

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Vicki Boshka,

Complainant

against

Docket #FIC 2020-0541

Chairperson, Board of Education,
Monroe Public Schools; Board of
Education, Monroe Public Schools;
and Monroe Public Schools,

Respondents

March 25, 2026

The above-captioned matter was heard as a contested case on November 16, 2021, February 18, 2022, and April 28, 2022, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearings were conducted through the use of electronic equipment (remotely) pursuant to the Governor's Executive Order 7B (Mar. 14, 2020), which suspended the requirement to conduct public meetings in person and pursuant to §149 of Public Act 21-2 (June Spec. Sess.), respectively.

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 letter dated September 16, 2020, the complainant requested that the Chairperson of the Board of Education provide her with copies of all records related to the investigation of the Superintendent, the Interim Director of Finance, or other matters under investigation during 2019-2020, including but not limited to:
 - a. Any documents stipulating the responsibilities or specific tasks and services the Monroe Board of Education requested the Attorney Firm of David Ryan, LLC to perform and provide in reference to the investigation of the Superintendent Zmary and Interim Director of Finance. Document including but not limited to contracts or statements of work, etc.;

- b. Any and all interim status reports or resultant draft reports, etc., from Attorney David Ryan and/or the firm of David Ryan, LLC related to the matter of any work requested by the Monroe [Board] of Education including, but not limited to the investigation of Superintendent Zamarly and Interim Director of Finance Frank Connolly;
- c. Any and all public records related to the payment of the services of David Ryan and/or the firm of David Ryan, LLC in relation to the investigation of Superintendent Zamarly and Interim Director of Finance Frank Connolly or other matters under investigation;
- d. Any and all public records related to Superintendent Zamarly including, but not limited to employment, duties, responsibilities or tasks and also his separation by...[or] with the Monroe Board of Education; and
- e. Any and all public records related to any and all legal services from any law firms the Monroe Board of Education has retained, is retaining or plans to retain in the matter related to the investigation of Superintendent Zamarly and Director of Finance Frank Connolly including, but not limited to, the separation of Superintendent Zamarly and the Director of Finance from the Monroe Board of Education.

(The “first request”).

3. It is found that, by letter dated September 22, 2020, the respondents acknowledged the complainant’s first request, and further responded as follows:

- a. With regard to the request set forth in paragraph 2.a, above, the respondents stated: “‘other matters under investigation during 2019-2020...’ This portion of your request is too broad and is tantamount to a fishing expedition.”
- b. With regard to the request set forth in paragraph 2.b, above, the respondents stated: “‘related to the matter of any work requested by the Monroe Board of Education....’ This portion of your request is too broad and is tantamount to a fishing expedition.”

- c. With regard to the request set forth in paragraph 2.c, above, the respondents stated: “Any and all interim status reports or resultant draft reports....’ The requested records are exempt from disclosure pursuant to C.G.S. §1-210(b)(1) and will not be disclosed.”
- d. With regard to the request set forth in paragraph 2.d, above, the respondents stated: “Any and all public records related to Superintendent Zmary including....’ This request is too broad as it is unlimited in time and scope. In addition, to the extent that this request seeks documents exempt from disclosure pursuant to C.G.S. §1-210, the request is denied.”
- e. With regard to the request set forth in paragraph 2.e, above, the respondents stated: “Any and all public records related to any and all legal services from any law firms....’ This request is too broad.”

It is found that the respondents further stated that: “[s]ubject to the foregoing, the Board of Education will gather and provide to you responsive public records that are not exempt from disclosure.”

4. It is found that, by letter dated September 22, 2020, the complainant replied to the respondents’ acknowledgment, in part, as follows:

...I am including in this letter additional public records requests which are specific. My initial request was broad due to the fact that the Board of Education was very vague about the matters surrounding the investigation of the Superintendent and [the] Director of Finance. It is my understanding that there is no statute preventing the public from requesting records related to the duties, actions and expenditures of a public agent.

It is further found that the complainant requested that the respondents provide her with copies of the following additional records:

- a. ...all legal itemized statements and all bills paid by the Board of Education from January 2016 to September 2020;
- b. Any and all correspondence, emails, letters, contracts written from January 2018-September 2020 that would reveal the purpose of the investigation of the

Superintendent and Director of Finance;

- c. Any document stipulating the responsibilities or the job descriptions of the Monroe Board of Education Superintendent and Board of Education Director of Finance;
- d. All evaluations or employee performance review documents of the Board of Education Superintendent and Director of Finance from January 2016 to September 2020;
- e. Any and all draft reports or settlement agreement between Monroe and Superintendent Zamary written [from] January 2019 to September 2020;
- f. Any and all draft reports or settlement agreement between Monroe and the Director of Finance or Interim Director of Finance written from January 2019 to September 2020; and
- g. Any and all reports, correspondence, letters, emails regarding misappropriation of finances or inappropriate documentation of the BOE budget from 2017-2019.

(The “second request”).

5. It is found that, by letter dated September 25, 2020, the respondents acknowledged the complainant’s second request, and further responded as follows:

- a. With regard to the request set forth in paragraph 4.a, above, the respondents stated: “You requested ‘all legal itemized statements and bills paid by the Board of Education from January 2016 to September 2020.’ Aside from being very broad, this request seeks information protected by the attorney-client privilege and is denied on the basis of the same, as such records are exempt from disclosure pursuant to C.G.S. §1-210(b)(10). In addition, the exemptions set forth in C.G.S. §§1-210(b)(4) and (9) may also be applicable to some of the invoices.”
- b. With regard to the request set forth in paragraph 4.d, above, the respondents stated: “To the extent that such records exist and to the extent that an objection is asserted pursuant to C.G.S. §1-214(b), disclosure will

not be made.”

- c. With regard to the requests set forth in paragraphs 4.e, 4.f, and 4.g, above, the respondents stated: “Again, draft reports are exempt from disclosure pursuant to C.G.S. §1-210(b)(1) and will not be disclosed.”

It is found that the respondents further stated: “[s]ubject to the foregoing, the Board of Education will gather and provide to you responsive public records that are not exempt from disclosure.”

6. It is found that, by email dated October 2, 2020, the respondents provided the complainant with records responsive to her first and second requests.

7. It is found that, by letter dated October 21, 2020, the complainant requested that the respondents provide her with copies of the following records:

- a. All legal itemized statements and all legal bills paid by the Board of Education from January 2016 to October 2020 (I have expanded the time frame of the original record request which was denied);
- b. Any and all correspondence, emails, letters, contracts written from January 2018 [to] October 2020 that would reveal the purpose of the investigation of the Superintendent and Director of Finance;
- c. All evaluations or employee performance review documents of the Board of Education Director of Student Support Services and Director of Finance from January 2016 to October 2020. In response to the original request, the BOE did not release any performance reviews for the Director of Finance (G. DiBlasi and Frank Connolly). The BOE did not release the superintendent’s performance reviews for the 2016-2017, 2017-2018, [and] 2018-2019 school years;
- d. Any documents showing payments made to Jack Zmary for his consulting services within the timeframe of 2019-2020;
- e. Any and all draft reports, contracts, separation agreement or settlement agreement between Monroe and Superintendent Zmary written [from] January 2019 to October 2020. (One agreement was provided);

- f. Any and all draft reports, contracts, separation agreement or settlement agreement between Monroe and Kay Moser written [from] January 2019 to October 2020;
- g. Any and all draft reports, separation/termination letters, contracts, separation agreement or settlement agreement between Monroe and Gabrielle DiBlasi written [from] January 2019 to October 2020;
- h. Any and all draft reports, separation/termination letter, or settlement agreement between Monroe and the Director Finance or Interim Director of Finance written from January 2019 to October 2020; and
- i. Any and all reports, correspondence, letters, [or] emails regarding misappropriation of finances or inappropriate documentation of the BOE budget from 2017-2020.

(The “third request”).

8. By email dated and filed October 22, 2020¹, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with all the requested records.

9. At the time of the request, §1-200(5), G.S., provided:

“[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, printed, photostated, photographed or recorded by any other method.²

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

² Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped.”

10. 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.

11. 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.”

12. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

13. Regarding the third request set forth in paragraph 7, above, §1-206(a), G.S., provides, in relevant part, that:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request....Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(Emphasis added).

