

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Melissa Steeves,

Complainants

against

Docket #FIC 2021-0617

Superintendent of Schools,
Trumbull Public Schools; and
Trumbull Public Schools

Respondents

October 12, 2022

The above-captioned matter was heard as a contested case on March 16, 2022, at which time the complainant and the respondents appeared 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 remotely through the use of electronic equipment, pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3.

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 letter dated September 13, 2021, the complainant submitted to the respondents the following request for records:

We request that you provide us with copies of any and all materials including lesson plans, instruction manuals, instruction handbooks, proposals from outside contractors, documents, emails, voice mails, charts, graphics, other teaching materials and any other supplemental material used by this school district to instruct students, teachers, staff, or parents about any of these subjects during the period of January 1, 2019 and the date of this request: September 13, 2021[:]

- (a) The 1619 Project
- (b) Howard Zinn's "A People's History of the United States"
- (c) The Black Lives Matter Organization and/or Curriculum
- (d) Marxist Ideology
- (e) Critical Race Theory
- (f) Gender Identity and Trans-Genderism
- (g) Anything sexuality related by grade level

- (h) Anything related to “White Fragility” or anti-White content
- (i) David Steeves
- (j) Melissa Steeves
- (k) Grace Steeves
- (l) Spencer Steeves
- (m) SERC [State Education Resource Center]
- (o) Medical Mask Exemption for Grace and Spencer Steeves....

Should you have any questions concerning this FOIA request or our petition for a waiver of fees, please do not hesitate to contact me

3. It is found that, by email dated September 17, 2021, the respondents acknowledged the request described in paragraph 2, above. It is further found that, by email dated October 6, 2022, the respondents notified the complainant that they identified records responsive to the request, that they would need to redact information related to other students before providing such records, and that copies of such records would be provided at a cost of 10 cents per page.

4. It is found that, by email dated October 12, 2021, the respondents notified the complainant that 153 pages of records responsive to the complainant’s request, set forth in paragraphs 2(i)-(l), above, were available for pick up.

5. It is further found that the respondents otherwise denied the complainant’s request, stating that “[t]o identify any further documents which are responsive would require extensive and time intensive research which we are not required to undertake under the Freedom of Information Act”

6. By email dated and filed October 27, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with copies of all requested records.

7. 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.

8. 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.

9. 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.”

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

11. At the hearing, the complainant contended that, although she received responsive records, additional records should have been provided.

12. With respect to the request for records relating to David Steeves, Melissa Steeves, Grace Steeves, Spencer Steeves, and medical mask exemption for Grace and Spencer Steeves, described in paragraph 2(i)-(l) and 2(o), it is found that the respondents do not maintain “materials . . . used by [the] school district to instruct students, teachers, staff, and/or parents” about such topics.

13. Nevertheless, the respondents’ IT Director conducted a search for all emails to, from, and about David Steeves, Melissa Steeves, Grace Steeves, and Spencer Steeves, and provided copies of all such emails to the complainant.

14. At the hearing, the respondents contended that certain other email communications were withheld pursuant to §1-210(b)(10), G.S., because they are communications privileged by the attorney-client relationship. The respondents submitted such records to the Commission for in camera inspection. However, based on an in camera review of the records, such records are not responsive to the complainant’s request for “materials . . . used by [the] school district to instruct students, teachers, staff, or parents about” the topics described in the request.

15. It is therefore concluded that the respondents did not violate the FOI Act with respect to the complainant’s request for records described in paragraphs 2(i)-(l) and 2(o), above.

16. With respect to the request for records described in paragraphs 2(a)-(h) and 2(m), above, it is found that, on or about February 2022, the respondents provided the complainant with 133 pages of records and one flash drive containing over 3,000 email records. However, it is found that the respondents did not conduct a search for all records responsive to the request. Instead, it is found that the respondents limited their search to emails that referenced the topics listed in the request, and provided emails to the complainant regardless of whether such emails were responsive to the request.

