

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kevin Cox,

Complainant

against

Docket #FIC 2022-0110

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

Respondents

January 25, 2023

The above-captioned matter was heard as a contested case on July 5, 2022, at which time the complainant appeared and presented testimony, exhibits and argument on the complaint, but the respondents did not appear at the hearing. On July 6, 2022, the respondents filed a motion to reopen the hearing, stating that they had inadvertently failed to appear at the hearing. The respondents' motion to reopen was granted. On September 13, 2022, a reopened contested case hearing was held, 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 July 5 hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Spec. Sess.), as amended by §1 of Public Act No. 22-3. The September 13 hearing was an in-person proceeding.

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 April 28, 2021, the complainant requested that the respondents provide him with copies of the following records:
 - a. All the Oxford High School Grounds Maintenance Bids submitted to the Board of Education (the "BOE") on or before the 12:00 pm deadline of April 23, 2021;
 - b. All documentation that accompanied the submissions;
and
 - c. The minutes of the BOE [meeting] on April 27, 2021 that included an award of the RFP-4-2021-01.

3. It is found that, by email dated April 30, 2021, the respondents acknowledged the April 28 request.

4. It is found that, by letter dated February 10, 2022, the complainant made a second request for the records described in paragraph 2, above.

5. It is found that, by a second letter dated February 10, 2022, the complainant requested that the respondents provide him with copies of the following records:

All the documents pertaining to the Oxford High School Grounds Maintenance Bid RFP-4-2021-01 submitted to the BOE after the 12:00 pm deadline on April 23, 2021.

6. It is found that, by a third letter dated February 10, 2022, the complainant requested that the respondents provide him with copies of the following records:

All documents pertaining to the execution and performance of the awarded Oxford High School Grounds Maintenance Bid RFP-4-2021-01 that were required to be submitted to the BOE per the specifications of the contract, including:

- a. Criminal background checks of all employees after RFP is awarded. . . ;
- b. Soil Analysis;
- c. Monthly reports detailing assessment of weed, insect and disease issues found and sprayed. . . ;
- d. Fertilizing;
- e. Seeding; and
- f. Product purchase invoices.

7. It is found that, by letter dated February 18, 2022, the respondents acknowledged the complainant's requests.¹

8. By letter of complaint, dated and filed March 10, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act

¹ Although the respondents' acknowledgement referenced receipt of the complainant's "letter" dated February 10, 2022, the respondents clarified at the continued contested case hearing that they received the three February 10, 2022 requests at the same time and that their acknowledgement was meant to recognize their receipt of all three requests.

by failing to provide him with copies of the records requested in paragraphs 4, 5 and 6, above.

9. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

10. 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.

11. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

13. It is found that, by letter dated March 31, 2022, the respondents disclosed 35 pages of responsive records to the complainant. It is found that this disclosure satisfied the request for records that was made on April 28, 2021 and renewed on February 10, 2022. See ¶¶ 2 and 4, above.

14. It is further found that, at the time of the first contested case hearing, the complainant had received a one-page record responsive to the request set forth in paragraph 5, above, however, he had not received any records in response to the request set forth in paragraph 6, above.

15. The complainant contended that the respondents should have more records responsive to the two outstanding requests referenced in paragraphs 5 and 6, above.

16. Robert Miller, the Superintendent of the Oxford Public Schools appeared and testified at the continued contested case hearing on behalf of the respondents.

17. It is found that, on July 11, 2022, which was six days after the first contested case hearing, the respondents disclosed all of the records they maintain that are responsive to the two remaining requests referenced in paragraphs 5 and 6, above, free of charge.

18. The complainant contended that the respondents failed to disclose the records to him promptly.

19. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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.

20. It is found that the Superintendent believed that his executive assistant was processing and responding to the complainant's initial April 28 request. It is found that it was not until the three February 10 requests were received that the respondents realized that the April 28 request had not been fulfilled. It is further found that the respondents were in the midst of a busy budgetary process when they received the requests at issue in this case.

21. It is found that it took the respondents 150 days to provide the complainant with records responsive to the February 10 requests referenced in paragraphs 5 and 6, above.

22. It is found that, other than the bid that the complainant submitted in response to the RFP referenced in paragraphs 5 and 6, above, only one other business submitted a bid.² It is therefore found that the volume of records requested was not large.

23. It is found that the request in this case was clear and straightforward. It is further found that, once the respondents turned their attention to the February 10 requests, they were able to provide the requested records to the complainant in very short order.

24. Under the facts and circumstances of this case, even taking the respondents' reasons for the delay into consideration, it is found that the respondents failed to provide the records to the complainant promptly.

25. Accordingly, it is concluded that the respondents violated the promptness provisions of §§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:

² It is found that the other business that submitted a bid in response to the RFP was awarded the contract.

1. Henceforth, the respondents shall strictly comply with the promptness 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 January 25, 2023.



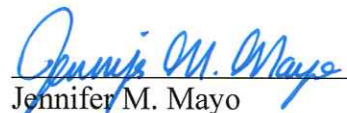
Jennifer M. Mayo
Acting Clerk of the Commission

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:

KEVIN COX, Prestige Landscaping Inc., 1 Skyline Drive, Oxford, CT 06478

CHAIRMAN, BOARD OF EDUCATION, OXFORD PUBLIC SCHOOLS; BOARD OF EDUCATION, OXFORD PUBLIC SCHOOLS; AND OXFORD PUBLIC SCHOOLS,
c/o Attorney Bianca LoGiurato, Pullman & Comley, LLC, 850 Main Street, PO Box 7006,
Bridgeport, CT 06601-7006



Jennifer M. Mayo
Acting Clerk of the Commission