

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gregg Haythorn and Jenn Haythorn,

Complainants

against

Docket #FIC 2020-0634

Superintendent of Schools, Weston
Public Schools; and Weston Public Schools,

Respondents

October 12, 2022

The above-captioned matter was heard as a contested case on November 23, 2021, December 20, 2021, March 8, 2022 and August 31, 2022, at which times the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. The hearing was conducted remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Sp. Sess.), and §1 of Public Act 22-3 (effective May 1, 2022).

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 November 1, 2019, the complainants requested from the respondents a copy of “all written and electronic communications between any Weston District employee or representative and Silver and Petrocelli dated calendar years 2016 - 2019.”
3. It is found that, by email dated November 1, 2019, the complainants requested from the respondents a copy of “all correspondence and communications (written or electronic) between any representative of the Weston District or BoE and any representative of Milone and MacBroom or NESDEC pertaining to Weston district enrollment projections and analysis for the [s]chool [y]ears 2015- 2020.”
4. It is found that, by email dated November 5, 2020, the complainants requested from the respondents a copy of:

all Weston Board of Ed member and Cabinet-level District Administrator hand-written and electronic notes, worksheets, correspondence, emails (active, archived, and deleted whether generated by a BoE member or received by the BoE member directly or as a cc) from Town-issued and

personal accounts, presentation materials, analysis, social media posts (draft and final versions), pertaining to the 2020/2021 District and Town budget review, deliberation, creation, and approval process, for the dates October 1, 2019 – July 30, 2020. Specifically, email records would include (but not be limited to) those between private residents, DTC members, other Board members of all 3 Boards, District cabinet members, demographers, etc., pertaining in any way to the 2020/2021 budget (meetings, workshops, presentations, deliberations, hearings, approval, votes, motions, worksheets, etc.).

5. By email dated December 8, 2020, and filed with the Commission on December 10, 2020,¹ the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the requested records described in paragraphs 2, 3 and 4, above.

6. At the time of the request, §1-200(5), G.S., provided:

“[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.²

7. 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.

¹ 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 was applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. In addition, Executive Order 7M suspended the requirement that any appeal alleging a violation of the FOI Act be filed with the Commission within 30 days of the alleged violation. Such Order applied to appeals filed between March 25, 2020 and April 19, 2021. Consequently, the Commission retains jurisdiction over this matter.

² Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped”.

8. 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.”

9. It is concluded that the records requested by the complainants are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that the respondents acknowledged the requests described in paragraphs 2 and 3, above, by email dated November 5, 2020. In their email, the respondents informed the complainants that their initial search identified approximately 4,500 pages of records potentially responsive to the request described in paragraph 2, above, and 2,500 pages of records potentially responsive to the request described in paragraph 3, above. The respondents further informed the complainants that they would need to review those records to determine whether they were actually responsive and whether any were exempt from disclosure. In light of the volume of records, respondents asked the complainants whether they wished to narrow the scope of the requests, and if not, whether they wished certain records to be prioritized over others. Also, the respondents informed the complainants that they would provide non-exempt responsive records on a rolling basis. It is found that, in an email also dated November 5, 2020, the complainants declined to narrow the scope of the request or to prioritize the records.

11. It is found that the respondents disclosed copies of records responsive to the requests, described in paragraphs 2 and 3, above, to the complainants in February and March 2021.

12. With regard to the request, described in paragraph 4, above, it is found that the respondents disclosed copies of responsive records on December 21, 2021, March 5, 2021, March 12, 2021, March 26, 2021, April 1, 2021, April 6, 2021, April 7, 2021, and April 22, 2021 to the complainants.

13. At the hearing in this matter, the complainants argued that the respondents failed to provide the records responsive to the requests described in paragraphs 2, 3, and 4, above, promptly. In addition, the complainants argued that the respondents failed to conduct a thorough search for records responsive to the request, described in paragraph 4, above, and therefore, that they failed to prove that they provided all responsive records.

14. With regard to the question of promptness, 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.

15. It is found that, between September 6, 2019 and September 22, 2021, the complainants submitted 99 records requests to the respondents. It is found that, at the time of the requests at issue herein, dozens of those requests were pending. In addition, it is found that the respondents had received records requests from other requesters, which requests also were pending. It is found that the sheer number of requests made by the complainants to the respondents during the time frame referenced above significantly contributed to the delay in providing the requested records.

16. It is found that the three requests at issue in this case sought records from multiple years and from numerous town officials or employees. As found in paragraph 9, above, the search for records responsive to the request described in paragraph 2, above, identified 4,500 pages of records, and that the search for records responsive to the request described in paragraph 3, above, identified 2,500 pages. It is found that the scope of the request described in paragraph 4, above, was very broad and yielded as many as 14,000 potentially responsive records. It is found that the volume of records responsive to the requests at issue herein was high; in all, the respondents provided approximately 32,000 pages of records to the complainants. However, it is found that the number of records required to be reviewed prior to providing those pages to the complainants was significantly higher. It is found that the respondents spent approximately 150 hours responding to the requests.

17. It is found that, shortly after the date of the requests described in paragraph 2 and 3, above, the COVID-19 pandemic forced the closing of schools, businesses and government offices. It is found that the request described in paragraph 4, above, was made while schools, businesses and government offices were still closed and/or dealing with the effects of the pandemic. It is found that, one such significant issue the respondents faced during this time was the transition to remote/hybrid learning, which required, among other tasks, procurement of equipment and training of teachers, staff and administrators on the technical aspects of remote learning/teaching. It is found that the pandemic significantly impacted the respondents' ability to respond to FOI requests.

18. In addition, it is found that at the time of the requests at issue, the respondents were understaffed, having experienced the departure of several staff members who had been responsible for or involved with responding to FOI requests. It is found that such staffing shortages contributed to the delay in providing responsive records to the complainants.

19. It is found that, at the time the complainants made the request described in paragraph 4, above, they informed the respondents that the records pertaining to the budget were of great importance to them because "the budget cycle for next year is already well underway."

20. Taking into consideration all of the foregoing factors, it is found that, under the facts and circumstances of this case, the respondents provided the requested records to the complainants promptly.

21. Accordingly, it is concluded that the respondents did not violate the promptness requirements in §1-210(a) and 1-212(a), G.S.

22. With regard to the complainants' claim that the respondents failed to conduct a thorough search for records responsive to the request described in paragraph 4, above, it is found that the respondents searched for responsive records maintained electronically including deleted emails, contained on the town server, and reasonably used the search terms "budget" and "budget book", which located 14,000 and 11,000 emails, respectively. In addition, each of the officials or employees identified in the request searched for responsive records, including text messages, on their personal devices. It is found that the respondents also conducted a search of their hard copy records responsive to the request.

23. The complainant argued that the search was not thorough because it did not uncover every document extant, and that therefore the respondents violated the FOI Act. However, it is found that the search conducted by the respondents was diligent, thorough, and reasonably calculated to identify and locate the requested records, and that the respondents provided all such non-exempt records to the complainant.

24. Based upon the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 October 12, 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 AND JENN HAYTHORN, 6 Winthrop Hill, Weston, CT 06883

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



Cynthia A. Cannata
Acting Clerk of the Commission