

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Montoya,

Complainant

against

Docket # FIC 2019-0606

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

Respondents

June 23, 2021

The above-captioned matter was heard as a contested case on February 3, 2020 and December 22, 2020, at which times the complainant 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 December 22, 2020 continued hearing was conducted telephonically.<sup>1</sup> This matter was consolidated for hearing with Docket #FIC 2019-0607; David Montoya v. Superintendent of Schools, Westport Public Schools; and Westport Public Schools.

On February 9, 2021, the parties filed post-hearing briefs and on February 23, 2021, the respondents filed a reply brief.

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 1, 2019,<sup>2</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records.

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<sup>1</sup> On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

<sup>2</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

3. It is found that, by letter dated September 13, 2019, the complainant asked several questions of the respondents related to “the collection of FERPA materials”; requested copies of all law firm engagement letters entered by the Westport Public Schools and Board of Education; certain school district policies; and certain assessments, from September 1, 2017 through the date of the request.

4. 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, printed, photostated, photographed or recorded by any other method.

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

6. 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.”

7. It is found that, to the extent the requested records described in paragraph 3, above, exist, such records are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that, by letter dated September 17, 2019, the respondents acknowledged receipt of the September 13, 2019 request.

9. It is further found that by email dated November 27, 2019, the respondents provided the complainant with certain records responsive to his request, but declined to answer the plaintiff’s questions, or to create records.

10. At the hearing, the complainant contended that the Commission should compel the respondents to answer the questions posed and to create records if responsive records do not exist or have not been maintained. However, the respondents are not required to answer questions under the FOI Act, and the Commission has no authority to compel the respondents to answer the complainant’s questions. Albright-Lazzari v. Murphy, No. CV105014984S, 2011 WL 1886878, at \*3 (Super. Ct. Apr. 21, 2011). Additionally, nothing under the FOI Act requires the

respondents to create records or lists. Id. See also Jolley v. Bragdon, No. CV075012256, 2008 WL 2039066, at \*4 (Super. Court Apr. 22, 2008); Wildin v. FOIC, 56 Conn. App. 683 (2000); and Docket #FIC 87-15; Vincenzo v. Board of Parole, et al. (March 25, 1987).

11. It is therefore concluded that the respondents did not violate the FOI Act as alleged by the complainant by declining to answer questions or create records.

12. With respect to the complainant's request for copies of the engagement letters described in paragraph 3, above, it is found that on or about November 27, 2020, the respondents notified the complainant that a search for responsive records was underway and that all responsive, non-exempt records would be provided on a rolling basis as they become available. It is further found that the respondents sought further clarification from the complainant with respect to the period for which the records were requested, but the complainant did not provide any further clarification or time limitation on his request.

13. It is found that on or about December 6, 2019, January 3, 2020, January 22, 2020, and February 7, 2020, the respondents provided the complainant with copies of all responsive records which they maintained or were able to obtain directly from the respective law firms. Moreover, the respondents, by their counsel, provided additional information about the scope of representation of the law firms.

14. At the hearing, the complainant contended that the respondents violated the FOI Act by failing to maintain all engagement letters. While the Commission understands the complainant's concern with respect to retention of letters of engagement, jurisdiction over the retention and destruction of public records does not rest with this Commission, but rather with the State's Public Records Administrator and the applicable State's Attorney, as provided by statute. Additionally, as previously stated in paragraph 10, nothing in the FOI Act requires the respondents to create a record.

15. Accordingly, it is concluded that the respondents did not violate the FOI Act with respect to the request for the engagement letters.

16. With respect to the complainant's request for certain policies and assessments, it is found that the respondents provided copies of all records responsive to the complainant's request on November 27 and December 6, 2020.

17. Accordingly, it is concluded that the respondents did not violate the FOI Act regarding the request for the policies and assessments.

18. At the hearing, the complainant contended that the respondents did not provide the requested records promptly.

19. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request."

20. Advisory Opinion #51 describes several factors that should be considered in weighing a request for records against other priorities: the volume of the requested records; the amount of personnel time necessary to comply with the request; the time by which the requester needs the records; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of personnel time involved in complying with the request.

21. In this case, it is found that that between September 1, 2019 and December 15, 2019, the complainant made several requests for records under the FOI Act and the Family Educational Rights and Privacy Act, or “FERPA”, including the request at issue herein. Moreover, it is found that the respondents communicated with the complainant regarding this request and provided responsive records on a rolling basis. Given the volume of requests and the communications between the parties, which indicate that the respondents acted in good faith to provide records responsive to the complainant’s request, it is found that the respondents promptly provided the requested records to the complainant.

22. Consequently, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

The following order by the Commission is hereby recommended based on 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 June 23, 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:

**DAVID MONTOYA**, c/o Attorney Piper Paul, Piper Paul Law, LLC, 1465 Post Road East, Suite 100, Westport, CT 06880

**SUPERINTENDENT OF SCHOOLS, WESTPORT PUBLIC SCHOOLS; AND  
WESTPORT PUBLIC SCHOOLS**, c/o Attorney Jessica R. Smith, Shipman & Goodwin LLP, 300 Atlantic Avenue, 3rd Floor, Stamford, CT 06901 and Attorney Morgan P. Rueckert, Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission