

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jay Hardison,

Complainant

against

Docket #FIC 2018-0661

Tara B. Ochman, Chairman,  
Board of Education, Darien  
Public Schools; D. Jill McCammon,  
as member, Board of Education,  
Darien Public Schools; and  
Board of Education, Darien  
Public Schools,

Respondents

September 11, 2019

The above-captioned matter was heard as a contested case on February 19, 2019, 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 September 7, 2018, the complainant sent Board of Education Member D. Jill McCammon the following public records request:

On June 1, 2017, Nadine Vasil sent you an email requesting that you provide any and all documents responsive to my May 19, 2017 FOIA request. You indicated to me, in a private conversation, that you replied in writing to Ms. Vasil's request.

Pursuant to the Connecticut Freedom of Information Act, I hereby request your response to Ms. Vasil's email request (or responses, if there were more than one to Ms. Vasil and/or to anyone else), and any and all clarifications to your response(s) to that June 1, 2017 Nadine Vasil email.

In addition, I am requesting any and all records created by any person with respect to this FOIA request, and this request is for/through the date of production.

3. By email dated September 18, 2018, the respondents acknowledged the request.

4. It is found that, under cover of email dated October 3, 2018, the respondents disclosed two responsive records to the complainant. It is further found that the respondents informed the complainant that certain records had been withheld or redacted pursuant to §1-210(b)(10), G.S. (the attorney-client privilege).

5. By letter dated and filed October 23, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to provide him with copies of the records described in paragraph 2, above.

6. With regard to the allegations that the respondents failed to disclose responsive, public records to the complainant, §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.

7. 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.

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

10. The complainant contended that there should be more responsive records and that the respondents are acting in bad faith by withholding responsive records from him.

11. At the conclusion of the contested case hearing, the hearing officer ordered the respondents to submit all of the records at issue to the Commission for an in camera inspection. On March 1, 2019, the respondents submitted such records to the Commission.

12. The in camera records total 12 pages and will be referred to as IC-2018-0661-1 through IC-2018-0661-12. The respondents contend that the following records (or portions thereof) are exempt from disclosure pursuant to the attorney-client privilege: IC-2018-0661-1 (lines 1 through 10); IC-2018-0661-2 (entire page); IC-2018-0661-3 (lines 1 through 8); IC-2018-0661-4 (entire page); IC-2018-0661-5 (lines 1 through 12); IC-2018-0661-7 (entire page); IC-2018-0661-8 (entire page); IC-2018-0661-9 (lines 1 through 9); IC-2018-0661-10 (entire page); IC-2018-0661-11 (entire page); and IC-2018-0661-12 (line 1).

13. Section 1-210(b)(10), G.S., permits the nondisclosure of “communications privileged by the attorney-client relationship....”

14. 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.

15. 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. . . .

16. 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.

17. 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.

18. Attorney Melika S. Forbes appeared and testified at the contested case hearing on behalf of the respondents.

19. It is found that the in camera records identified in paragraph 12, above, are records that are responsive to the second part of the underlying request—that is, “I am requesting any and all records created by any person with respect to this FOIA request.” See ¶ 2, above. It is further found that such records contain the legal advice that the respondents sought and/or received from their attorneys. It is further found that the respondents were acting within the scope of their duties with regard to current agency business when they sought and/or received this advice. It is further found that the communications were made in confidence. It is further found that the respondents did not waive their attorney-client privilege.

20. Finally, with regard to the in camera records, or portions thereof, for which an exemption to disclosure has not been claimed, it is found that such records are emails that originated with the complainant. It is found that the complainant is in possession of such records.

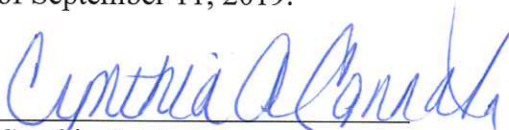
21. Based on the above legal principles and after a careful in camera inspection records, it is found that the in camera records, or portions thereof, identified in paragraph 12, above, are exempt from disclosure pursuant to the attorney-client privilege.

22. Accordingly, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

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

1. The complaint is hereby dismissed.

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



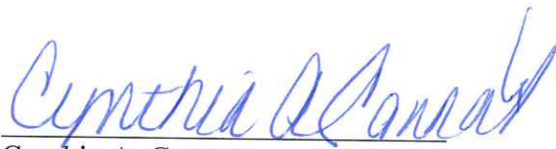
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**JAY HARDISON**, 11 Nearwater Lane, Darien, CT 06820

**SUPERINTENDENT OF SCHOOLS, DARIEN PUBLIC SCHOOLS; AND DARIEN PUBLIC SCHOOLS**, c/o Attorney Thomas B. Mooney, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919



Cynthia A. Cannata  
Acting Clerk of the Commission