

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Christopher Peak and New Haven Independent,

FINAL DECISION

Complainants

against

Docket #FIC 2020-0135

Benjamin Cruse, Principal, Achievement First,
Hartford High school; and Achievement First,
Hartford High School

Respondents

February 24, 2021

The above-captioned matter was heard as a contested case on November 11, 2020, at which time the complainants and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹ The respondents submitted a copy of the records at issue for an in camera inspection.

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 March 16, 2020, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with their request for certain public records.
3. It is found that the respondent Achievement First Hartford High School ("AF Hartford") receives charter school management services from Achievement First ("AF"), a not-for-profit corporation. It is also found that AF Hartford and AF are separate corporations with their own boards of directors.
4. It is found that the complainants on or about November 27, 2019, began seeking records of alleged misconduct and discipline regarding six individuals who had been employed at one time at AF Hartford.
5. It is found that counsel for AF acknowledged the November 27 request on December 4, 2019.

¹ Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

6. It is found that follow-up requests and responses ensued between the parties, including the provision of copies of certain records over the following months.

7. It is found that the complainants, following up on their earlier requests, emailed a February 26, 2020 request to the respondents the following specific records that the complainant believed were either omitted from the records provided to him, or redacted:

- a. "Incident report from Oct. 31, 2018 confrontation between Patrick Dodds and a scholar;
- b. "Notes from Oct. 31, 2018 meeting between Patrick Dodds, Emily Banks;
- c. "Notes from prior verbal complaints from scholars to Leah Weimerskirch about Patrick Dodds;
- d. "Emailed complaint from Jan. 24 about Patrick Dodds;
- e. "Notes from January 24 meeting between Patrick Dodds and Mia Dunlap;
- f. "Notes from Jan. 24, meeting between Leah Weimerskirch and staff member;
- g. "Notes from Jan.24 meeting between Patrick Dodds and staff member;
- h. "Follow-up emails from Feb. 4 between Latasha Williams and her supervisor about how to respond to a written complaint;
- i. "Follow-up emails from Feb. 12 between Latasha Williams and a staff member;
- j. "Text messages from March 2019 between Patrick Dodds and a scholar;
- k. "Scholar complaints about Patrick Dodds from June 13 meeting with Rachel Sexton;
- l. "Notes from June 14 meeting between Patrick Dodds, Rachel Sexton and Emily Banks;
- m. "Notes from June 17 meeting between Patrick Dodds, Emily Banks and Leah Weimerskirch;
- n. "Emails between Leah Weimerskirch and Patrick Dodds on expectations for physical contact with scholars;
- o. "Notification of Sept. 20 arrest of Patrick Dodds;
- p. "Notification of Sept. 23 text messages between Patrick Dodds and a scholar;
- q. "Documents from Sept. 25 and Sept. 26 records review, as part of joint investigation, especially the three prior employee complaints about Patrick Dodds turned over to Attorney Elisa Bartlett;
- r. "Notes from Sept. 25 meeting between Latasha Williams, Ben Cruse and Tsehaia Brown;

- s. "Notes from Sept. 25 meeting between Leah Weimerskirch, Ben Cruse and Amy D'Angelo;
 - t. "Notes from Oct. 2 hearing for Leah Weimerskirch;
 - u. "Notes from Oct. 17 meeting between Latasha Williams, Ben Cruse, Christi George;
 - v. "Notes from Oct. 17 meeting between Leah Weimerskirch, Ben Cruse, Christi George;
 - w. "Relevant records from weekly check-ins between Patrick Dodds and Leah Weimerskirch, particularly the weekly agendas about behavior "goals" around teacher-scholar boundaries;
 - x. "Any additional records collected by Attorney Elisa Bartlett about Patrick Dodds;
 - y. "Notes from interviews with school staff by Attorney Elisa Bartlett provided to Achievement First;
 - z. "Disciplinary letter to Leah Weimerskirch;
 - aa. "Disciplinary letter to Emily Banks;
 - bb. "Investigatory findings about Patrick Dodds;
 - cc. "Disciplinary letter to Patrick Dodds; and
 - dd. "Any additional communication with Dodds, in particular around Merit Comments from March 2019.
8. It is found that the respondents conducted a diligent search for the requested records.
9. It is found that the respondents provided copies of all the records it maintains that are responsive to the request described in paragraph 7, above, except for records claimed to be exempt below.
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: “Any 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, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

14. The records withheld from the complainants fall into three categories: records claimed to be privileged by the attorney-client relationship; records containing personally identifiable student information; and records provided to the Department of Children and Families (“DCF”).

