

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Robert J. Conrad and the  
Journal Inquirer

FINAL DECISION

Complainants

Docket #FIC85-11

against

Somers Board of Education  
and the Town of Somers

September 11, 1985

Respondents

The above captioned matter was heard as a contested case on May 14, 1985 at which time the complainants and the respondent board appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondent board is a public agency within the meaning of 1-18a(a), G.S.
2. By letter filed with the Commission January 24, 1985, the complainants claimed that the respondent had improperly denied them copies of the board's evaluation of the superintendent of school on January 14, 1985.
3. The complainants' request for the evaluation record was made on December 21, 1984 and the respondent voted to deny the complainants' access to the requested records on January 14, 1985.
4. The requested copy was a document generated as part of a newly designed evaluation process developed by agreement with the superintendent.
5. Board members had, as a preliminary task, gone through a checklist demanding a yes or no answer to specific performance objectives for the superintendent.
6. Where a no answer was given, the board members stated, on the back of the papers, the factual basis for the negative response.

7. The comments explaining the negative answers were subsequently compiled on a single piece of paper and distributed to the board members as a preliminary step in the evaluation process.

8. This compilation is the record sought by the complainants from the board, however, the complainants have, in fact, already obtained a copy of the compilation from one board member.

9. The complainants used the subject record as the basis for a newspaper article in early January prior to January 14, the date the board refused to disclose the record to the complainants.

10. The unexpected publicity disturbed the board and the superintendent so much that they agreed not to pursue the evaluation process to a conclusion.

11. The respondent claimed the record sought by the complainants was exempt under §1-19(b)(1), G.S. as a preliminary note and under §1-19(b)(2), G.S. as a personnel or similar file the disclosure of which would constitute an invasion of personal privacy.

12. §1-19(b)(1), G.S. exempts from disclosure, "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure."

13. §1-19(c), G.S. provides in relevant part:

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

14. It is found that the subject record, the compilation of comments from the back of the checklists filled out by board members, is an intra-agency memorandum or report comprising part of the process by which governmental decisions and policies are formulated.

15. It is concluded, therefore, that the subject record is not a preliminary note within the meaning of §1-19(b)(1), G.S.

16. §1-19(b)(2), G.S. exempts from disclosure "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

17. It is found that the subject record is part of the personnel file of the superintendent.

18. The content of the subject record includes negative statements concerning personality, physical appearance, relationships and humor of the superintendent.

19. The publication of the contents of the subject record had a detrimental effect upon the candidacy of the superintendent for the post of superintendent of schools in another town.

20. It is found that the subject record is one in which the public has a legitimate interest because the superintendent of schools has a critical administrative role, especially in this case, because the evaluation process never went to completion.

21. It is further found that the subject record is not exempt from disclosure under §1-19(b)(2), G.S., because the legitimate interest of the public in the performance of the superintendent outweighs any privacy interest which the superintendent has in this regard.

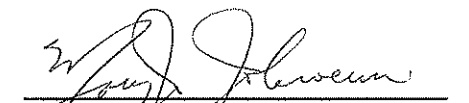
22. Both complainants and respondents requested the imposition of civil penalties pursuant to §1-21i(b), G.S.

23. It is found that civil penalties are inappropriate in this case.

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

1. No order is deemed necessary inasmuch as the complainants already have a copy of the record which they requested from the respondent board.

Approved by order of the Freedom of Information Commission at its regular meeting of September 11, 1985.

  
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Mary Jo Jolicoeur  
Clerk of the Commission