14. It is found that the complainant sent the third request to the respondents by U.S. mail on October 21, 2020, and filed an appeal with the Commission on October 22, 2020. It is further found that the respondents did not deny the third request in writing prior to the filing of the complaint on October 22, 2020. It is also found that the third request may not be “deemed” denied by operation of law, within the meaning of §1-206(a), G.S.

15. It is therefore concluded that the Commission may not grant the complainant any relief with regard to the third request. See City of Bridgeport v. Freedom of Info. Comm'n, 222 Conn. App. 17, 41, 57 (2023), cert. denied, 348 Conn. 936, 306 A.3d 1072 (2024) (concluding that, for purposes of determining whether a request has been deemed denied pursuant to §1-206(a), G.S., the operative date is the date that the request was received by the public agency, and further concluding that, “a denial of a request, either in fact or pursuant to §1-206 (a), [G.S.,] is an essential fact that goes to the merits of a complaint before the commission.”). Accordingly, the third request will not be further

addressed herein.

16. At the first hearing on this matter, the complainant conceded that the respondents had provided her with copies of some of the requested records. She contended, however, that some of the records she had received contained redactions and further contended that the respondents had failed to provide her with all requested records.

17. The former Chairwoman of the Board of Education (the “former Chairwoman”) appeared and testified on behalf of the respondents at the first and third contested case hearings on this matter. In addition, the Superintendent of Monroe Public Schools appeared and testified on behalf of the respondents at the third contested case hearing.

18. Upon receipt of the requests set forth in paragraphs 2 and 4, above, it is found that the former Chairwoman conducted a search for responsive records, including searching through the Board of Education’s electronic and hardcopy records. It is further found that the former Chairwoman forwarded the requests to the Superintendent of Schools, who in turn searched for responsive electronic and hardcopy records responsive to both requests.

19. It is found that, by the time of the first contested case hearing, the respondents had satisfied the requests set forth in paragraphs 2.a, 2.d, 4.b, 4.c, and 4.d, above.

20. Based upon the testimony of the former Chairwoman, it is found that the respondents do not maintain any records responsive to the requests set forth in paragraphs 4.f, or 4.g, above.³

21. Accordingly, it is found that the records the respondents withheld with respect to the requests set forth in paragraphs in 2.b, 2.c, 2.e, 4.a, and 4.e, above, consist of (1) various attorneys’ legal bills; and (2) the investigation report concerning former Superintendent Jack Zamarly.

22. At the conclusion of the third contested case hearing, the respondents represented that they would disclose all responsive legal bills to the complainant, redacting only those portions of the bills containing substantive descriptions of the legal work performed by the various attorneys. The complainant did not contest the redactions in the legal bills based on the attorney-client privilege.

³ Due to technical difficulties, which made it exceedingly difficult for the parties and the hearing officer to hear the testimony of the former Chairwoman, the first contested case hearing was continued to February 18, 2022. Unfortunately, due to technical difficulties that occurred upon convening the second contested case hearing, the February 18, 2022 hearing was continued to April 28, 2022.

23. By motion dated and filed May 13, 2022, the complainant notified the hearing officer that she had received the redacted legal bills and was requesting: (1) that the hearing officer review the legal bills in camera; and (2) that the contested case hearing be reopened so that a September 2, 2020 legal bill, which was attached to her motion and noted that an “investigation report” was received by the respondents’ counsel on August 24, 2020, could be marked into evidence. The respondents objected to such motion.

24. On May 23, 2020, the hearing officer issued the following order: (1) the respondents were ordered to submit the legal bills to the Commission without redactions for in camera inspection; (2) the respondents were ordered to submit an unredacted copy of the “investigation report,” which was mentioned in the legal bill attached to the complainant’s motion, to the Commission for in camera inspection; (3) the legal bill attached to the complainant’s motion had been marked into evidence as the complainant’s Post-Hearing Ex. R; and (4) the motion to reopen the hearing was denied.