15. With respect to the records claimed to be privileged by the attorney-client relationship, the respondents claim that the records so withheld are exempt from disclosure pursuant to §1-210(b)(10), G.S., which statute permits a public agency to withhold from disclosure records of “communications privileged by the attorney-client relationship.”

16. 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.

17. 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...

18. The Supreme Court has also 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, 260 Conn. 149.

19. It is found that AF hired attorney Elisa Bartlett to provide legal services to AF Hartford with respect to an investigation of potential misconduct of its employees.

20. It is found that the records claimed by the respondents to be privileged consist of communications between attorney Elisa Bartlett and employees of AF.

21. Based upon the credible testimony of attorney Melika Forbes, General Counsel for AF, it is found that the records withheld as privileged were communications between public officials and an attorney that were confidential, made in the course of the professional relationship that existed between the attorney and his or her public agency client, and related to legal advice sought by the agency from the attorney. It is also found that the privilege was not waived.

22. It is therefore concluded that the respondents did not violate the FOI Act by withholding the records claimed to be privileged by the attorney-client relationship.

23. With respect to the portions of the records claimed to contain personally identifiable student information, it is found that the respondents reacted student names and information that would personally identify students.

24. Section 1-210(b)(11), G.S., provides in relevant part that disclosure is not required of:

Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age

25. Section 1-217(b)(17), G.S., provides that disclosure is not required of “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g....”

26. The Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g(b)(2), provides in relevant part that:

No funds shall be made available under any applicable program to any educational 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

27. “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.” Further, Title 34, §99.3 of the Code of Federal Regulations provides:

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.

28. It is concluded that the names of and personally identifiable information about students redacted by the respondents are exempt from disclosure pursuant to §§1-210(b)(11) and (17), G.S., and that the respondents did not violate the FOI Act by redacting that information.

29. With respect to the records withheld because the respondents provided them to DCF, §17a-101k, G.S., provides:

The Commissioner of Children and Families shall maintain a registry of the reports received pursuant to sections 17a-101a to 17a-101d, inclusive, and 17a-103, and shall adopt regulations to implement the provisions of this section, including the use of the registry on a twenty-four-hour daily basis to prevent or discover abuse of children and the establishment of a hearing process for any appeal by a person of the commissioner's determination that such person is responsible for the abuse or neglect of a child pursuant to subsection (b) of section 17a-101g. The information contained in the reports and *any other information relative to child abuse, wherever located, shall be confidential* subject to such statutes and regulations governing their use and access as shall conform to the requirements of federal law or regulations. Any violation of this section or the regulations adopted by the commissioner under this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year.

30. It is found that the records submitted by the respondents to DCF and withheld from the complainants are information relative to child abuse, and are therefore exempt from disclosure pursuant to §17a-101k.

31. It is therefore 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.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 24, 2021.



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:

CHRISTOPHER PEAK, AND NEW HAVEN INDEPENDENT, 138 Linden Blvd., Flr. 2, Brooklyn, NY. 11226

BENJAMIN CRUSE, PRINCIPAL, ACHIEVEMENT FIRST, HARTFORD HIGH SCHOOL; AND ACHIEVEMENT FIRST, HARTFORD HIGH SCHOOL, c/o Attorney Mark J. Sommaruga, Pullman & Comley LLC, 90 State House Square, Hartford, CT 06103-3702



Cynthia A. Cannata
Acting Clerk of the Commission