

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Avi Kamrat,

Complainant

against

Docket # FIC 2022-0468

Chair, Board of Education, Town of
Hamden; and Board of Education, Town of
Hamden,

Respondents

September 27, 2023

The above-captioned matter was heard as a contested case on July 25, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

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. By complaint filed October 7, 2022, the complainant appealed to the Commission, alleging, in relevant part, that:
 - (a) The respondents violated §1-231, G.S., when they held executive sessions on September 13, 2022, and September 20, 2022, “for reasons that are not authorized by the FOI Act.”
 - (b) The respondents violated §1-231, G.S., when they “invited persons to the executive sessions on September 13, 2022, and September 20, 2022, who were not members of the Board of Education for reasons that are not permitted by the FOI Act” and because the minutes for each meeting do not include that the high school principal was invited to, and participated in, each executive session.
 - (c) The respondents’ discussions in the executive sessions on September 13, 2022, and September 20, 2022¹, went beyond the matters set forth on each meeting agenda.

¹ The Commission notes that, in the complaint, the complainant refers to a September “27” meeting with respect to this allegation. However, at the hearing, the parties clarified through testimony that the alleged violation occurred during a September 20, 2022 meeting of the respondents.

- (d) The respondents violated §1-225 by failing to timely post minutes for seven meetings occurring between July 26, 2022, and September 20, 2022.
- (e) The respondents denied the complainant's September 30, 2022, request for records by failing to promptly provide all of the requested records.
- (f) The respondents violated §149 of Public Act 21-2 when they convened a meeting on September 20, 2022, with some members attending via electronic equipment, but (1) the minutes do not list who attended in person and via electronic equipment and (2) the vote taken regarding the calculation of weighted GPA was not taken via roll call, though it was not unanimous.²

3. It is found that, at the commencement of the 2022-2023 school year, concerns arose among students, parents, and administration of the Hamden Public Schools regarding the calculation of weighted grading and class rank and whether the policy concerning such issue was fair to all students. It is further found that, because of these concerns, the respondents sought legal advice from their counsel pertaining to the calculation of weighted grading and class rank.

4. It is found that the respondents convened a regular meeting on September 13, 2022. It is further found that the meeting agenda described, in relevant part, the following business to be conducted: "6. Executive Session ... (b) Discussion of confidential attorney-client communication regarding the calculation of weighted grading and class rank."

5. It is found that the respondents subsequently convened a special meeting on September 20, 2022, and that the agenda for such meeting described, in relevant part, the following business to be conducted: "4. Proposed for executive session: Discussion of attorney-client privileged communication regarding the calculation of weighted grading and class rank", and a separate action item, described as "possible action regarding the calculation of weighted grading and class rank."

6. It is found that, following the meetings described in paragraphs 4 and 5, above, by email dated September 28, 2022, the complainant requested that the respondents clarify "which of the 5 reasons the board went into executive session" at each meeting. It is found that the respondent Board Chair replied to the complainant that same day, attempted to answer the complainant's questions, and cited to §§1-200(6), and 1-210(b)(10), G.S.

7. It is found that, by separate email dated September 28, 2022, the complainant requested access to the minutes of the September 13, 2022, and September 20, 2022, meetings. It is found that the executive assistant to the superintendent replied, "as soon as they are available – they will be posted and I will let you know."

8. It is found that, by email dated September 30, 2022, the complainant requested from the respondents the opportunity to inspect or obtain copies of the following public records:

² The provisions set forth in §149 of Public Act 21-2 governing meetings of public agencies conducted by electronic equipment ("electronic meetings") were in effect from July 1, 2021 through April 30, 2022. Public Act 22-3 then eliminated the April 30, 2022, sunset provision. Therefore, the electronic meeting provisions remain in effect. Such provisions were codified at §1-225a, G.S.

- (a) Minutes of the September 13, 2022, and September 20, 2022, Board of Education meetings;
- (b) Records of board member votes held at the September 13, 2022, and September 20, 2022, Board of Education meetings, if not a part of the meeting minutes;
- (c) Minutes of the executive sessions convened during the September 13, 2022, and September 20, 2022, Board of Education meetings;
- (d) All documents or records that were discussed during the executive sessions convened during the September 13, 2022, and September 20, 2022, meetings of the Board of Education (excluding any records related to the discussion to review Non-Union Contracts for Assistant Superintendents);
- (e) All materials distributed to board members in advance of the September 13, 2022, and September 20, 2022, Board of Education meetings, related to the calculation of weighted GPAs and class rank; and
- (f) Records of any recommendations that were made by the administration relating to the calculation of weighted GPAs and class rank.

9. It is found that by email dated October 4, 2022, the respondents' secretary acknowledged the complainant's request described in paragraph 8, above, and indicated that an inquiry would be made to obtain the information requested by the complainant.

10. It is found that the complainant was dissatisfied with the responses he received from the respondents, as described in paragraphs 6, 7, and 9, above, and therefore filed with the Commission the complaint that is at issue herein.

11. With respect to the allegation set forth in paragraph 2(e), above, that the respondents denied the complainant's September 30, 2022, request for records described in paragraph 8, above, §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.

12. 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 (1) inspect such records promptly during regular office or business hours . . . or (3) receive a copy of such records in accordance with section 1-212.

13. 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.”

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

15. It is found that, by email dated October 10, 2022, the respondents promptly provided the complainant with records responsive to the September 30, 2022, request. It is further found that certain responsive records were not provided to the complainant because the respondents contended that such records constitute attorney-client privileged communications within the meaning of §1-210(b)(10), G.S.

16. At the hearing, the complainant contended that the only records that remained at issue were the records described in paragraph 15, above, which the respondents contended constitute attorney-client privileged communications.

17. Immediately following the hearing, the respondents submitted to the Commission the records described in paragraph 16, above, with an Index to Records Submitted for In Camera Inspection (“Index”). On the Index, the respondents described each record as an attorney-client privileged communication exempt from disclosure pursuant to §1-210(b)(10), G.S. Such records shall hereinafter be referred to as IC-2022-0468-001 through IC-2022-0468-017.

18. Section 1-210(b)(10), G.S., provides, in relevant part, that nothing under the FOI Act requires the disclosure of “communications privileged by the attorney-client relationship.”

19. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the attorney-client privilege. That law is set forth in Maxwell v. FOI Comm’n, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” *Id.* at 149.

20. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of

such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice....

21. The Supreme Court has further stated that, “[i]n Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice. Olson v. Accessory Controls and Equipment Corp., 254 Conn. 145, 157 (2000).

22. After careful in camera inspection, it is found that the in camera records constitute written legal memoranda by an attorney with the law firm of Shipman & Goodwin, LLP, which law firm serves as counsel to the respondents. It is found that the memoranda are directed to the attention of their client, the respondents. It is found that the in camera records contain factual information, legal considerations, and recommendations in response to the advice sought by the respondents concerning the issues identified in paragraph 3, above.

23. It is found that each legal memorandum is clearly marked, in bold and all capital letters: “CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGED COMMUNICATION” and “DO NOT REDISTRIBUTE.” It is found that the in camera records were transmitted in confidence. It is further found that the respondents have not waived the attorney-client privilege.

24. Based on the foregoing, it is found that the in camera records constitute attorney-client privileged communications within the meaning of §1-210(b)(10), G.S. It is therefore concluded that the respondents did not violate the disclosure provisions in §§1-210(a) and 1-212(a), G.S., when they did not provide copies of the in camera records to the complainant, as alleged in paragraph 2(e), above.

25. With respect to the allegations set forth in paragraphs 2(a) and 2(c), above, §1-225, G.S., provides, in relevant part, that the “meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public....”

26. Section 1-200(6), G.S., defines “Executive Session”, in relevant part, as

a meeting of a public agency at which the public is excluded for one or more of the following purposes: ... (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

27. Section 1-231(b), G.S., provides that “[a]n executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless the executive session is for a purpose explicitly permitted pursuant to subdivision (6) of section 1-200.”