25. On June 7, 2022, the respondents submitted two sets of unredacted records, each with a corresponding index, to the Commission for in camera inspection. The first submission, which consists of the responsive legal bills, shall be identified as IC-2020-0541-1 through IC-2020-0541-367⁴ (the “legal bills”). The second submission, which

⁴ Regarding the legal bills, the Commission notes that the respondents’ in camera submission included pages that did not contain redactions so that the hearing officer could review the totality of the bills in context. The Commission further notes that the respondents provided the complainant the following pages of legal bills without redactions: IC-2020-0541-2; IC-2020-0541-5; IC-2020-0541-6; IC-2020-0541-8 through IC-2020-0541-16; IC-2020-0541-18; IC-2020-0541-19; IC-2020-0541-21; IC-2020-0541-22; IC-2020-0541-25; IC-2020-0541-27; IC-2020-0541-28; IC-2020-0541-31 through IC-2020-0541-34; IC-2020-0541-36; IC-2020-0541-37; IC-2020-0541-39; IC-2020-0541-41 through IC-2020-0541-43; IC-2020-0541-46; IC-2020-0541-48 through IC-2020-0541-51; IC-2020-0541-53 through IC-2020-0541-61; IC-2020-0541-63; IC-2020-0541-65; IC-2020-0541-68 through IC-2020-0541-72; IC-2020-0541-74 through IC-2020-0541-78; IC-2020-0541-80; IC-2020-0541-82; IC-2020-0541-85; IC-2020-0541-88; IC-2020-0541-91; IC-2020-0541-93 through IC-2020-0541-98; IC-2020-0541-100; IC-2020-0541-102 through IC-2020-0541-110; IC-2020-0541-112 through IC-2020-0541-123; IC-2020-0541-125 through IC-2020-0541-128; IC-2020-0541-130 through IC-2020-0541-135; IC-2020-0541-137 through IC-2020-0541-142; IC-2020-0541-144; IC-2020-0541-146 through IC-2020-0541-151; IC-2020-0541-153 through IC-2020-0541-158; IC-2020-0541-160; IC-2020-0541-161; IC-2020-0541-163 through IC-2020-0541-166; IC-2020-0541-168 through IC-2020-0541-181; IC-2020-0541-183 through IC-2020-0541-186; IC-2020-0541-188; IC-2020-0541-190 through IC-2020-0541-194; IC-2020-0541-196 through IC-2020-0541-209; IC-2020-0541-211 through IC-2020-0541-219; IC-2020-0541-221 through IC-2020-0541-236; IC-2020-0541-238 through IC-2020-0541-242; IC-2020-0541-246 through IC-2020-0541-248; IC-2020-0541-250; IC-2020-0541-252 through IC-2020-0541-255; IC-2020-0541-257; IC-2020-0541-259 through IC-2020-0541-261; IC-2020-0541-264 through IC-2020-0541-267; IC-2020-0541-269 through IC-2020-0541-271; IC-2020-0541-273 through IC-2020-0541-277; IC-2020-0541-280; IC-2020-0541-282 through IC-2020-0541-288; IC-2020-0541-290 through IC-2020-0541-293; IC-2020-0541-295 through IC-2020-0541-297; IC-2020-0541-299; IC-2020-0541-304; IC-2020-0541-306; IC-2020-0541-308; IC-2020-0541-309; IC-2020-0541-311; IC-2020-0541-315 through IC-2020-0541-317; IC-2020-0541-319; IC-2020-0541-325 through IC-2020-0541-327; IC-2020-0541-329; IC-2020-

consists of an investigation report concerning the former Superintendent Jack Zmary, shall be identified as IC-2020-0541-1-Zmary through IC-2020-0541-27-Zmary (the "Investigation Report").

26. With regard to the legal bills, with the exception of IC-2020-0541-62; IC-2020-0541-64; IC-2020-0541-66; IC-2020-0541-298; IC-2020-0541-300 through IC-2020-0541-303; IC-2020-0541-305; IC-2020-0541-307; IC-2020-0541-310; IC-2020-0541-312 through IC-2020-0541-314; IC-2020-0541-318; IC-2020-0541-320 through IC-2020-0541-324; IC-2020-0541-328; IC-2020-0541-330 through IC-2020-0541-333; IC-2020-0541-337; IC-2020-0541-339; IC-2020-0541-341 through IC-2020-0541-345; IC-2020-0541-348; and IC-2020-0541-349, the respondents contended that portions of the in camera records are exempt from disclosure pursuant to §1-210(b)(10), G.S., which section permits an agency to withhold records of "communications privileged by the attorney-client relationship."

