

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Deanna Bouchard,

Complainant

against

Docket #FIC 2024-0225

Superintendent of Schools, Colchester
Public Schools; and Colchester Public
Schools,

Respondents

March 26, 2025

The above-captioned matter was heard as a contested case on November 14, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After the contested case hearing, by email dated December 30, 2024, the complainant submitted an after-filed exhibit, which has been admitted into evidence over the objection of the respondents, and marked as follows: Complainant's Exhibit H (after-filed): Signed Statement of Andrea Migliaccio, dated December 11, 2024, and attached text messages. By order of the hearing officer, dated January 2, 2025, the respondents submitted an after-filed exhibit, which has been admitted into evidence and marked as follows: Respondents' Exhibit 3 (after-filed): Affidavit of Superintendent Daniel Sullivan, signed January 27, 2025.

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 March 26, 2024, the complainant requested copies of the following records: "[t]he complete cell phone log of text messages to/from Colchester Superintendent Daniel Sullivan, since being hired as Superintendent for Colchester Public Schools, up until the day this FOI is completed."
3. It is found that, by email dated April 1, 2024, the respondents acknowledged the complainant's records request. It is also found that, by email dated April 8, 2024, the respondents disclosed to the complainant nine pages of responsive text message communications.

4. By letter of complaint, dated and filed April 22, 2024, 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 paragraph 2, above.

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 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:

[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: “[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 found that, when the respondent Superintendent of Schools (“superintendent”) was hired by the respondent Colchester Public Schools (“Colchester”), Colchester agreed to pay for the superintendent’s personal cell phone, which the superintendent uses for both personal use and official business. It is also found that the superintendent retained his personal cell phone number.

9. It is found that text messages maintained on the superintendent’s cell phone that are entirely personal in nature, do not relate to the conduct of the public’s business within the meaning of §1-200(5), G.S. It is also found, however, that text messages maintained on the superintendent’s cell phone that relate to his position, or official duties or actions as the superintendent, do relate to the conduct of the public’s business within the meaning of §1-200(5), G.S.

10. It is therefore concluded that the requested records, to the extent they relate to the superintendent’s job, or official duties or actions, and to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. At the hearing on this matter the complainant alleged that, based upon previously obtained cell phone billing records, the superintendent sent and received over thirteen thousand text messages during the applicable time period and that additional responsive text messages must exist, which were not disclosed to the complainant. The complainant also alleged that the superintendent was improperly destroying public records because his executive assistant informed the complainant that the superintendent deletes text messages on a daily basis. The complainant further argued that the superintendent should be ordered to retrieve backup text messages stored on his personal iCloud storage system.

12. The superintendent credibly testified, and it is found, that he frequently deletes personal text message conversations and “transitory” text messages from his cell phone and that he does not store backups of such text messages in his iCloud storage or any other storage system.¹ The superintendent also credibly testified, and it is found, that he purposefully avoids using text messages to conduct public business, other than what he deems to be “transitory” text messages. The superintendent further testified, and it is found, that, between the time that he received the records request described in paragraph 2, above, and the time that he disclosed responsive records to the complainant, as described in paragraph 3, above, he did not delete any text messages, transitory or otherwise, related to his job, official duties or any action taken in his capacity as superintendent.²

13. In Complainant’s Exhibit H (after-filed), Andrea Migliaccio, a former member of the Colchester Board of Finance, stated that she conducted public business via text messages on her cell phone and attached text messages between herself and the superintendent.

14. By order of the hearing officer, the superintendent submitted an affidavit, wherein he responded to the assertions made in Ms. Migliaccio’s signed statement, and the text messages attached thereto.

15. It is found that the superintendent did not dispute that such text messages had been exchanged between Ms. Migliaccio and himself. It is also found that the superintendent admitted that a text message sent by Ms. Migliaccio on April 21, 2023 (“April 21st text message”), as well as a text message sent to Ms. Migliaccio on May 1, 2023 (“May 1st text message”), were not “transitory” in nature. Rather, the superintendent argued that the April 21st text message “relates solely to the business of the Board of Selectman [sic] and Board of Finance” and not to the business of the Board of Education and that the May 1st text message “relates to the status of HB 5003 and the state’s budgetary process, not directly to the business of the Board of Education...” The superintendent further attested that because neither text message is “a public record of the Board of Education”, such text messages did not need to be disclosed to the complainant.

¹ The Commission notes that jurisdiction over the retention and destruction of public records rests with the State’s Public Records Administrator. See Dept. of Public Safety v. Freedom of Information Commission, 103 Conn. App. 571, 577 (2007) (the Commission is a creature of statute with limited jurisdiction; it can only administer and enforce the provisions set forth in the FOI Act).

² Because the superintendent credibly testified that he did not delete any text messages between receiving the complainant’s records request and disclosing responsive text messages to the complainant, the Commission need not further address the respondents’ claim related to “transitory” text messages.

16. It is found, however, that the complainant did not request public records of the Board of Education and that the Board of Education is not a respondent in the present matter. Rather, it is found that the complainant requested all text messages to and from the superintendent that relate to the conduct of the public's business.³ It is also found that the text messages described in paragraph 15, above, relate to the superintendent's position as superintendent, and therefore, relate to the conduct of the public's business within the meaning of §1-200(5), G.S.

17. Based upon the findings in paragraphs 13 through 16, above, it is found that, when the superintendent conducted a search of his cell phone for responsive records and disclosed such records to the complainant, the superintendent erroneously narrowed the scope of his search.

18. It is therefore found that the respondents failed to conduct a thorough and diligent search for the requested records, described in paragraph 2, above, and failed to provide all responsive records to the complainant.

19. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

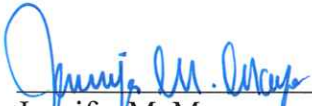
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall undertake a thorough and diligent search for all records responsive to the request described in paragraph 2 of the findings, above, and provide copies of such records free of charge, including any "transitory" text messages, within 14 days of the Notice of Final Decision in this matter.

2. In complying with paragraph 1 of this order, the respondents shall search for, and provide copies of, responsive records up through March 26, 2024, which is the date of the complainant's request in this matter.

3. Henceforth, the respondents shall strictly comply with the disclosure provisions in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 26, 2025.


Jennifer M. Mayo
Acting Clerk of the Commission

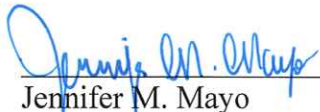
³ See paragraphs 2 and 9, above.

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:

DEANNA BOUCHARD, 16 Meadow Drive #3, Colchester, CT 06415

SUPERINTENDENT OF SCHOOLS, COLCHESTER PUBLIC SCHOOLS; AND COLCHESTER PUBLIC SCHOOLS, c/o Attorney Julie Reznik and Attorney Rebecca R. Santiago, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission