

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Christopher Aidone,

Complainant

against

Docket # FIC 2021-0618

Board of Education,
Westport Public Schools; and Westport
Public Schools

Respondents

October 26, 2022

The above-captioned matter was heard as a contested case on July 14, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits¹ and argument on the complaint.² 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 email dated July 21, 2021, the complainant in relevant part, requested that the respondents Board and Westport Public Schools, provide him with a copy of:

[a]ll of the following types of communication, correspondence and documents: email messages (including any and all attached files/documents to emails), all presentations, all memoranda, all agendas, and all meeting minutes, between and among, both individually and collectively, the following individuals, groups, entities and committees, dated December 1, 2019 to present:

All members of TEAM Westport...

¹ Following the hearing in this matter, a document consisting of 5 pages that was offered as a full exhibit by the complainant during the hearing, but not accepted, was marked as Complainant's Exhibit B For Identification Purposes Only.

² Prior to the hearing in this matter, the complainant withdrew the complaint against the Chair, TEAM Westport, Town of Westport, and TEAM Westport, Town of Westport. The case caption has been amended.

All members of the Westport, CT Public Schools Equity Study team Committee...

All members of the Westport, CT Public Schools BOE...

The NYU Metropolitan Center for Research on Equity and the Transformation of Schools

Jennifer Tooker, Second Selectwoman, Town of Westport CT

Thomas Scarice, Superintendent, WPS

Dr. Anthony Buono, Asst. Superintendent, WPS

Dr. Valerie Babich, Coordinator of Psychological Services, WPS

That contain any and all mention, citation, discussion of, or reference to the following list of words, groupings of words (in any combination), and/or topics: Anti Racism, Black Lives Matter, BLM/BLM Movement, Critical Race Theory, CRT, Cultural appropriation, Colonialism, Cultural Sensitivity, Diversity, DEI, DEI Committee, Equity, Inclusion, Inequality, Microaggression(s), Multi-culturism, New York University, NYU Metro Center, NYU Metropolitan Center for Research on Equity and the Transformation of Schools, NYU Steinhardt, Racism, race-based theory, Staff/ staff member(s) of color, Structural racism, Systemic racism, Westport, CT Public Schools Equity Study, White privilege, White supremacy, Victimization

And any discussions regarding potential changes or additions to WPS school curricular, WPS school mission statements, WPS school goals, and WPS book/reading assignments, which may include or incorporate any and all of the above-mentioned words, groupings of words, and topics.³

3. It is found that by email dated July 21, 2021, counsel for the Town of Westport (Town) acknowledged receipt of the request and informed the complainant that Mr. John Bayers, Assistant Superintendent for Human Resources and General Administration would coordinate and gather responsive records on behalf of the Equity Study TEAM Committee, Board of Education, Superintendent Scarice, Dr. Buono and Dr. Babich. She further informed him that neither the Town nor the Westport Public Schools maintain records of the NYU Metropolitan Center for Research on Equity and the Transformation of Schools but that responsive records that contain such names would be produced.

³ A copy of the July 21, 2021 request was also sent via email to Thomas Scarice, Superintendent, Westport Public Schools (WPS); John Bayers, Director of Human Resources, WPS; Dr. Anthony Buono, Assistant Superintendent, WPS; Jim Marpe, First Selectman, Town of Westport; and Jennifer Tooker, Selectwoman, Town of Westport.

4. It is found that at the suggestion of Mr. Bayers, the complainant and Mr. Bayers met on or about August 6, 2021 (August 6, 2021 meeting), to discuss the request and if it could be narrowed. The August 6, 2021 meeting did not lead to a narrowing of the request.

5. It is found that having not received any records, or follow up after the August 6, 2021 meeting, the complainant on more than one occasion (including on August 10, September 21 and 29, and October 4, 2021) emailed Mr. Bayers for an update regarding the request, but never received a response.

6. By letter of complaint, dated and filed with the Freedom of Information (FOI) Commission (Commission) on November 1, 2021, the complainant appealed, alleging that the respondents violated the FOI Act by failing to provide him with the records, as described in paragraph 2, above.

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:

[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., in relevant part, further provides: “[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 concluded that the requested records are “public records” within the meaning of §§ 1-200(5) and 1-210(a), G.S.

11. It is found that following the August 6, 2021 meeting, Mr. Bayers worked with the respondent Board’s tech staff who conducted a search using the search terms specified by the complainant.

12. It is found that the search generated more than 130,000 pages of potentially responsive records.

13. It is found that by cover letter dated July 11, 2022, almost one year after the complainant's request, Mr. Bayers provided the complainant with approximately 1,500 pages of responsive records, apologized for the delay, and informed the complainant that he is "continuing to review potentially responsive records and will provide additional non-exempt, responsive records on a rolling basis, as they become available." Additionally, in the July 11, 2022 letter, Mr. Bayers asked the complainant if he would like the records review prioritized in any specific way. He further indicated in the July 11, 2022 letter:

I recognize that it has taken me a long time to provide these records... It has been an unusually busy year as we have continued to wrestle with the impact of COVID-19 on our schools and district staffing, and we have not had the appropriate levels of staffing available to help me respond to FOIA requests. As the Assistant Superintendent for Human Resources and General Administration, I have an extremely full plate, and I underestimated the extent to which I would be diverted from the task of addressing your request... It is necessary to carefully review each record to ensure that it does not contain confidential student information or other protected information. In addition, we may need to redact certain information that is protected or otherwise exempt from disclosure. This process can take a long time.

Please understand that the district takes its obligations under FOIA very seriously and we are committed to responding fully to your request as promptly as practicable. I plan to set aside time every week to work through the 130,000+ pages until our response is complete....

14. At the hearing in this matter, the complainant contended that the respondents failed to promptly provide him with all records responsive to his request.⁴

15. The Commission has previously opined that the meaning of the word "promptly" in §1-210(a) G.S., means, "quickly and without undue delay, taking into account all of the factors presented by a particular request ... [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in 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 the personnel time involved in complying with the request. See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

⁴ The complainant did not contest the redaction of confidential student information, and any other protected information from the responsive records.

16. It is found, after taking into consideration all the reasons the respondents explained at the hearing that caused the delay, including, the impact of the COVID-19 pandemic, level of staffing, and redactions to be made to records prior to disclosure, the respondents' overall response was not prompt. In particular, it is found that the respondents did not follow up with the complainant for eleven months (between the August 6, 2021 meeting and the July 11, 2022 cover letter), to explain their circumstances, in accordance with Advisory Opinion #51.

17. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide the complainant with all non-exempt responsive records.

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

1. The production of all responsive records to the request, described in paragraph 2 of the findings, above, shall be completed not later than 6 months from the date of the Notice of the Final Decision in this matter. Within 30 days of the Notice of the Final Decision in this matter, the respondents shall commence providing the complainant with a copy of the non-exempt responsive records in installments, on a rolling basis, at least once each month, until all responsive records have been provided.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of October 26, 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:

CHRISTOPHER AIDONE, 11 Janson Drive, Westport, CT 06880

CHAIR, TEAM WESTPORT, TOWN OF WESTPORT; TEAM WESTPORT, TOWN OF WESTPORT, c/o Attorney Nicholas R. Bamonte, Berchem Moses PC, 1221 Post Road East, Westport, CT 06880 and Attorney Eileen Lavigne Flug, Berchem Moses P.C., 1221 Post Road East, Westport, CT 06880; **AND BOARD OF EDUCATION, WESTPORT PUBLIC SCHOOLS; WESTPORT 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 Street, 3rd Floor, Stamford, CT 06901



Cynthia A. Cannata
Acting Clerk of the Commission