

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Jessica Vasquez,

Complainant

against

Docket #FIC 2023-0489

Superintendent of Schools,
Hartford Public Schools;
Labor Investigator,
Hartford Public Schools; and
Hartford Public Schools,

Respondents

July 24, 2024

The above-captioned matter was heard as a contested case on April 22, 2024, 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. It is found that, by email dated September 18, 2023, the complainant requested that the respondents provide her with access to records related to the complainant dropping her minor child off at school on September 14, 2023:
 - a. any video surveillance available at [Hartford Pre-Kindergarten Magnet School at Burns Campus] (“HPKM”) on the date of 9/14/23 between 8:00 am and 12:00 pm so I can see the exact amount of time my child was left unattended;
 - b. the policy for tardy students getting to class and how the front office reconciles late arrivals; and
 - c. any communication between the teachers and the office to confirm late arrivals have made it to their classrooms

to make sure students are accounted for and safe (the “original request”).

3. It is found that, by email dated September 18, 2023, the complainant and her fiancé Javier Melendez¹ requested that the respondents provide them with copies of the following additional records:

...any reports/documents pertaining to [our] son and any investigation regarding [our] son.... Also, any notes documented or taken regarding [our son]...due to the incident being investigated (the “supplemental request”).

4. It is found that, by email dated September 18, 2023, the respondents acknowledged the original and the supplemental request. It is further found that, with regard to the supplemental request, the respondents sought clarification as to whether the complainant was seeking records in addition to those pertaining to the September 14, 2023 drop off of her son at school.

5. It is found that, by email dated September 18, 2023, the complainant clarified for the respondents that she was only seeking copies of records pertaining to September 14, 2023.

6. It is found that, by email dated September 18, 2023, the respondents acknowledged receipt of the complainant’s clarification.

7. By email dated and filed September 28, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with access to or copies of the requested records.

8. 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.

9. 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

¹ The Commission notes that Ms. Vasquez and Mr. Melendez are the parents of the minor child discussed herein.

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, . . . (3) receive a copy of such records in accordance with section 1-212.

10. 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.”

11. It is concluded that the records requested by the complainant are public records within the meaning of §§ 1-210(a) and 1-212(a), G.S.

12. It is found that, on September 14, 2023, the complainant required a late drop off for her minor child at HPKM’s pre-kindergarten program. It is further found that the procedure at HPKM for a late drop-off involves signing the child in with a security guard through a designated entrance (the “late-drop-off door”). It is further found that the complainant signed her child in with the security guard at the late-drop-off door at 8:02 am.² It is further found that, after the complainant signed her child in, the child, who was not yet three years old at the time, was allowed to wander into an adjacent classroom where he remained unattended for an extended period of time. It is further found that, at 8:29 am, the complainant received an email from her child’s teacher, inquiring why the child was absent from school. It is found that the complainant, who became *extremely* panicked upon receipt of the teacher’s email, responded at 9:35 am, informing the teacher that she had signed her child in with the security guard at 8:02 am. It is further found that the child’s teacher then alerted the appropriate school officials that the child had been signed into the school by his mother at 8:02 am but was absent from his assigned classroom. It is further found that, at 10:52 am, the principal of HPKM left the complainant a voicemail message, indicating that the complainant’s child had been located in the room adjacent to the late-drop-off door. It is further found that the principal informed the complainant that the child had been taken to the nurse’s office to be examined and that he was doing fine. It is further found that the principal informed the complainant that, because of the amount of time the child had been left unattended, the school was going to report itself to the Connecticut State Department of Children and Families.

13. It is found that the records requested by the complainant have to do with HPKM’s policies and procedures with regard to late student arrivals, and the records specifically concerning the school’s investigation into her child’s late arrival on September 14, 2023, including a surveillance video inside the school that records children being signed in with the security guard and entering the school through the late-drop-off door.

14. It is found that, at the time of the contested case hearing, the complainant indicated that the only record at issue was the surveillance video, which the complainant wanted to view in order to determine the exact amount of time her child had been left unattended.

² It is found that 7:30 am is considered an on-time arrival at HPKM.

15. At the hearing on this matter, the respondents contended that the surveillance video is exempt from disclosure pursuant to §1-210(b)(17), G.S.

16. Section 1-210(b)(17), G.S., provides that nothing in the FOI Act shall require the disclosure of: “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC §1232g.” (FERPA).

17. “Education records” are defined at 20 USC §1232g(a)(4)(A) as those records, files, documents, and other material which (i) contain information directly related to a student and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

18. 20 USC §1232g(b)(2) provides, in relevant part, that:

No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—(A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents....”

19. In addition, 20 USC §1232g(1)(A) provides, in relevant part, that:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students (sic) shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.

20. The Commission takes administrative notice of “Letter re: Berkeley County School District,” 7 FERPA Answer Book 40, 104 LRP Pub. 44490 (Feb. 10, 2004) (the “Berkeley Letter”). The Family Policy Compliance Office, a unit administering FERPA within the U.S. Department of Education, issued the Berkeley Letter. Specifically addressing videotapes, the Berkeley Letter states, in relevant part, that:

If education records of a student contain information on more than one student, the parent requesting access to education records has the right to inspect and review, or be informed of, only the information in the record directly related to his or her child.... If, on the other hand, another student is pictured fighting in the videotape you would not have the right to inspect and review that portion of the videotape.

21. It is found that FERPA unambiguously establishes that a parent does not have the right to education records which include or have information about students other than their own child. The Berkeley Letter reaffirms this principle in the specific context of a videotape.

22. It is found that the requested surveillance video shows a number of students in addition to the complainant's son being signed in with the security guard through the late-drop-off door. It is further found that the respondents cannot edit the surveillance video to delete the images of the other students.

23. It is concluded that the disclosure of the requested surveillance video would result in the disclosure of "education records" within the meaning of 20 USC §1232g(a)(4)(A) of children other than the complainant's child. It is therefore concluded that such record is permissively exempt from disclosure pursuant to the provisions of §1-210(b)(17), G.S.

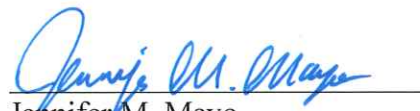
24. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to provide the complainant with access to the requested surveillance video.

25. Although the requested surveillance video is exempt from disclosure, the Commission notes that the respondents were able to capture still images and print out several color redacted photographs from the video and provide such redacted photographs to the complaint. It found that such photographs include a photograph of the complainant's son being signed in to school with the security guard and a photograph of the complainant's son being retrieved by a staff member of HPKM from the room into which he was permitted to wander; and that such photographs are time and date stamped.

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.

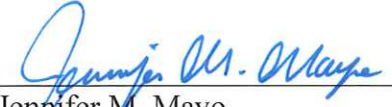

Jennifer M. Mayo
Acting Clerk of the Commission

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:

JESSICA VASQUEZ, 45 Claire Road, East Hartford, CT 06118

SUPERINTENDENT OF SCHOOLS, HARTFORD PUBLIC SCHOOLS; HARTFORD PUBLIC SCHOOLS; AND LABOR INVESTIGATOR, HARTFORD PUBLIC SCHOOLS, c/o Attorney Lori Mizerak, Office of the Corporation Counsel, 550 Main Street, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission