

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Montoya,

Complainant

against

Docket # FIC 2019-0607

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.¹

This matter was consolidated for the purposes of hearing with, and the Commission takes administrative notice of the evidence presented in, Docket #FIC 2019-0606; David Montoya v. Superintendent of Schools, Westport Public Schools; and Westport Public Schools. See Conn. Regs. §§ 1-21j-18 and 1-21j-37(d).

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, 2019,² 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.

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

² 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

3. It is found that, by letter dated September 18, 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 into by the Westport Public Schools and Board of Education; certain school district policies; certain metadata; and certain emails and phone records from September 1, 2015 through the present.

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 email dated November 27, 2019, the respondents informed the complainant that the information requested substantially overlaps with the September 13, 2019 request at issue in Docket #FIC 2019-0606, and it is so found. Because it is found that the request for such information is addressed by the Commission in Docket #FIC 2019-0606, the Commission need not address it herein.

9. It is further found that the respondents notified the complainant in their email, dated November 27, 2019, that they declined to respond to the complainant’s questions or to create records.

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.

10. At the hearing, the complainant contended that the respondents violated the FOI Act by refusing to answer questions or to create records. 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 Docket #FIC 87-15, Vincenzo v. Board of Parole, et al.; Jolley v. Bragdon, No. CV075012256, 2008 WL 2039066, at *4 (Super. Court Apr. 22, 2008); and 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 by declining to answer questions or create records.

12. Regarding the complainant's request for records, it is found that the respondents did not locate any records responsive to the request for phone records. However, it is found that the respondents provided to the complainant copies of all email communications responsive to his request.

13. It is therefore concluded that the respondents did not violate the FOI Act by as alleged by the complainant with regard to the request for email and phone records.

14. With respect to the request for metadata, it is found that on several occasions the respondents notified the complainant that it did not maintain the metadata he requested. It is found that the respondents utilized a program, called Pearson "Inform," to collect and store data regarding certain students within the school district. However, Pearson discontinued the program and disabled the school district's access to it on or about July 2018. It is found that the respondents did not extract the requested metadata from the program prior to its disabling by Pearson and therefore did not maintain metadata responsive to the complainant's September 18, 2019 request.

15. Nevertheless, upon receipt of the complainant's request, the respondents' Director of Technology contacted Pearson to determine whether Pearson maintained any of the metadata requested. It is found that the respondents were advised by Pearson that the metadata had been destroyed.

16. Based on the credible evidence presented at the hearing, it is found that the respondents do not maintain any metadata responsive to the complainant's request.

17. During the hearing, the complainant contended that the respondents violated the FOI Act by failing to maintain the metadata. While the Commission understands the complainant's concern with respect to the retention of records, 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, or as provided by other state or federal law.

18. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant with regard to the request for the metadata.

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

20. 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.”

21. 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.

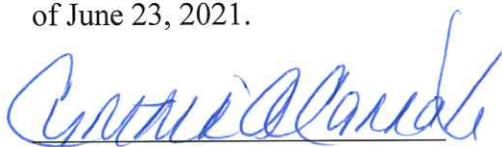
22. In this case, it is found that between September 1, 2019 and December 15, 2019, the complainant made several requests for records under the FOI Act or Family Educational Rights and Privacy Act, or “FERPA”, including the request at issue herein. Moreover, it is found that the respondents maintained communication with the complainant regarding his request and providing 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 records responsive to the September 18, 2019 request.

23. 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 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 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 and Goodwin LLP, 300 Atlantic Street, 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