

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Elaine Papas,

Complainant

against

Docket #FIC 2020-0210

Executive Director of
Human Resources, Hartford
Public Schools; Executive
Director of Internal Investigation
and Security, Hartford Public
Schools; Labor Relations
Information Specialist, Hartford
Public Schools; and Hartford Public Schools,

Respondents

November 17, 2021

The above-captioned matter was scheduled for hearing as a contested case on July 1, 2021, at which time both 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 hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

Subsequently, on July 12, 2021, the complainant moved to file, without objection, an after-filed exhibit. Such motion is hereby granted, and the exhibit marked as Complainant's Exhibit M (after-filed): Chain of Text Messages (dated June 26 and June 27, 2019, respectively). On July 13, 2021, the respondents also moved to file, without objection, an after-filed exhibit. Such motion is hereby granted, and the exhibit marked as Respondents' Exhibit 7 (after-filed): Email Chain (most recent dated July 2, 2021 at 4:20pm), with copy of 2017-2018 crisis drill report attached.

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 March 9, 2020, the complainant, who is an employee of the Hartford Public Schools, requested that the respondents provide her with copies of "four (4) years of statistics of schools who were/are in default of the monthly required drills" (hereinafter "crisis drill reports"). It is found that the request was for school years 2016-2017,

2017-2018, 2018-2019 and 2019-2020 (to date). It is found that by separate email dated that same day, the complainant requested “a copy of the discipline letter of Brooke Lafreniere dated July 1, 2019” (hereinafter “discipline letter”).¹

3. It is found that, by email dated March 9, 2020, the respondents informed the complainant that her request for the crisis drill reports was forwarded to “Labor.” It is found that by separate email dated that same day, the respondents informed the complainant that her request for the discipline letter was forwarded to “Labor.”

4. It is found that, by email dated April 8, 2020, the complainant inquired as to the status of her request for the crisis drill reports. It is found that by separate email dated that same day, the complainant also inquired as to the status of her request for the discipline letter.

5. It is found that, by email dated April 8, 2020, the respondents informed the complainant they were working on her records requests and would advise when complete.

6. It is found that, by email dated April 22, 2020, the complainant again inquired as to the status of her requests for the crisis drill reports and discipline letter.

7. It is found that, by email dated April 27, 2020, the respondents provided the complainant with copies of the crisis drill reports for 2018-2019 and 2019-2020.

8. It is found that, by email dated April 27, 2020, the complainant informed the respondents that she had yet to receive a copy of the requested discipline letter and the 2016-2017 and 2017-2018 crisis drill reports.

9. It is found that by two separate emails each dated April 27, 2020, the respondents informed the complainant that they did not have any documents that were responsive to her requests for the discipline letter or the 2016-2017 and 2017-2018 crisis drill reports.

10. By letter of complaint received May 12, 2020,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with her March 9, 2020 requests. At the hearing, the complainant also sought the imposition of “penalties.”

11. Section 1-200(5), G.S., defines “public records or files” as:

¹ The Commission notes that throughout the hearing in this matter the terms “discipline letter” and “disciplinary letter” were used interchangeably. For purposes of consistency and clarity, the term “discipline letter” shall be utilized hereinafter.

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 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 subject matter jurisdiction.

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

12. 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 (1) inspect such records promptly during regular office or business hours . . . (3) receive a copy of such records in accordance with section 1-212.

13. 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.”

14. It is found that the requested records, to the extent they are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

15. At the hearing, the complainant contended that the respondents failed to provide her with all records responsive to her requests, and that their response was not prompt. She testified that the respondents failed to provide her with the requested discipline letter and the 2016-2017 and 2017-2018 crisis drill reports.

16. With respect to the request for the discipline letter, it is found that such request relates to an incident involving a safety code drill conducted by the complainant and an investigation related thereto. It is found that the conduct of the complainant and other staff members, including Brooke Lafreniere, was investigated. It is found that the complainant and Ms. Lafreniere each received similar notices of and attended pre-disciplinary meetings, respectively.³ It is found that subsequent to her pre-disciplinary meeting, the complainant received a discipline letter, dated July 1, 2019.

17. At the hearing, the complainant testified that she believes that a discipline letter similar to the July 1, 2019 letter provided to the complainant, as described in paragraph 16, above, was hand-delivered to Ms. Lafreniere on July 1, 2019.

