

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Thomas J. Green,

Complainant

against

Docket # FIC 2023-0190

Superintendent of Schools, Windham Public
Schools; Director, Human Resource
Department, Windham Public Schools; and
Windham Public Schools,

Respondents

June 26, 2024

The above-captioned matter was heard as a contested case on October 5, 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. It is found that, by email dated May 25, 2023, the complainant requested that the respondents provide him with a copy of “the paystep and years of experience for the employees at Windham Public Schools at the beginning of the school year for 2022-2023 and the paystep for all employees at the end of the school year.”
3. It is found that on or about June 28, 2023, the respondents provided the complainant with records that the respondents believed were responsive to the request described in paragraph 2, above. It is found that such records included data, extracted from a database, regarding school teachers and their paystep at the end of the 2022-2023 school year, among other data. It is also found that the respondents notified the complainant that they do not have paystep data to provide to the complainant for the beginning of the school year, stating that “Windham Public Schools payroll system runs off of a live system, so we do not have information related to step placement in September.” It is also found that the respondents did not provide the complainant with a copy of any record responsive to the request for “years of experience for the employees at Windham Public Schools at the beginning of the school year for 2022-2023.”
4. By letter of complaint filed July 5, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for all of the records described in paragraph 2, above. Specifically, the complainant alleged in his complaint that the respondents did not provide him with the years of

experience for all employees at Windham Public Schools, nor did the respondents provide him with the paystep for all employees at the beginning of the school year.

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 1-211(a), G.S., provides, in relevant part:

[a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the [FOI] Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made.

8. 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.”

9. It is found that the records described in paragraph 2, above, to the extent such records exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that on or about March 2023, the respondents notified the complainant that his salary placement was incorrect and that his salary would be adjusted. It is found that such events prompted the complainant to make a series of requests for records, including the request described in paragraph 2, above.

11. It is found that, in addition to the copies of records that were provided to the complainant on June 28, 2023, the respondents also provided copies of responsive records on or about September 21, 2023. It is found that such records included data, extracted from a database, regarding the respondents' employees, and employee paystep as of September 8, 2022 and June 30, 2023, among other data. It is found that the respondents did not provide the complainant with a copy of records responsive to the request for "years of experience for the employees at Windham Public Schools at the beginning of the year for 2022-2023."

12. At the hearing, the complainant contended that the respondents failed to fully and promptly comply with his request. The respondents disputed this contention.¹

13. With respect to the complainant's contention that the respondents failed to provide him with copies of records responsive to his request for "years of experience for the employees at Windham Public Schools at the beginning of the year for 2022-2023," based on the credible testimony of the respondents' witnesses, it is found that the respondents do not maintain any record responsive to such request.

14. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of the FOI Act when they did not provide the complainant with copies of records responsive to his request for "years of experience for the employees at Windham Public Schools at the beginning of the year for 2022-2023."

15. With respect to the contention that the respondents did not provide records in a prompt manner, this 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 records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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.

16. It is found that the request described in paragraph 2, above, dated May 25, 2023, requested, in part, information related to the end of the school year. It is found that the last day of the 2022-2023 school year was on or about June 16, 2023. Although the respondents had no legal obligation "to provide the complainant with records not yet in existence at the time of [his] request," (see, e.g., *Stephen Whitaker v. Boris Hutorin, Dir., Dep't of Infor. Tech., Town of Greenwich*, Docket #IC 2005-332 (June 28, 2006), and *Rita M. Pacheco v. Parks and Rec. Comm'n, City of Torrington*, Docket #FIC 1996-221 (Jan. 8, 1997)), at the conclusion of the

¹ At the hearing, the respondents argued that, although they provided the complainant with copies of records responsive to the request, described in paragraph 2, above, they maintain, they were not required by the FOI Act to do so, because compliance required them to create a record. Such argument, however, is unavailing. The request described in paragraph 2, above, falls within the broad scope of §1-211(a), G.S., and compliance with such request required the respondents to extract existing data from a singular database, and to provide the requested data to the complainant.

school year, the respondents extracted data from a database in order to provide the complainant with records regarding teachers and their paystep as of the end of the 2022-2023 school year, among other data. As already found in paragraph 3, above, the respondents provided copies of such records to the complainant by email dated June 28, 2023, less than two weeks following the end of the 2022-2023 school year.

17. Additionally, and as already found in paragraphs 2 and 3, above, the May 25, 2023 request included a request for records pertaining to the beginning of the school year. It is found that the respondents initially notified the complainant that data regarding the beginning of the school year was not available for the reason set forth in paragraph 3, above.

18. Notwithstanding, it is found that the respondents' director of finance later discovered a previous export of paystep data, which occurred on or about September 8, 2022. It is found that the respondents utilized such data to respond, in part, to the May 25, 2023 request for paystep for all employees at the beginning of the school year and provided responsive records to the complainant on or about September 21, 2023.

19. Finally, the complainant contended that the respondents were not prompt because they did not provide copies of records regarding "all employees" until September 2023. As already found in paragraph 3, above, on June 28, 2023, the respondents provided the complainant with copies of records containing data pertaining to teachers, rather than all employees, as set forth in the complainant's request. At the hearing, the respondents' witness credibly testified that she only provided teacher information because she believed, based on her communications with the complainant, that he was only seeking information as it related to teachers and not all school district employees, and that she believed that the respondents complied with his request.

20. It is found that the complainant presented no evidence to demonstrate that, after he received and reviewed the copies of records described in paragraph 3, above, he made any efforts to explain to the respondents what information he still sought. It is also found that the first time the respondents became aware of the complainant's complaint to the Commission, and particularly that the complainant alleged that the respondents failed to provide records responsive to his request for paystep "for all employees at Windham Public Schools at the beginning of the school year for 2022-2023," was on or after August 15, 2023, when the Commission notified the respondents that a complaint had been filed against them in this matter. It is also found that, in the weeks immediately following such notice, the respondents provided the complainant with copies of the outstanding records that they maintained and that were responsive to the request described in paragraph 2, above.

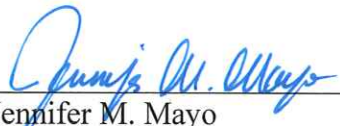
21. Based on the foregoing, it is found that the respondents provided the complainant with copies of all records responsive to the request described in paragraphs 2, above, that they maintained, promptly.

22. It is therefore concluded that the respondents did not violate the promptness requirements 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:

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 26, 2024.



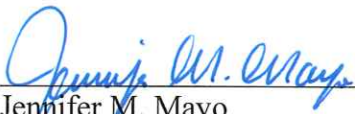
Jennifer M. Mayo
Acting Clerk of the Commission

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:

THOMAS J. GREEN, 9 Lebanon Square, Mansfield Center, CT 06250

SUPERINTENDENT OF SCHOOLS, WINDHAM PUBLIC SCHOOLS; DIRECTOR, HUMAN RESOURCE DEPARTMENT, WINDHAM PUBLIC SCHOOLS; AND WINDHAM PUBLIC SCHOOLS, c/o Attorney Jessica L. Ritter and Attorney Julie Reznik, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission