

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Kristen McDowell,

Complainant

against

Docket # FIC 2023-0403

Superintendent of Schools, New Haven
Public Schools; and New Haven Public
Schools,

Respondents

July 24, 2024

The above-captioned matter was heard as a contested case on January 4, 2024 and May 29, 2024, at which times 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. It is found that, by email dated August 2, 2023, the complainant requested that the respondents provide her with a copy of the following records:

all documentation (notes, evidence and findings), photo and video in regards to my child going missing/ lost on door to door service to be transported to his school of Nathan [H]ale [E]lementary for New Haven Public [S]chool[s] [(“NHPS”). This incident happened on December 23, 2021 and I am requesting the complete video footage from [F]irst [S]tudent bus service and or board of education [(the “Video”). I am also requesting my child's full educational file.
3. It is found that the respondents acknowledged the complainant’s request on August 2, 2023.
4. By complaint filed August 10, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her request for certain public records. Specifically, the complainant alleged that the respondents did not provide copies of the requested records and, in particular, the Video.
5. 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.

6. 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.

7. 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.”

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

9. It is found that, by email dated September 19, 2023, the respondents advised the complainant of the following:

staff have conducted diligent searches of NHPS records with regard to your FOIA request. We understand that you have been provided with copies of responsive documents. We have not, however, found any video recordings of the incident described in your request. NHPS cannot locate any such video in its records. After diligent search of our records, we have not found any record of having received the video from the bus company. This therefore concludes our response to your FOIA request.

10. It is found that NHPS contracts with First Student, Inc. (“First Student”) to provide bus transportation services for NHPS. It is further found that First Student buses are equipped with onboard video cameras.

11. It is found that, on December 23, 2021, the complainant’s son with special needs was scheduled to receive door-to-door bus service from his home to Nathan Hale Elementary School (“Nathan Hale School”). It is found that, on December 23, 2021, NHPS notified the complainant that her son was marked absent from school. It is found that, on December 23, 2021, a First Student school bus picked up the complainant’s son in the morning but failed to transport him

directly to Nathan Hale School as scheduled (the “Incident”). It is found that the complainant’s son was ultimately transported to the school; however, he unfortunately experienced symptoms of trauma from the Incident.

12. It is found that, beginning on December 23, 2021 to the present, the complainant has sought an explanation for what happened to her son during the Incident, but NHPS has not provided the complainant with an answer to her satisfaction. It is found that, prior to her August 2, 2023 request described in paragraph 2, above, the complainant orally requested to see the Video, but she was never provided a copy or permitted to view the footage depicting the Incident.

13. It is found that, on or about the same time, the then Director of Transportation for NHPS (“Transportation Director”) went out on leave and a former Director of Transportation was called back from retirement to assist and ultimately began to serve as Interim Director of Transportation (“Interim Transportation Director”).

14. At the hearings on this matter, the complainant disputed the respondents’ claims that the Video did not exist. The complainant testified that she was told that she was not permitted to see the Video because it would violate provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The complainant also testified that a NHPS social worker told the complainant that she had viewed the Video. The complainant also testified that she was informed that the Video had been emailed to the Principal for Nathan Hale School (“Principal”) and that the Interim Transportation Director had viewed the Video, but thereafter, the respondents claimed that the video did not exist. The complainant also testified that she contacted First Student and that First Student told her that the Video was sent to the Transportation Department of NHPS (“Transportation Department”).

15. The complainant also testified, and it is found, that the respondents provided her with her son’s educational file but that such file contained no records relating to the Incident. The complainant contended that there should have been an incident report, teacher and/or counseling notes, and planning and placement team (“PPT”) records relating to the Incident, but the respondents provided her with no such records.

16. The Chief Operating Officer (“COO”) for NHPS, the Executive Director of Student Services and Special Education for NHPS (“Special Education Director”), and the Principal appeared and testified on behalf of the respondents at the contested case hearing on January 4, 2024. In addition, the Interim Transportation Director appeared and testified on behalf of the respondents at the contested case hearing on May 29, 2024.

17. Based upon the testimony of the Principal, it is found that, within a few days of the Incident, the Transportation Director, at the Principal’s request, sent an email to First Student requesting that First Student provide a copy of the Video to the Principal. Nonetheless, it is found that the Principal never received a copy of the Video and that she never reviewed the Video.

18. Additionally, it is found, based upon the testimony of the Principal, that she asked all of the members of the NHPS student services team for the complainant’s son whether they

informed the complainant that they had viewed the Video and they all informed her that they did not. It is also found that the Principal asked the social worker, with whom the complainant claimed to have discussed the Video, whether such social worker viewed the Video and the social worker stated she had not viewed the Video.

19. Based upon the testimony of the COO, it is found that he oversees the Transportation Department, among other departments of NHPS. It is found that, in the ordinary course, the respondents do not maintain video footage for the buses; rather such video is maintained by First Student. It is also found that First Student does not permanently keep footage from the video cameras installed onboard its buses.

20. It is found that the COO directed the Information Technology Department for NHPS ("IT") to conduct a search for the Video. It is found that IT searched all video sent to the Principal, Nathan Hale School, and the COO from First Student within the last three years and conducted a key word search of the entire NHPS system-wide server. It is found that such searches yielded no results. In addition, it is found that the COO contacted First Student directly and First Student informed him that they had not located the Video.

21. Based upon the testimony of the Special Education Director, it is found that she oversees special education for NHPS, among other duties and that the complainant's son's educational file is maintained, in paper format, in the central special education office. It is further found that the Special Education Director's staff searched for and located such educational file as well as certain electronic correspondence that were provided to the complainant. With respect to incident reports and teacher notes, it is found that such records typically are maintained at the school which the subject student attends. It is found that the Special Education Director's staff inquired with Nathan Hale School regarding such records and that no responsive incident reports or teacher notes exist.

22. Based upon the testimony of the Interim Transportation Director, it is found that typically when an incident occurs at one of NHPS schools, the principal requests that the Transportation Department request a copy of the video from First Student and First Student provides a copy of the video directly to the principal of the respective school. It is found that the Transportation Director, not the Interim Transportation Director, requested the Video of the Incident from First Student and that the Transportation Director is no longer employed by NHPS. It is also found that the Interim Transportation Director never received a copy of the Video and never viewed the Video.

23. While the complainant believes, perhaps justifiably, that the respondents should have received and maintained the Video and should have prepared and kept notes, reports, PPT records, and other records regarding the Incident, it is found, based upon the testimony of the respondents' witnesses, that the Video cannot be located despite the respondents' various search efforts and that such other records do not exist.


24. In sum, it is found that the respondents conducted a reasonable and diligent search for responsive records in the locations where such records would be maintained if they existed. It is further found that, other than the records provided to the complainant, the respondents do not maintain any records responsive to the request set forth in paragraph 2, above.

25. It is concluded therefore that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 July 24, 2024.



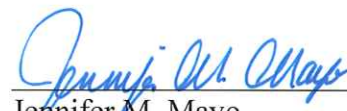
Jennifer M. Mayo
Acting Clerk of the Commission

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:

KRISTEN MCDOWELL, 62 Market Street, New Haven, CT 06513

SUPERINTENDENT OF SCHOOLS, NEW HAVEN PUBLIC SCHOOLS; AND NEW HAVEN PUBLIC SCHOOLS, c/o Attorney Elias A. Alexiades, Office of the Corporation Counsel, 165 Church Street, 4th Floor, New Haven, CT 06510



Jennifer M. Mayo
Acting Clerk of the Commission