email subject;
 - d. Date [and] time(s) user opened the email;

- e. IP from which the email was opened;
- f. URLs accessed within the email by the user, and
- g. Any other recipient-activity information captured by School Messenger.

3. It is found that, by email dated October 24, 2023, the respondents acknowledged the complainant's request, and indicated that they would contact the complainant as soon as their search and review process had been completed.

4. It is found that, by email dated November 6, 2023, the respondents provided the complainant with responsive records. It is found that the respondents redacted the following information from such records: student identification numbers, student and parent names, and student and parent email addresses.

5. By email dated November 19, 2023 and filed November 20, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by redacting parent names and parent email addresses from the responsive records.

6. 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, videotaped, printed, photostated, photographed or recorded by any other method.

7. 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, . . . (3) receive a copy of such records in accordance with section 1-212.

8. 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.”

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

10. At the hearing, the complainant contended that the respondents improperly redacted parent names and parent email addresses from the responsive records. The complainant represented that he was not challenging the redactions concerning student identification numbers, student names, or student email addresses.

11. The respondents contended that the redacted portions of the responsive records are exempt pursuant to §1-210(b)(17), G.S.

12. It is found that the complainant is a parent of one child currently attending public school in Westport and another child who has graduated from such school system. It is further found that, for years, the complainant has been receiving notes and updates from Westport Public Schools, such as Superintendent updates, school event notices, school bus changes, student absences, and parent-teacher association (“PTA”) newsletters. It is found that such notices and updates are sent to the complainant, other parents, and students, by way of a mass communication system called School Messenger. It is found that the complainant’s request in this case seeks both the names and emails addresses of the other parents who use School Messenger, and the records that are created (that is, metadata) when such parents engage with the system. It is found that the School Messenger system can send text messages and emails and attachments thereto, as well as personalized PDFs to families and students concerning, for example, individualized student transcripts.

13. It is found that, on November 6, 2023, the respondents, with the assistance of their Information Technology staff, provided the complainant with a link to a Google drive repository containing a series of zip files. It is found that the zip files, when accessed, revealed a collection of spreadsheets containing most of the fields requested by the complainant.

14. It is found that, after communicating with School Messenger’s help desk, the respondents determined that they were not capable of including two of the fields requested by the complainant, that being the IP address from which the communication was opened, and the URLs (or “Uniform Resource Locators”) accessed within the email by the user. See ¶¶ 2.e and 2.f, above. Accordingly, it is concluded that the respondents did not violate the FOI Act when they did not disclose records responsive to paragraphs 2.e and 2.f, above.

15. It is further found, however, that the respondents redacted the fields containing both parent names and parent email addresses.

16. It is found that the respondents receive parent names and parent email addresses through the student registration and enrollment processes.

17. Section 1-210(b)(17), G.S., provides that nothing in the FOI Act shall require the disclosure of: “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act (“FERPA”), 20 USC §1232g.”

18. “Education records” are defined at 20 USC §1232g(a)(4)(A) as those records, files, documents, and other material 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.

19. 20 USC §1232g(b)(2) provides, in relevant part, that:

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

20. In addition, 20 USC §1232g(a)(B)(5) provides, in relevant part, that:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent’s prior consent.

21. With regard to the disclosure of directory information, 34 C.F.R. §99.37 provides, in relevant part, that:

- (a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance... at the agency or institution of:
 - (1) The types of personally identifiable information that the agency or institution has designated as directory information;

- (2) A parent's...right to refuse to let the agency or institution designate any or all of these types of information about the student as directory information; and
- (3) The period of time within which a parent...has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information....

...

- (d) In its public notice to parents...that is described in paragraph (a) of this subsection, any educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice....

22. Accordingly, it is found that, under FERPA, an educational agency or institution may designate the information that it considers to be directory information. It is also found that FERPA's regulations allow educational agencies or institutions to adopt directory information policies that limit the disclosure of directory information. It is further found that FERPA's regulations permit, but do not require, educational agencies or institutions to adopt limited directory information policies that allow the disclosure of directory information to specific parties, for specific purposes, or both.

23. It is found that, at the time the complainant made his request for records, the respondent's definition of directory information included:

...information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes...the parent's name, address and/or email address....

24. It is further found that, at the time the complainant made his request for records, the respondents' policy on the disclosure of directory information stated, in relevant part that, while certain school groups such as clubs, student activity groups, and the PTA may receive

directory information for internal purposes, “[i]ndividuals may not receive Directory Information for private, non-school use....”

25. It is further found that the respondents’ Parent/Guardian Handbook from the 2023-2024 academic year stated, in relevant part, as follows:

It is our policy not to make directory information available to private individuals, to commercial or college recruiters or to any non-school-related group, except in the circumstances described below, all of which, in accordance with ...FERPA have an opt-out provision:

1. PTA Directories:

Each school PTA¹ publishes a school directory, inclusion in which requires permission from parents. For convenience, we furnish the directory information to the PTA. If you give permission, your name, your child’s name, address and telephone number, email address and cellphone number are listed in this directory, which is made available to the PTA members and other parents. While the use of information for other but legitimate school purposes is discouraged, the school system is not able to control access to the information once the directories are distributed....

26. It is found that one individual within the various PTAs is designated as “communicator,” and such individual has full access to that portion of information within School Messenger provided to such PTA group.

27. It is further found that, at the time of the complainant’s request, the respondents had, and were permitted to have, a policy limiting the disclosure of directory information to certain groups and prohibiting disclosure of directory information to private individuals.

28. The complainant contended that, because he is a member of the high school PTA, the respondents should not be permitted to redact the fields in the responsive records containing parent names and email addresses.

29. In this regard, it is found that the complainant is asking the Commission to enforce a private right to access the requested records due to his capacity as a member of the PTA.

30. It is concluded, however, that the Commission lacks jurisdiction to make determinations regarding or enforce any private right of access.

¹ Based on the respondents’ testimony, it is found that there are eight individual schools within the Town of Westport, including one high school, two middle schools, and five elementary schools. It is further found that each school has its own PTA.

31. It is further concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to provide the complainant with access to the fields within the responsive records containing parent names and email addresses.

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.



Valicia Dee Harmon
as Hearing Officer