17. At the hearing, the respondents contended that, although they voluntarily searched for records as set forth in paragraph 16, above, they were not obligated to search for responsive records because doing so would constitute research, which is not required under the FOI Act. In particular, the respondents contended that the request “did not seek particular records, but broad

categories of records that were only responsive if they were utilized in a particular way,” namely, if they were “used ... to instruct students, teachers, staff, or parents.” The respondents claimed that to locate and provide all responsive records, they would have had to: exercise discretion to identify which search terms to use to search for potentially responsive records; review and analyze the content of the potentially responsive records to determine whether each record related to the topics listed in the request; and then reach out to the appropriate teachers, department chairs, and/or administrative staff to determine whether each such record was “used ... to instruct” on the topics identified in the request.

18. In *Wildin v. Freedom of Information Commission*, 56 Conn. App. 683 (2000), the Appellate Court held that a public agency is not required to conduct research in order to respond to a request for public records. The court explained that a request requires research if it does not properly identify the records sought, such that the public agency must conduct an analysis or exercise discretion to determine which records fall within the scope of the request. *Id.* at 686–87. The court contrasted a request that would require analysis or discretion with one that is simply burdensome, noting that “[a] record request that is simply burdensome does not make that request one requiring research.” *Id.* at 687. As the court explained, the process of gathering records from many different sources or reviewing a voluminous set of records to determine if they are subject to disclosure, is not research. *Id.*

19. With respect to the records described in paragraph 2(g), above, it is found that searching for records “used to instruct students, teachers, staff, or parents” about “[a]nything sexuality related by grade level” would require research. It is found that, on its face, the request is not sufficiently precise to identify the records sought. Based on the testimony presented at the hearing, it is further found that whether any particular records contain information that is “sexuality related” is a subjective determination, such that the respondents would be required to analyze the contents of instructional materials and exercise discretion in deciding whether such records were responsive to the request.

20. However, it is found that contacting school district staff to identify records used to instruct on the specific topics identified in paragraphs 2(a)-(f), 2(h), and 2(m), above, is not research. Undertaking those efforts would not require the respondents to analyze whether records maintained by the school district were used to instruct on the topics described in the request for the time period at issue. *See McKinney v. Chief, Police Department, City of New Haven, et al.*, FIC 2017-0524 (process of reviewing thousands of complaints and 911 calls to identify cases involving specific fact pattern did not require research); *Brennan v. Chief, Police Department, Town of West Hartford, et al.*, FIC 2012-0405 (process of updating database by contacting court for case disposition information to determine whether records were exempt from disclosure was not research).

21. Based on the foregoing, it is found that the respondents failed to prove that they provided all records responsive to the complainant’s request for records described in paragraphs 2(a)-(f), 2(h), and 2(m), above, to the complainant.

22. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the request described in paragraph 2(a)-(f), 2(h) and 2(m) above.

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:

MELISSA STEEVES, 111 Putting Green Road North, Trumbull, CT 06611

SUPERINTENDENT OF SCHOOLS, TRUMBULL PUBLIC SCHOOLS; AND TRUMBULL PUBLIC SCHOOLS, c/o Attorney Rebecca Goldberg, Berchem Moses PC, 75 Broad Street, Milford, CT 06460



Cynthia A. Cannata
Acting Clerk of the Commission

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

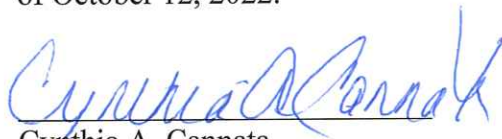
1. Forthwith and within sixty days of the date of the notice of final decision in this matter, the respondents shall conduct a search for, and provide copies of, all records used by the school district for instruction on the topics set forth in paragraphs 2(a)-(f), 2(h) and 2(m), above, during the period of January 1, 2019 through September 13, 2021, free of charge.

2. In complying with the order set forth in paragraph one, above, the respondents need only conduct a search for records using the terms identified by the complainant, as set forth in paragraphs 2(a)-(f), 2(h), and 2(m). The respondents need not search beyond those express terms and need not exercise any discretion in ascertaining whether a record falls within the scope of the topic identified.

3. If no responsive records are located, the respondents shall so inform the complainant by affidavit, no later than sixty days of the date of the notice of final decision in this matter.

4. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210 and 1-212 G.S.

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