28. As already found in paragraphs 4 and 5, above, the respondents convened a regular meeting on September 13, 2022, and a special meeting on September 20, 2022, at which times

the respondents entered into executive session.

29. It is further found that the minutes of the September 13, 2022, regular meeting stated that the respondents entered into executive session and engaged in “discussion about attorney-client privileged communication regarding the calculation of weighted grading and class rank” Similarly, it is found that the minutes for the September 20, 2022, special meeting stated that the respondents entered into executive session in order to “discuss attorney-client privileged communication regarding the calculation of weighted grading and class rank.”

30. It is found that the respondents entered the September 13, 2022, executive session to discuss the in camera records identified as IC-2022-0468-001 through IC-2022-0468-008, which constitute a confidential written attorney-client privileged communication within the meaning of §1-210(b)(10), G.S., as found in paragraph 24, above. It is further found that the respondents entered the September 20, 2022, executive session to discuss the in camera records identified as IC-2022-0468-009 through IC-2022-0468-017, which, as found in paragraph 24, above, constitute a separate confidential written attorney-client privileged communication within the meaning of §1-210(b)(10), G.S. It is therefore found that the respondents entered into each executive session for a purpose authorized by §§1-200(6)(E) and 1-231(b), G.S.

31. It is further found, based on the credible testimony of the respondents’ witness, that the discussion held during each executive session did not go beyond the scope of that which was noticed on the meeting agendas.

32. It is therefore concluded that the respondents did not violate the FOI Act as alleged in paragraphs 2(a) and (2)(c), above.

33. With respect to the allegation described in paragraph 2(b), above, §1-231(a), G.S., provides, in relevant part, that “[a]t an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons’ attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance”

34. It is found that the respondents invited each of the following individuals into the executive sessions convened during the September 13, 2022, and September 20, 2022 meetings: the superintendent, assistant superintendent, high school principal, high school coordinator for college and career pathways, and legal counsel who drafted the legal memoranda for the respondents.

35. It is found that the individuals identified in paragraph 34, above, were present for the entirety of the executive sessions on September 13, 2022, and September 20, 2022. It is found that each professional offered unique expertise and background information about the issue that is the subject of the memoranda described in paragraphs 17-23, above. It is found that throughout each executive session, the members of the respondent board of education had questions for each of the non-board members that required the testimony or opinion of individual staff and counsel.

36. Based upon the credible testimony of the respondents' witness, it is found that the attendance of the individuals identified in paragraph 34, above, for the entirety of each executive session on September 13, 2022, and September 20, 2022, was necessary to present testimony or opinion to the respondents within the meaning of §1-231(a), G.S.

37. It is therefore concluded that the respondents did not violate §1-231(a), G.S., by inviting the individuals identified in paragraph 34, above, into the executive sessions convened on September 13, 2022, and September 20, 2022, and permitting such individuals to stay in each executive for their duration.

38. However, at the hearing, the respondents did not dispute that the minutes for the September 13, 2022, and September 20, 2022, meetings excluded the high school principal from the list of individuals who were invited to the executive sessions. Because of the foregoing, it is concluded that the respondents violated §1-231(a), G.S., by failing to include in the meeting minutes that the high school principal attended the executive sessions on September 13, 2022, and September 20, 2022, as alleged in paragraph 2(b), above.

39. With respect to the allegation described in paragraph 2(d), above, §1-225(a), G.S., provides, in relevant part, that “[n]ot later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site.”

40. It is found that the respondents convened meetings on July 26, 2022, August 9, 2022, September 13, 2022, and September 20, 2022.³

41. As already found in paragraph 7, above, on September 28, 2022, the complainant requested access to the minutes of the September 13, 2022, and September 20, 2022, meetings, and was told by the executive assistant to the superintendent that “as soon as they are available – they will be posted and I will let you know.”

42. It is further found that, on September 29, 2022, the complainant visited the website for the respondents' meeting notices, agendas and minutes and did not locate any minutes for the meetings identified in paragraph 40, above. It is further found that, on September 30, 2022, the complainant checked the website again, and that the minutes for the September 13, 2022, and September 20, 2022, meetings were posted, but no minutes for the July 26, 2022, and August 9, 2022, meetings were posted. It is further found that the respondents presented no evidence to demonstrate that the respondents made minutes for the July 26, 2022, and August 9, 2022, meetings available to the public.

³ During the hearing, the complainant presented a screen shot of the respondents' website, taken on September 29, 2022. The screen shot showed that no minutes were posted for meetings occurring between July 26, 2022, and September 20, 2022. However, the Commission notes that several of the meetings listed were not meetings of the respondents. Rather, several of the meetings listed were meetings convened by committees of the board of education. Such committees are separate public agencies that the complainant has not named as respondents in this matter. Consequently, whether such committees violated §1-225(a), G.S., is an issue not before this Commission and therefore need not be addressed further herein.

43. At the hearing, the respondents did not dispute that the minutes for the meetings identified in paragraph 40, above, were not made available within the time prescribed by §1-225(a), G.S. It is therefore concluded that the respondents violated §1-225(a), G.S., by failing to make available to the public the minutes for the July 26, 2022, August 9, 2022, September 13, 2022, and September 20, 2022, meetings, within the time prescribed by statute, as alleged in paragraph 2(d), above.

44. Finally, with respect to the allegation described in Paragraph 2(f), above, §1-225a(d), G.S., provides, that “[a]ny vote taken at a meeting during which any member participates by means of electronic equipment shall be taken by roll call, unless the vote is unanimous. The minutes of the meeting shall record a list of members that attended such meeting in person and a list of members that attended such meeting by means of electronic equipment.”

45. At the hearing, the respondents did not dispute, and it is therefore found, that some of its members participated in the September 20, 2022, meeting by means of electronic equipment, that the vote described in paragraph 2(f), above, was not taken by roll call (and was not unanimous), and that the minutes do not identify whether the respondent board members were in attendance in person or by means of electronic equipment. It is therefore concluded that the respondents violated §1-225a(d), G.S., as alleged in paragraph 2(f), above.

46. Notwithstanding the conclusions in paragraphs 38, 43, and 45, above, throughout the hearing, the respondents contended that any non-compliance was inadvertent and that they and their staff have undergone FOI training to address the issues raised by the complainant herein. The respondents also contended that they never intended to mislead the public and that, for all of the meetings at issue, the respondents immediately posted a copy of the meeting recording on their website so that the public was always apprised of the business that was conducted.

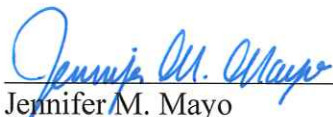
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall amend the minutes for the September 13, 2022, and September 20, 2022, meetings to correct the errors identified paragraphs 38 and 45 of the findings, above. The amended minutes shall be filed within 30 days of the date of the notice of final decision in this matter.

2. The respondents shall prepare and make available minutes for the July 26, 2022, and August 9, 2022, meetings, to correct the errors identified in paragraph 43 of the findings above. The minutes shall be filed within 30 days after the date of the notice of final decision in this matter.

3. Henceforth, the respondents shall strictly comply with the provisions of §§1-225(a), 1-225a(d), and 1-231(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 27, 2023.



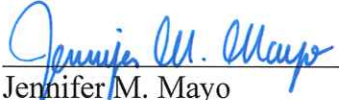
Jennifer M. Mayo
Acting Clerk of the Commission

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:

AVI KAMRAT, 135 Dessa Drive, Hamden, CT 06517

CHAIR, BOARD OF EDUCATION, TOWN OF HAMDEN; AND BOARD OF EDUCATION, TOWN OF HAMDEN, c/o Attorney Natalia Sieira Millan, Shipman & Goodwin LLP, 1 Constitution Plaza, Hartford, CT 06103 and Attorney Kelsey Scarlett, Kelsey Scarlett, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission