

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Patrick Eaton-Robb and the  
Associated Press,

Complainants

against

Docket #FIC 2018-0660

President, State of Connecticut,  
University of Connecticut; and  
State of Connecticut, University  
of Connecticut,

Respondents

September 11, 2019

The above-captioned matter was heard as a contested case on March 1, 2019, at which time the complainants 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 letter email dated October 15, 2018, the complainants sent the respondents the following request for public records:

All files, records and documents in your possession or control that refer, relate to . . . a medical emergency involving a student athlete on campus on Oct. 10 and the response to that emergency. This request includes, but is not limited to, any and all documents, notes, correspondence or memoranda, transcripts or recordings of calls to university authorities, in whatever tangible or physical form that relate to the requested records. I understand that you may need to redact names under federal privacy laws.

3. It is found that, by email dated November 9, 2018, the respondents denied the complainants' request, stating as follows: "[a]ny records responsive to your request are

subject to exemption under the Connecticut General Statutes (including 1-210(b)(2) and 1-210(b)(17)) and therefore will not be transferred to you.”

4. By letter dated and filed November 15, 2018, the complainants appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide records responsive to the request.

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, 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:

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.

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 records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

9. The respondents claimed that the requested records are exempt from disclosure pursuant to §1-210(b)(17), G.S. The respondents contended that, because the complainants know the identity of the student involved in the underlying medical incident, even in redacted form, the records would reveal “personally identifiable information” about the student.

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

11. "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.

12. 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).

13. 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.

14. Attorney Rachael Rudnick, Associate Vice President and Chief Privacy Officer of the University of Connecticut's ("UCONN") Office of Privacy Protection & Management, appeared and testified at the contested case hearing on behalf of the respondents.

15. It is found that the requested records resulted from a medical emergency involving one UCONN student on October 10, 2018. It is found that the October 10<sup>th</sup> incident was reported on in the press and that such reports contain the student's name. It is further found that the complainants know the student's name.

16. It is found that the requested records contain information “directly related” to one particular student of UCONN, within the meaning of 20 U.S.C. §1232g(a)(4)(A)(i). It is further found that such records are “maintained” by UCONN, within the meaning of 20 U.S.C. §1232g(a)(4)(A)(ii).

17. With regard to 911 transcripts specifically, which the respondents conceded do exist, the complainants contended that these records should be disclosed because they were created and are maintained by a law enforcement unit at UCONN. While the complainants are correct in that records created and maintained by law enforcement units of an education agency are not covered by FERPA, see 20 U.S.C. §1232g(a)(4)(B)(ii) and C.F.R. §99.8, based on the testimony of Attorney Rudnick, it is found that the 911 transcripts (as well as all of the other responsive records) are maintained in this case by UCONN’s Fire Department, which is not considered a law enforcement unit.

18. It is therefore concluded that the requested records are education records within the meaning of 20 U.S.C. §1232g(a)(4)(A).

19. Furthermore, while the complainants contended that the respondents should be ordered to redact the records in order to protect the student’s identity, it is found that, because the complainants already know the identity of the student, pursuant to 34 C.F.R. §99.3 (g), there is no meaningful way for the respondents to redact the requested records in order to protect the identity of this student.

20. It is concluded that the requested records are exempt from disclosure pursuant to the provisions of §1-210(b)(17), G.S., and FERPA.<sup>1</sup>

21. It is further concluded that the respondents did not violate the FOI Act as alleged in the complaint.

22. The Commission notes that, subsequent to the contested case hearing, the respondents disclosed to the complainants certain policies and procedures responsive to the request that do not contain references to the student who experienced the medical emergency on October 10, 2018. See Compl. Br. at 1 (received and filed Mar. 19, 2019 and marked as post-hearing Ex. C).

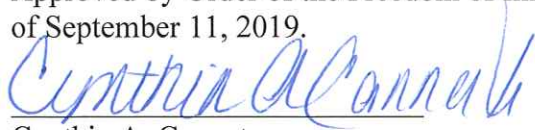
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.

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<sup>1</sup> Because the Commission has determined that the records are exempt pursuant to §1-210(b)(17), G.S. and FERPA, it need not address the respondents’ claim of exemption pursuant to §1-210(b)(2), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting  
of September 11, 2019.



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:

**PATRICK EATON-ROBB AND THE ASSOCIATED PRESS**, 10 Columbus Boulevard, 10th Floor, Hartford, CT 06106

**PRESIDENT, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT**, c/o Attorney Nathan LaVallee, UCONN, Office of the General Counsel, 343 Mansfield Road, Unit 1177, Storrs, CT 06238



Cynthia A. Cannata  
Acting Clerk of the Commission