

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ellen Nichols,

Complainant

against

Docket #FIC 2023-0128

Chair, Board of Education, West Hartford
Public Schools; Board of Education, West
Hartford Public Schools; Executive
Director, Cooperative Educational
Services; and Cooperative Educational
Services,

Respondents

January 10, 2024

The above-captioned matter was heard as a contested case on September 14, 2023, at which time the complainant and the respondents appeared 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. It is found that, by separate emails dated January 30, 2023, the complainant requested copies of the following records from the West Hartford Public Schools (“WHPS”) and the Cooperative Educational Services (“CES”) related to the West Hartford Board of Education’s (“BOE”) search for a new superintendent of schools:

- (a) all contracts and agreements between the Town of West Hartford, WHPS, BOE and/or CES;
- (b) records related to the “On Line Survey” that closed November 27, 2022, including:
 - (i) questions asked with corresponding individual responses and individual data results;
 - (ii) questions asked with corresponding individual responses by participant type: parent/caregiver, students, WHPS staff, administrators, community and other residents who do not fall into prior listed categories;
- (c) records related to “Focus Groups” between December 5-12, 2022, including:

- (i) questions asked with corresponding individual responses and data results;
- (ii) questions asked with corresponding individual responses and data results by participant type: WHPS Staff, parent/caregiver, high school students, middle school students, building and district administrators, WHPS staff, community partners and West Hartford community;
- (iii) individual notes taken by Mr. Erwin at each meeting;
- (d) individual interviews with BOE members, members of the WHPS Executive Team and current district and school administrators, including questions asked with corresponding individual responses and notes;
- (e) from the online surveys, focus groups and individual and/or group interviews conducted by CES:
 - (i) the “Themes” identified and the individual responses and data supporting them;
 - (ii) the “Attributes” identified as desirable in the new superintendent and individual responses and data supporting the identified attributes, including the number of supporting responses;
 - (iii) the “Expectations” of the new leader held by colleagues, parents, students and the community and the individual data as it supported each “expectation”, including the number of supporting responses;
 - (iv) the “comprehensive list of characteristics most important to the district’s stakeholders” and the individual responses and data that supported such list of characteristics, including the number of supporting responses;
 - (v) the “Profile” that was constructed from the data, arising from CES’ research and the individual responses and data that supported the profile items, including the number of responses;
 - (vi) all records, responses and data that did not support one of the attributes, expectations, characteristics or profile items;
 - (vii) any and all reports or records submitted to the WHPS, BOE or the Town of West Hartford; and
 - (viii) any and all CES work product and/or papers, including electronic or paper spreadsheets.

3. It is found that, by email dated February 23, 2023, CES responded to each of the requests described in paragraph 2, above, and disclosed records responsive to the requests described in paragraphs 2(a), 2(b), and 2(c), above. It is also found that, by the same email, CES informed the complainant that CES did not maintain any records responsive to the request described in paragraph 2(d), above. It is further found that, by the same email, CES disclosed to the complainant all records maintained by CES that were responsive to the request described in paragraph 2(e), above, with the exception of those records it considered exempt from disclosure pursuant to §1-210(b)(6), G.S.¹

¹ The Commission notes that in the email, dated February 23, 2023, CES claimed the requested records were exempt under §1-210(6), G.S., but clearly intended to refer to §1-210(b)(6), G.S.

4. It is found that, by email dated February 28, 2023, the complainant requested from CES copies of the following records:

- (a) the Candidate Evaluation Form and Refined Performance Criteria that CES previously claimed were exempt from disclosure pursuant to §1-210(b)(6), G.S.;
- (b) the “Structured Feedback” collected from members of the BOE; and
- (c) related survey responses that had been “translated, coded and categorized, much like putting together a doctoral study”.

5. It is found that, by email dated March 8, 2023, WHPS disclosed to the complainant records responsive to the requests described in paragraphs 2(a), 2(b), 2(c), and 2(e), above. It is also found that all such records were given to WHPS by CES and previously disclosed to the complainant by CES, as described in paragraph 3, above, with the exception of the WHPS Superintendent of Schools Final Job Posting, which was responsive to the requests described in paragraphs 2(e)(vii) and 2(e)(viii), above. It is also found that the WHPS withheld the same records as CES, which have been identified as the Candidate Evaluation Form and Refined Criteria, as described in paragraph 4(a), above, as exempt from disclosure pursuant to §1-210(b)(6), G.S. It is further found that, by the same email, WHPS informed the complainant that WHPS did not maintain any records responsive to the request described in paragraph 2(d), above.

6. By letter of complaint, dated and filed March 14, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records, described in paragraphs 4(a) and 4(b), 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 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., 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.”

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, by email dated March 20, 2023, CES again denied the complainant’s request for copies of the records described in paragraph 4(a), above, but disclosed the record described in paragraph 4(b), above, and informed the complainant that CES did not maintain any records responsive to the request described in paragraph 4(c), above.

12. It is found that, at the time of the complainant’s January 30th request, the respondents’ interview process for hiring the new superintendent of schools was ongoing. It is also found that, on or around April 18, 2023, the hiring process for a new superintendent concluded and the new superintendent was named.

13. It is found that, although the respondents had previously denied the complainant’s records request described in paragraph 4(a), above, by email dated May 23, 2023, CES disclosed to the complainant copies of the Candidate Evaluation Form and Refined Criteria described in paragraph 4(a), above.

14. It is found that the respondents conducted a thorough search for the records described in paragraphs 2 and 4, above. It is also found that, with the disclosure of records described in paragraph 13, above, the respondents had disclosed to the complainant all responsive records.

15. At the hearing in this matter, the complainant argued that the records described in paragraph 13, above, were not exempt from disclosure under §1-210(b)(6), G.S., and thus, the records described in paragraph 4(a), above, were not disclosed promptly. The complainant also argued that the respondents failed to promptly disclose the records described in paragraph 4(b), above.

16. With regard to the records described in paragraph 4(a), above, the respondents argued that, although they still consider such records to be permissively exempt from disclosure pursuant to §1-210(b)(6), G.S., they decided to disclose such records to the complainant, after the search and hiring process for a new superintendent was concluded, on or around April 18, 2023, in an attempt to resolve the present matter. The respondents also argued that because such records are exempt from disclosure, the promptness requirements of §§1-210(a) and 1-212(a), G.S., do not apply.

17. Section 1-210(b)(6), G.S., provides that disclosure is not required of “[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations.”

18. At the hearing in this matter, the respondents testified that the Refined Performance Criteria, described in paragraph 4(a), above, is an interview guidance document that was relied

upon by the BOE during interviews of candidates for the superintendent position at WHPS. The respondents also testified that the Candidate Evaluation Form, described in paragraph 4(a), above, is the score sheet that was used by the BOE to grade candidates during such interviews. The respondents further testified that the records clearly identify the respondents' priorities, ranked in order of importance, for assessing candidates for the superintendent position during the interview process and that, together, the two documents are akin to a scoresheet and answer key for interviewing superintendent candidates.

19. It is found that the Refined Performance Criteria and the Candidate Evaluation Form, described in paragraph 4(a), above, were entered into evidence, without objection, as Complainant's Exhibit G: Email from CES to the Complainant, with Attachments, dated May 23, 2023.

20. In Washington v. Freedom of Information Commission, et. al., 25 Conn. L. Rptr. 334 (1999), the Superior Court concluded that, "[b]ased on the testimony at the FOIC hearing," oral board panelists' scoring sheets were "the equivalent of a scoring key" which is specifically exempted from disclosure under §1-210(b)(6), G.S.

21. The Commission has interpreted Washington to mean that certain oral examination data for employment positions are exempt from disclosure pursuant to §1-210(b)(6), G.S. See Docket #FIC 2000-501; Randal Edgar et al. v. Paul Sequeira, Superintendent of Schools, Waterbury Public Schools (March 28, 2001) (scores assigned by interviewers to each candidate for the position of superintendent of schools constitute examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2001-006; Dennis Murray v. Director of Personnel, City of Hartford (April 11, 2001) (scoring sheets of each oral board panelist for each candidate constitute examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2003-377, Joseph R. Casey, Jr. v. Commissioner, State of Connecticut, Department of Correction (April 14, 2004) (forms containing questions asked by the interview panel, candidates' responses, ratings given by the interview panel members and any comments made by such members constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2008-525; David Glidden and the Connecticut State Employees Association v. Commissioner, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (July 22, 2009) (interviewer notes, interview questions, and interview reports and recommendations for hiring/promotions constitute test questions, scoring keys and other examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2009-123; Richard Malley v. Commissioner, State of Connecticut, Department of Environmental Protection; and State of Connecticut, Department of Environmental Protection (February 24, 2010) (DEP interviewer's report and recommendations for hiring or promotion constitutes examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2013-064; Alireza Jamalipour v. Commissioner, State of Connecticut, Department of Transportation; and State of Connecticut, Department of Transportation (September 25, 2013) (recommendations for selection, or the explanation for the selection or non-selection of the candidates included in an Interview Selection Report were permissively exempt from disclosure pursuant to §1-210(b)(6), G.S.); Docket #FIC 2014-197;

George Winter v. Commissioner, State of Connecticut, Department of Motor Vehicles; and State of Connecticut, Department of Motor Vehicles (January 14, 2015) (oral interview questions, scores, rankings and the criteria used in development of the questions constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); and Docket #FIC 2017-0730; Joseph Dinegar v. Superintendent, State of Connecticut, Connecticut Technical High School System; and State of Connecticut, Connecticut Technical High School System (June 27, 2018) (the scoring rubric, test questions, responses to test questions, interview questions, interviewer notes/evaluations, and scoring keys for candidates for employment constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.).

22. Based upon a careful review of the records described in paragraph 19, above, and the testimony of the respondents' witness at the hearing in this matter, it found that such records constitute test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.

23. It is therefore concluded that the records described in paragraph 4(a), above, are permissively exempt from disclosure pursuant to §1-210(b)(6), G.S. Accordingly, it is concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., with respect to such records, as alleged by the complainant.²

24. With regard to the record described in paragraph 4(b), above, the respondents testified, and it is found that, based on their reasonable interpretation of the complainant's January 30th request, the "Structured Feedback" form was not responsive to the requests described in paragraph 2, above, and as a result, the form was only disclosed to the complainant after she specifically requested such form in her February 28th request, described in paragraph 4, above.

25. 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. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6047741 (July 20, 2020) *6, a public agency should consider its obligations under the FOI Act as a "primary duty" of that agency, "on par with the [agency's] other significant duties, or said another way, that the agency's FOIA duty is not a second class duty."

26. 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

² Because there was no violation of the FOI Act with respect to the records described in paragraph 4(a), the Commission need not analyze whether such records were promptly disclosed to the complainant.

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.

27. With regard to the factors listed above, it is found that the complainant indicated in her requests, described in paragraphs 2 and 4, above, and through additional communications with the respondents, the importance of the records and the time by which the complainant needed the requested records.


28. It is found that the respondents disclosed the "Structured Feedback" form to the complainant 20 days after the complainant's February 28th request. It is also found that at the time of the complainant's request, described in paragraph 4, above, the respondents were in the midst of conducting interviews and reviewing candidates for the open superintendent position at WHPS. It is also found that the individual respondents, as separate agencies, had to coordinate their responses to FOI requests and determine which records could be disclosed during the interview process and which records that were permissively exempt from disclosure should be withheld. It is further found that between January and May of 2023, the respondents had ongoing communication with the complainant and disclosed multiple records to the complainant.

29. Based on the facts and circumstances of this case, it is concluded that, with respect to disclosure of the record described in paragraph 4(b), above, the respondents did not violate the promptness requirements of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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 January 10, 2024.



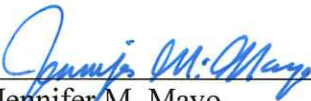
Jennifer M. Mayo
Acting Clerk of the Commission

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:

ELLEN NICHOLS, 75 North Quaker Lane, West Hartford, CT. 06119

CHAIR, BOARD OF EDUCATION, WEST HARTFORD PUBLIC SCHOOLS; BOARD OF EDUCATION, WEST HARTFORD PUBLIC SCHOOLS, c/o Attorney Cynthia Lauture, Office of the Corporation Counsel, 50 South Main Street, Room 319, West Hartford, CT 06107; **EXECUTIVE DIRECTOR, COOPERATIVE EDUCATIONAL SERVICES; AND COOPERATIVE EDUCATIONAL SERVICES**, c/o Attorney Thomas B. Mooney, One Constitution Plaza, Hartford, CT 06103-1919



Jennifer M. Mayo
Acting Clerk of the Commission