

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
Paula Mackin Cosgrove,) Report of Hearing Officer
Complainant)
) Docket #FIC76-216
against)
) January 17, 1977
State of Connecticut; and State)
Board of Education,)
Respondents)

The above captioned matter was heard as a contested case on January 10, 1977, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies as defined in §1-18a(a), General Statutes.

2. By letter dated December 8, 1976, the complainant requested access to inspect the "Early Leaver's Reports" for the Hartford School System for the periods of October 1, 1974 - September 30, 1975; October 1, 1975 - September 30, 1976, and October 1, 1976 - December 1, 1976. The complainant concedes that the names of students, or other information that would identify such students, should be deleted or concealed on the requested documents.

3. By letter dated December 9, 1976, the respondent board denied the aforesaid request.

4. From such denial, the complainant filed the present appeal with this Commission on December 14, 1976.

5. At the hearing herein, the respondents moved to dismiss the complaint on the ground that the requested documents are not public records under §1-19(a), General Statutes, and 20 U.S.C. §1232g; and §§1-19(b)(1) and (c), General Statutes.

6. It is found that this Commission has jurisdiction over this complaint. In view of paragraph 1 of the order below, this Commission shall treat the respondents' motion to dismiss as a defense to the complaint herein.

7. 20 U.S.C. §1232g, commonly known as the Buckley Amendment, provides in pertinent part that no federal funds shall be made available to state and local educational agencies that have a policy or practice of permitting the release of education records or personally identifiable information of

students, unless prior consent is obtained.

8. The aforesaid federal prohibition against disclosure is not compulsory or mandatory. It is merely a condition precedent to the granting of funds.

9. The exclusion from the definition of public records stated in §1-19(a), General Statutes, refers to provisions of federal law which are compulsory and mandatory as to public agencies.

10. It is found that the Buckley Amendment is not such a compulsory and mandatory provision of federal law as to exclude the requested documents from the category of public records under §1-19(a), General Statutes.

11. Furthermore, with the names of students deleted or concealed, the requested documents do not contain personally identifiable information as defined in 41 F.R. §99.3 (June 17, 1976). It is indeed unclear from the definition provided in 41 F.R. §99.3(b)(5) (June 17, 1976) whether the requested documents are even education records within the meaning of the Buckley Amendment since they contain information relating to persons who are no longer students.

12. In this regard, it is found that the names of the persons concerned can be readily deleted or concealed on the form of the requested documents.

13. It is also found that the requested documents are not personnel, medical or similar files within the meaning of §1-19(b)(1), General Statutes.

14. It is further found that when the names of the persons concerned are deleted or concealed, the disclosure of such documents would not constitute an invasion of such persons' personal privacy as required by the §1-19(b)(1) exclusion.

15. It is therefore concluded that the requested documents are public records as defined in §§1-18a(d) and 1-19(a), General Statutes.

16. The respondents contend that the requested documents should not be ordered disclosed by this Commission pursuant to the legislative policy embodied in P.A. 76-421.

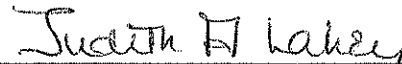
17. P.A. 76-421 is not effective until July 1, 1977 and is therefore not currently binding. This Commission declines to invoke an unclear policy of prospective legislation in this case. It should be noted that this Commission has submitted to the 1977 General Assembly proposed revisions to P.A. 76-421 which, if enacted, would clarify and conform that Act to P.A. 75-342.

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

1. The respondents' motion to dismiss is hereby denied.

2. The respondent board shall forthwith provide access to the complainant to inspect the records herein requested, in accordance with §1-19(a), General Statutes.

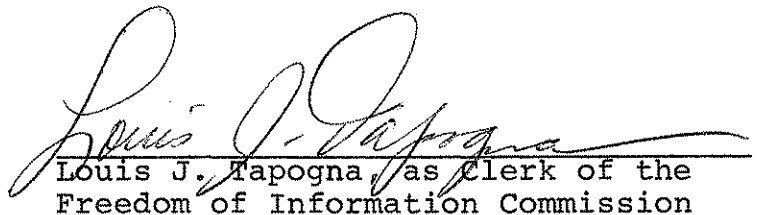
3. The inspection required in paragraph 2 of this order shall be subject to the right of the respondent board to delete or conceal on the aforesaid records the names of the persons concerned.



Commissioner Judith A. Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on February 23, 1977.



Louis J. Tapogna
Louis J. Tapogna, as Clerk of the
Freedom of Information Commission