

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Gregg Haythorn and Jenn Haythorn,

Complainants

against

Docket # FIC 2021-0470

Chairman, Board of Education, Weston
Public Schools; and Board of Education,
Weston Public Schools,

Respondents

July 27, 2022

The above-captioned matter was heard as a contested case on May 27, 2022, at which time the complainants and the respondents appeared, and presented testimony, exhibits and argument on the complaint. By order of the hearing officer, the hearing was reopened by notice issued June 1, 2022 for the purpose of taking additional evidence. The reopened hearing was held on June 10, 2022. Due to the COVID-19 pandemic and the state's response to it, the hearings were conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

Subsequently, on June 13, 2022, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit, which has been marked, without objection, as Respondents' Exhibit 5 (after-filed): Series of emails between respondents. On June 24, 2022, pursuant to a separate order of the hearing officer, the respondents submitted an after-filed exhibit, which has been marked, without objection, as Respondents' Exhibit 6 (after-filed): Email from Lisa Wolak, dated May 24, 2022. On June 26, 2022, the complainants submitted an after-filed exhibit, which has been marked, without objection, as Complainants' Exhibit U (after-filed): Email from Gregg Haythorn, dated May 17, 2021, with attachments.

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 August 10, 2021, the complainants requested that the respondents provide them with copies of:

[A]ll records, text messages, emails, documents, notes, communications, etc. as specified in the April 12th records request of Town of Weston officials regarding the 2020 investigation and analysis by the B[oard] o[f] E[ducation], Central Office, and Town officials (and others) of

alternatives to the W[eston] P[ublic] S[chools] State Partnership Health Plan, including with insurance vendors, carriers, brokers, agents, and providers, as well as all State of C[onnecticut] elected, appointed, and paid officials including but not limited to Anne Hughes and the State of C[onnecticut] Comptroller and the staff. (“August 10th request”).

3. On August 10, 2021, the respondents acknowledged receipt of the August 10th request and informed the complainants that they would begin processing such request.

4. By letter of complaint filed August 19, 2021, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly provide them with copies of the requested records, as described in paragraph 2, above. Specifically, the complainants characterized their request as follows:

All Board of Ed[ucation] member, Town of Weston officials, and W[eston] P[ublic] S[chools] Central Office Administrator communications, documents, analysis, presentation materials, worksheets, notes, etc., from Town issued and personal email, te[x]t, and other accounts and files, pertaining to the 2020/2021 budget analysis and negotiation pertaining to [the] W[eston] P[ublic] S[chools]’ participation in the State of C[onnecticut] Partnership Health Insurance Plan and alternative plans including BCBS-including (but not exclusively) those records pertaining to the previously undisclosed direct involvement of State Rep[resentative] Anne Hughes and State of C[onnecticut] Comptroller.¹

¹In their complaint, the complainants also alleged that the respondents failed to promptly provide them with copies of records responsive to two other records requests. Such requests were identified as requests 2 and 3 in the complaint. At the May 27, 2022 hearing in this matter, the complainants directed the hearing officer to certain exhibits that they identified as those records requests. However, after carefully examining those exhibits, the hearing officer determined that they were not the records requests, as described in the complaint. Accordingly, at the June 10, 2022 reopened hearing, the hearing officer ordered the complainants to submit copies of the original records requests as after-filed exhibits on or before June 17, 2022. In response, the complainants submitted three documents, all of which had been previously marked as exhibits at the May 27, 2022 hearing, and none of which appeared to constitute the records requests. Accordingly, on June 17, 2022, the hearing officer issued a second order, requesting that the complainants clarify in writing which of the submitted documents constituted the records requests or submit copies of the original records requests on or before June 21, 2022. In response to that order, the complainants informed the hearing officer that they were unable to locate copies of the original records requests. Thereafter, on June 26, 2022, the complainants submitted an email, dated May 17, 2021, which they believed to be a copy of the original records requests. Upon careful review of that document in conjunction with the complaint, it was unclear whether that document actually constituted such requests. On June 28, 2022, pursuant to an order of the hearing officer, the respondents informed the hearing officer that they were unable to locate copies of the original records requests. The parties dispute the scope and content of those requests. Consequently, without having copies of the original records requests to review, the hearing officer is unable to make any findings of fact and conclusions of law regarding whether the respondents failed to promptly provide the complainants with records responsive to the requests identified as 2 and 3 in the complaint. Therefore, those requests will not be further addressed herein.

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

6. 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.

7. 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.”

8. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearings, the complainants contended that the respondents failed to conduct an adequate search for the requested records and to promptly provide such records to the complainants.² The respondents argued that they conducted a diligent search for the requested records and that they have made and will continue to make reasonable efforts to promptly comply with the complainants’ voluminous records request.

10. It is found that the records request, as described in paragraph 2, above, encompassed electronic records, including the respondents’ work emails, personal emails, and text messages, as well as hardcopy records, including the respondents’ personal notes and other documents.

11. With respect to the respondents’ search for emails responsive to the August 10th request, Daniel Devito, the Director of Digital Learning and Technology for the respondents, testified, and it is found, that he initially compiled a list of search terms to use in searching the respondents’ email archive. It is found that Devito and Lisa Wolak, the Superintendent for the respondents, subsequently met with the complainants, including on April 26, 2022, at which meeting Devito gleaned more information about their request and was able to identify additional

²At the reopened hearing and in their post-hearing brief, the complainants requested that the Commission impose civil penalties against the respondents. However, such request was not fairly raised in the complaint, and therefore, it will not be further addressed herein.

search terms. It is also found that Devito extended the timeframe of the search. It is found that Devito completed his search of the respondents' email archive and ultimately located 15,237 potentially responsive records. It is found that Jodi Sacchetta, the Executive Secretary to the Superintendent, was tasked with reviewing such records in addition to all of her other responsibilities. It is found that, in February 2022 and May 2022, Sacchetta provided a total of 22 responsive records to the complainants. However, Sacchetta testified, and it is found, that, as of the date of the reopened hearing in this matter, she still had thousands of records to review.

12. It is also found that, on or about May 24, 2022, Superintendent Wolak requested that the respondents conduct searches of their personal email accounts, notes and text messages for records responsive to the August 10th request. It is found that, as of the date of the reopened hearing, the respondents had not located any such records.

13. With respect to the respondents' search for hardcopy records responsive to the August 10th request, it is found that Sacchetta was tasked with conducting such search. Sacchetta testified, and it is found, that she had not yet conducted such search, but planned to do so upon completion of her review of the records described in paragraph 11, above.

14. With respect to the complainants' claim that the respondents failed to promptly provide them with responsive records, 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 account all of the factors presented by a particular request." The advisory opinion goes on to describe some of the factors that should be considered, including: 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.

15. It is found that the complainants made approximately 108 separate records requests to the respondents between September 2019 and May 2022, a less than three-year period. It is also found that, since October 2020, when Devito began assisting the respondents with fulfilling records requests, he had spent approximately 250-300 hours working on the complainants' requests and approximately 100 hours working on all other requests. It is further found that the respondents hired an additional staff member to assist with responding to records requests due to the volume of requests that they received. As to the records request at issue, it is found that the complainants did not indicate a specific time by which they needed such records. It is also found that the complainants' request was very broad and lacked clarity, which was evidenced, in part, by the fact that the complainants themselves changed the verbiage that they used to describe their request in their complaint to the Commission. It is further found that the respondents met with the complainants on at least one occasion in an effort to clarify the complainants' request. Despite that effort, it is found that the request uncovered more than 15,000 potentially responsive records that needed to be reviewed. It is also found that, as of the date of the hearing, the respondents had spent at least 64 hours conducting such review and had disclosed approximately

22 records to date. It is found that the respondents have provided responsive records to the complainants on a rolling basis. It is further found that, since the complainants made the request at issue, the respondents have experienced staff turnover, not only of individuals who were responsible for responding to records requests, but also of individuals in administrative positions.

16. While the Commission recognizes that the respondents have not provided all responsive records as of the date of the contested case hearings in this matter, it is found that the respondents have been diligent in their search and have spent a significant amount of time searching for and reviewing records responsive to the August 10th request. It is also found that the respondents were, and remain, committed to processing the August 10th request and providing records responsive to such request. It is further found that the delay in responding to such request was caused, in part, both by the fact that the request at issue was unclear and broad and by the fact that the complainants made a large volume of records requests. See Torlai v. Freedom of Information Commission, Docket No. CV-15-5016760-S, 2016 WL 4150549 (June 27, 2016) (noting that the complainant filed “an astonishing 42 other records requests” with the respondent department during a two year period, finding it “noteworthy” that the complainant took no responsibility “for any part of the problem,” and concluding that “[t]his sort of deluge cannot help but overwhelm a state agency”); see also Montoya v. Superintendent of Schools, Westport Public Schools, et al., Docket #FIC 2019-0606 (June 23, 2021) (finding that “the respondents communicated with the complainant regarding [his] request and provided responsive records on a rolling basis,” “which[, coupled with the volume of requests,] indicate[d] that the respondents acted in good faith to provide records responsive to the complainant’s request”).

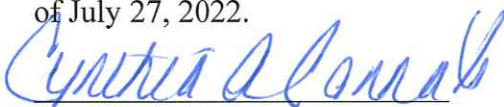
17. Finally, it is found, based on all of the evidence in this case, that the respondents have been appropriately responsive to the August 10th request and have made reasonable efforts to promptly comply with such request.

18. On the basis of the record concerning the above-captioned matter, and the specific facts and circumstances of this case, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S.

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.
2. The Commission encourages the respondents to continue to provide the complainants with copies of any records responsive to their request on a rolling basis, or otherwise inform the complainants in writing of the results of their continuing search.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 27, 2022.



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:

GREGG HAYTHORN, 6 Winthrop Hill, Weston, CT 06883; **AND JENN HAYTHORN**, 6 Winthrop Hill Road, Weston, CT 06883

CHAIRMAN, BOARD OF EDUCATION, WESTON PUBLIC SCHOOLS; AND BOARD OF EDUCATION, WESTON PUBLIC SCHOOLS, c/o Attorney Jessica Richman Smith, Shipman and Goodwin LLP, 300 Atlantic Street, 3rd Floor, Stamford, CT 06901 and Attorney Sarah Gleason, Shipman & Goodwin LLP, 300 Atlantic Avenue, 3rd Floor, Stamford, CT 06901



Cynthia A. Cannata
Acting Clerk of the Commission