27. Section 52-146r(b), G.S., provides that "[i]n any civil or criminal case or proceeding or in any legislative or administrative proceeding, all confidential communications shall be privileged and a government attorney shall not disclose any such communications unless an authorized representative of the public agency consents to waive the privilege and allow disclosure."

28. Section 52-146r(a)(2), G.S., defines "confidential communications" to mean:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice.

29. In Maxwell v. Freedom of Info. Comm'n, 260 Conn. 143, 149 (2002), the Connecticut Supreme Court held that §52-146r, G.S., "merely condit[ion]s the common law attorney-client privilege as this court previously defined it." The Court further stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client and relate to legal advice sought by the agency from the attorney."

0541-334 through IC-2020-0541-336; IC-2020-0541-338; IC-2020-0541-340; IC-2020-0541-346; IC-2020-0541-347; IC-2020-0541-350 through IC-2020-0541-352; IC-2020-0541-354 through IC-2020-0541-356; IC-2020-0541-359 through IC-2020-0541-364, IC-2020-0541-366; and IC-2020-0541-367.

Id.

30. The Supreme Court has adopted a four part test to determine whether communications are subject to the attorney-client privilege: “(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney; and (4) the communications must be made in confidence.” Shew v. Freedom of Info. Comm’n, 245 Conn. 149, 159 (1998). “The burden of establishing the applicability of the privilege rests with the party invoking it.” Harrington v. Freedom of Info. Comm’n, 323 Conn. 1, 12, (2016) (“Harrington”). If it is clear from the face of the records, extrinsic evidence is not required to prove the existence of the attorney-client privilege.” Lash v. Freedom of Info. Comm’n, 300 Conn. 511, 516-17 (2011).

31. Moreover, in Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice....The privilege fosters full and frank communications between attorneys and their clients and thereby promote[s] the broader public interests in the observation of law and [the] administration of justice.” PSE Consulting, Inc. v. Frank Mercede & Sons, Inc., 267 Conn. 279, 329–30 (2004).

32. In the context of an attorney’s billing records, it is generally accepted that an attorney billing statement and time records are protected by the attorney-client privilege to the extent that they reveal litigation strategy and/or the nature of the services performed. See Bruno v. Bruno, FA0540049006S, 2009 Conn. Super. LEXIS 1913, at *3 (Conn. Super. Ct. July 10, 2009) (“... bills, ... and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege”). Id. at *5.

33. Apart from the in camera records identified in paragraph 26, above, it is found that the respondents highlighted the portions of the billing records, which they claimed were exempt pursuant to §1-210(b)(10), G.S. The respondents contended that such portions of the records were exempt from disclosure because they reveal the specific nature of the legal services provided to them by their lawyers.

34. Upon careful in camera inspection, it is found that the portions of the legal bills claimed exempt from disclosure are communications “between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney,” which “relate to legal advice” sought by the public agency client from the attorney, and which were “transmitted in confidence,” within the meaning of §52-146r(a)(2), G.S.

35. It is concluded that such portions of the billing records constitute communications privileged by the attorney-client relationship, within the meaning of §1-

210(b)(10), G.S. It is found that the attorney-client privilege has not been waived with respect to such records. Accordingly, it is further 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 such portions of records to the complainant.

36. Next, with regard to the billing records, the respondents contended that portions of IC-2020-0541-62; IC-2020-0541-64; and IC-2020-0541-66 are exempt from disclosure pursuant to §1-210(b)(9), G.S., which section permits an agency to withhold “[r]ecords, reports or statements of strategy or negotiations with respect to collective bargaining.”

37. Upon careful in camera inspection, it is found that the portions of IC-2020-0541-62; IC-2020-0541-64; and IC-2020-0541-66, which the respondents highlighted, constitute records of strategy or negotiations with respect to collective bargaining.

38. 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 such portions of records to the complainant.

39. Finally, with regard to the billing records, the respondents contend that portions of IC-2020-0541-298; IC-2020-0541-300 through IC-2020-0541-303; IC-2020-0541-305; IC-2020-0541-307; IC-2020-0541-310; IC-2020-0541-312 through IC-2020-0541-314; IC-2020-0541-318; IC-2020-0541-320 through IC-2020-0541-324; IC-2020-0541-328; IC-2020-0541-330 through IC-2020-0541-333; IC-2020-0541-337; IC-2020-0541-339; IC-2020-0541-341 through IC-2020-0541-345; IC-2020-0541-348; and IC-2020-0541-349 are exempt from disclosure pursuant to §1-210(b)(17), G.S., which section permits an agency to withhold “[e]ducational⁵ records which are not subject to disclosure under the Family Education Rights and Privacy Act, 20 USC 1232g....”