³ The Commission notes that throughout the hearing in this matter the terms “pre-disciplinary meeting” and “pre-disciplinary hearing” were used interchangeably. For purposes of consistency and clarity, the term “pre-disciplinary meeting” shall be utilized hereinafter.

18. The respondents testified that they do not have any discipline letter for Ms. Lafreniere that is responsive to the complainant's request. Suhail Aponte, the Labor Information Investigation Specialist for the respondent Hartford Public Schools, testified that she searched for the requested discipline letter in Ms. Lafreniere's personnel file and investigation file as discipline letters would be kept in personnel and investigation files. Ms. Aponte also testified that she inquired with the respondents' Executive Director of Human Resources, the Executive Assistant for the Legal Department, and the former Executive Director of Internal Investigations and Security, regarding the existence of a discipline letter hand-delivered to Ms. Lafreniere on July 1, 2019, and was informed that there is no such letter.

19. It is found that the respondents conducted a thorough search for the requested discipline letter and did not locate any such record in their possession. Accordingly, it is concluded that the respondents do not maintain the requested discipline letter and did not violate the FOI Act as alleged in the complaint with respect to such record.

20. With respect to the requested crisis drill reports, it is found that subsequent to the filing of the complaint in this matter, the complainant reached out to and obtained a copy of the requested 2016-2017 crisis drill report from the respondents' former director of safety. It is found that counsel for the complainant forwarded a copy of such report to the respondents.

21. At the hearing, Ms. Aponte testified that the respondents' Security Department is responsible for compiling and maintaining crisis drill reports. She testified that she reached out to and was in constant communication with Security Department personnel regarding the requested crisis drill reports. Ms. Aponte testified that she did not know what locations were searched by the Security Department personnel, but that they continued to search for responsive records. Ms. Aponte also testified that upon receiving a copy of the 2016-2017 crisis drill report, as described in paragraph 20, above, she forwarded such record to the respondents' Director of Security and inquired as to whether a similar crisis drill report existed for 2017-2018 and was told that he was reaching out to an employee whom he believed could locate such report.

22. It is found that the day after the hearing in this matter, on July 2, 2021, the respondents provided the complainant with a copy of the 2017-2018 crisis drill report. It is found that the respondents themselves never provided the complainant with a copy of the 2016-2017 crisis drill report in response to her records request.

23. It is found that the respondents failed to provide the complainant with all of the requested crisis drill reports.

24. With respect to the complainant's claim that the respondents' response was not prompt, the Commission has previously opined that the meaning of the word "promptly" is a particularly fact-based question. 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 that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the

volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

25. Ms. Aponte testified, and it is found, that she is the sole employee tasked with handling FOI records requests and receives on average 100-150 requests per school year. She also testified that she does not necessarily maintain records requested and must then reach out to other departments to locate responsive records. In addition, she testified that there were some personnel changes in the Security Department.

26. Although the Commission recognizes that Ms. Aponte is the sole employee tasked with responding to numerous records requests and that there were some personnel changes, it is found that the provision of the 2017-2018 crisis drill report approximately 15 months after the initial request was not prompt.

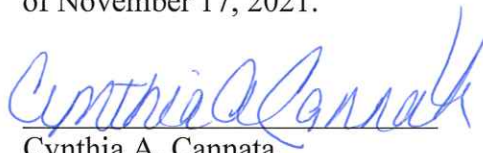
27. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the request for crisis drill reports.

28. To the extent that the complainant is requesting civil penalties, the Commission notes that a request for civil penalties was not fairly raised in the complaint, and therefore, the Commission declines to consider such a request.

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

1. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 17, 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:

ELAINE PAPAS, c/o Attorney Anthony J. Interlandi, Monarch Law LLC, 36 Russ Street, Hartford, CT 06106

EXECUTIVE DIRECTOR OF HUMAN RESOURCES, HARTFORD PUBLIC SCHOOLS; EXECUTIVE DIRECTOR OF INTERNAL INVESTIGATION AND SECURITY, HARTFORD PUBLIC SCHOOLS; LABOR RELATIONS INFORMATION SPECIALIST, HARTFORD PUBLIC SCHOOLS; AND HARTFORD PUBLIC SCHOOLS, c/o Cynthia Lauture, Esq., Office of the Corporation Counsel, City of Hartford, 550 Main Street, Hartford, CT 06103 and Attorney Lori Mizerak, Office of Corporation Counsel, City of Hartford, 550 Main Street, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission