

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)	
Joseph Volak, Complainant)	Report of Hearing Officer
)	
against)	Docket #FIC77-165
)	
Board of Education of the Town)	September 15, 1977
of Berlin, Respondent)	

The above captioned matter was heard as a contested case on September 8, 1977, at which time the complainant appeared and presented testimony and argument on the complaint.

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

1. The respondent board is a public agency as defined in §1-18a(a), G.S.

2. In Joseph Volak vs. Board of Education of the Town of Berlin, docket #FIC77-129, the complainant requested from the respondent board, on June 9, 1977, copies of its current photography contracts for yearbooks and current contracts with yearbook printing companies for the Berlin High School. The order of this Commission therein reads, in part, as follows:

"1. The respondent board shall forthwith send the complainant, by mail, the three pages of copy that were the subject of his June 9, 1977 letter of request."

3. Notice of the final decision of this Commission in docket #FIC77-129, containing such order, was sent to the respondent board on August 11, 1977.

4. By letter dated August 24, 1977, the complainant filed a complaint with the Commission alleging that the aforesaid order of this Commission in FIC docket #77-129 had not been complied with by the respondent board.

5. Not until August 31, 1977 did the complainant receive the documents as ordered in FIC77-129. Such compliance on the part of the respondent board occurred after the town of Berlin's receipt on August 30, 1977 of this Commission's Order to Show Cause concerning the matters raised in the present appeal.

6. It is found that the respondent board has failed to comply with an order of the Freedom of Information Commission in docket #77-129.

8. This Commission must now determine whether such failure to comply was wilfull.

9. There appears to have been as many as three superintendent of schools employed by the respondent board during the pendency of such order.

10. The complainant did not show whether or not the respondent board held a meeting to discuss or act upon the order in FIC docket #77-129 during the pendency of such order.

11. Therefore, it can not be concluded that such failure to comply with this Commission's order in FIC77-129 was wilful.

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

1. The respondent board shall comply with all orders of this Commission.

2. To underscore the absolute importance of paragraph 1 of the Order above we cite the following language of §1-21k(b), G.S. of the Freedom of Information Act:

"(b) Any member of any public agency who fails to comply with an order of the freedom of information commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense."

The respondent board is further advised that the custodian or other official directly responsible for such failure is subject to the imposition by this Commission of a fine of not less than twenty nor more than five hundred dollars for each occurrence thereof under §1-21i(d), G.S.

3. In the matter of future complaints brought against the respondent board concerning allegations of wrongful denial of the right to see and inspect public records, it is now incumbent upon this Commission to scrutinize and assess the distribution of responsibility amongst the board's membership, and those employed by the board, concerning its custodial responsibilities to the public with respect to records kept and maintained in the board's files. This Commission has every intention of doing so and in the event of a finding of a wilful violation, will seek prosecution and enforcement of the statutory sanctions and penalties cited in paragraph 2 above of this Order.



Commissioner Donald W. Friedman

as Hearing Officer

Approved by order of the Freedom of Information Commission on September 28, 1977.



Charlene G. Arnold
Clerk of the Commission