40. Upon careful in camera inspection, it is found that the respondents only redacted from the records identified in paragraph 39, above, the names and initials of students, or the names of the students’ parents; all other parts of such records, including the specific nature of the legal services provided by the lawyers, were not redacted.

41. “Education records” are defined at 20 U.S.C. §1232g(a)(4)(A) as those records, files, documents, and other materials 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.

42. This Commission has concluded that 20 U.S.C. §1232g prohibits public schools that receive federal funds from disclosing information concerning a student that would personally identify that student, without the appropriate consent. See Brenda Ivory v. Vice-Principal Griswold High Sch., Griswold Pub. Sch.; and Griswold Pub. Sch.,

⁵ Public Act 25-124 amended §1-210(b)(1), G.S., replacing the word “educational” with the word “education”.

Docket #FIC 1999-306 (Jan. 26, 2000).

43. 34 C.F.R. §99.3 provides, in relevant part, as follows:

Personally Identifiable Information

The term includes, but is not limited to--

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

44. It is found that the information redacted from the in the records identified in paragraph 39, above, “directly relates” to students attending Monroe Public Schools, within the meaning of 20 U.S.C. §1232g(a)(4)(A)(i). It is further found that such records are “maintained” by the respondents, which are “educational institutions” within the meaning of 20 U.S.C. §1232g(a)(4)(A)(ii).

45. It is concluded that the redacted portions of such records are “education records” within the meaning of 20 U.S.C. §1232g(a)(4)(A). It is further concluded that the redacted portions of such records are exempt from disclosure pursuant to the provisions of §1-210(b)(17), G.S.⁶ Finally, it is concluded that the respondents did not

⁶ The Commission notes that information found exempt from disclosure pursuant to §1-210(b)(17), G.S., would also be partially exempt from disclosure pursuant to the provisions of §1-210(b)(11), G.S. (Nothing in the FOI Act shall be construed to require the disclosure of “[n]ames and address of students enrolled in any public school....”)

violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they declined to provide such portions of records to the complainant.

46. Finally, with regard to the Investigation Report, the respondents contended that IC-2020-0541-1-Zamary through IC-2020-0541-27-Zamary are exempt from disclosure in their entirety pursuant to §1-210(b)(1), G.S., which section permits an agency to withhold “[p]reliminary drafts or notes provided the public agency as determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.”

47. Section 1-210(e)(1), G.S., additionally provides, in relevant part, that:

(e) Notwithstanding the provisions of subdivision (1)... of subsection (b) of this section, disclosure shall be required of:

Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency....

(Emphasis supplied).

48. In Shew, the Connecticut Supreme Court determined that an investigation report prepared by an attorney was a “preliminary draft” within the meaning of §1-210(b)(1), G.S. See Shew v. Freedom of Info. Comm’n, et al., 245 Conn. 149, 165 (1998). The attorney in Shew had been hired by the town to determine whether a town official should be terminated. The records at issue in that case were the attorney’s draft report, with its conclusion section left completely blank. Id.

49. Interpreting the phrase “preliminary notes and drafts” within §1-210(b)(1), G.S., the Court noted that it previously observed that:

‘[p]reliminary’ is defined as ‘something that precedes or is introductory or preparatory.’ As an adjective it describes something that is ‘preceding the main discourse or business.’ A ‘draft’ is defined as ‘a preliminary outline of a plan, document or drawing....’ By using the nearly synonymous words ‘preliminary’ and ‘draft,’ the legislation makes it very evident that preparatory

materials are not required to be disclosed.”
Furthermore, ‘the concept of preliminary, as opposed to final, should [not] depend upon ... whether the actual documents are subject to further alteration. ‘[P]reliminary drafts or notes reflect that aspect of the agency's function that precedes formal and informed decisionmaking.... It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass.’

Shew, 245 Conn. at 164–65 (internal citations omitted.)

50. Applying such principles to the records at issue in Shew, the Court determined that the attorney’s report with its conclusion left blank could be nothing but “a preliminary draft or note” under any definition of such terms. Id. at 165.

51. The Court further determined that §1-210(e)(1), G.S., did not mandate disclosure either. Focusing on why the attorney in Shew was hired, the court held that the attorney’s role was that of a legal advisor, which was analogous to being a staff member as required by §1-210(e)(1), G.S. (“We discern no reason, consistent with the purposes underlying that statute, to conclude that our legislature intended to exclude from [§-210(e)(1), G.S.,] drafts of memoranda prepared by persons who, like [the attorney in this case], are hired on a contractual basis to perform tasks that are, for all relevant purposes, indistinguishable from those which may be performed by agency personnel.”).

52. Like the attorney in Shew, the attorney whose draft report is at issue in this instant matter was hired by the respondent Board to determine whether former Superintendent Zamaro should be terminated.

53. Upon careful in camera inspection, it is found that, similar to the investigation report in Shew, the Investigation Report in this matter is incomplete, with many sections, including the conclusion section, left blank.

54. Moreover, while it is true, as the complainant contends, that the attorney who prepared the draft Investigation Report, provided a draft copy of the report to the law firm of Ciulla & Donofrio, LLP, so that Attorney Jeffrey M. Donofrio could review the draft report, it is found that both the attorneys were hired by the respondent Board on a contractual basis to perform tasks that are indistinguishable from those that may be performed by agency personnel.

55. In addition, based upon the testimony of the former Chairwoman, it is found that none of the respondents received or reviewed any part of the draft report. In this regard, the former Chairwoman further testified that, while the Board of Education was working to reach (and ultimately did reach) a mutually agreed to settlement with former Superintendent Zamaro, which ended the superintendent’s employment with the town, if

the board had been unable to reach such an agreement, the members of the board would have been required to sit as fact finders in a formal termination hearing concerning the former superintendent. The former Chairwoman testified, and it is found, that the board members purposely did not review the draft report because, if they were called upon to sit in judgment of the former superintendent, they did not want their impartiality to be tainted by the report. Because the draft report was never completed, was not reviewed by the board members and did not form any part of the basis for the former superintendent's departure from his employment with Monroe Public Schools, the former Chairwoman testified that the public interest in withholding such document clearly outweighed the public interest in disclosure. The Commission agrees.

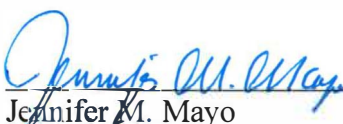
56. Finally, in accordance with the Appellate Court's decision in Lindquist, because the members of the board of education—who would have presided over the termination hearing if it had been convened—did not review the draft report, the provisions of §1-210(e)(1), G.S., likewise do not mandate disclosure in this case. See Lindquist v. Freedom of Info. Comm'n, 203 Conn. App. 541, n.9 (2021) (“To the extent we consider the health center's policy argument that requiring disclosure of the final comments and ratings by committee members will chill the discussion that is a necessary part of the peer review process and discourage faculty members from serving on the committee, we are not persuaded. The health center can protect from disclosure the comments and ratings by the committee members by choosing not to disclose them to the [ultimate decision maker], and [accordingly]...the committee members could discuss freely their views of the person they are evaluating, without worry that their comments and ratings would be made public.”).

57. It is found that the Investigation Report constitutes a “preliminary draft or note” within the meaning of §1-210(b)(1), G.S. 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 a copy of such report to 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 25, 2026.

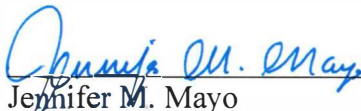

Jennifer M. Mayo
Acting Clerk of the Commission

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:

VICKI BOSHKA, 71 Ridgedale Road, Monroe, CT 06468

**CHAIRPERSON, BOARD OF EDUCATION, MONROE PUBLIC SCHOOLS;
BOARD OF EDUCATION, MONROE PUBLIC SCHOOLS; AND MONROE
PUBLIC SCHOOLS**, c/o Attorney Jeffrey M. Donofrio, Ciulla & Donofrio, LLP,
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Jennifer M. Mayo
Acting Clerk of the Commission