

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Ann Dematteo, Ben Engel and  
the Jackson Newspapers,

FINAL DECISION

Complainants

Docket #FIC85-61

against

Board of Education  
of the City and Town of  
New Haven,

September 11, 1985

Respondent

The above captioned matter was heard as a contested case on June 6, 1985 at which time the complainants and the respondent appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.

2. In December, 1984 the chairman of the respondent created and distributed to members of the respondent an evaluation form designed to assist members of the respondent in appraising the job performance of the superintendent of schools, pursuant to §10-157, G.S.

3. On January 7, 1985 a composite of the members' responses was distributed to the respondent by its chairman for discussion in executive session.

4. By letter dated February 15, 1985 the complainants made a request of the chairman of the respondent for copies of all of the respondent's job performance evaluations of the superintendent of schools, Dr. Dow, since his date of hire.

5. By letter of complaint filed with the Commission on March 5, 1985 the complainants appealed the respondent's failure to provide the requested records.

6. The forms used by the respondent contained 51 questions in 9 categories and were completed by its members and returned to the chairman of the respondent unsigned. The individual forms were retained by the chairman of the respondent after the creation of the composite document.

7. The chairman of the respondent claims that he could not release the records to the complainants without the approval of the respondent. It is found, however, that the absence of the respondent's approval is not a concern cognizable under the Freedom of Information Act.

8. The respondent claims that it cannot release the evaluation documents because it is still in the process of evaluating the superintendent and intends to use the documents in future discussions with Dr. Dow.

9. It is found that the absence of an opportunity for Dr. Dow to respond to the documents before the respondent does not affect the disclosability of the documents under the Freedom of Information Act.

10. The respondent also claims that the documents reflect personal opinions and not policy and are therefore not disclosable as public records.

11. It is found that the completed forms contain the estimation of the members of the respondent, in their capacity as public officers and not private individuals, of the performance of the superintendent of schools. The forms are professional evaluations, not personal thoughts.

12. The respondent also claims that the forms submitted to the chairman of the respondent by its members are preliminary drafts or notes within the meaning of §1-19(b)(1), G.S., the public interest in withholding which outweighs the public interest in disclosure.

13. Each form represents the rating which its author was willing to turn over to the chairman for his examination and his use in creating an evaluative document based on the data therein. The fact that data from the documents would ultimately be incorporated into another document does not alter the fact that the forms were final documents with respect to the individual members of the respondent.

14. The Commission finds unpersuasive the respondent's claim that disclosure would inhibit candor, since the documents in question were submitted anonymously.

15. It is concluded that the evaluation forms completed by members of the respondent and submitted to the chairman of the respondent are not preliminary drafts or notes within the meaning of §1-19(b)(1), G.S.

16. It is further found that the evaluations are intra-agency memoranda or recommendations within the meaning of §1-19(c), G.S.

17. The respondent failed to prove that the requested records are exempted from disclosure by any other federal law or state statute.

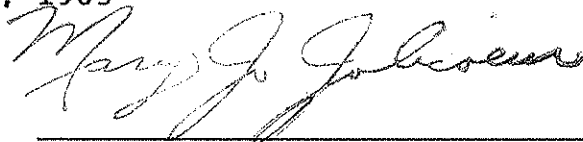
18. It is concluded that the evaluation forms and the resulting composite document are public records within the meaning of §1-18a(d), G.S., subject to disclosure pursuant to §§1-15, 1-19(a) and 1-19(c), G.S.

19. It is further concluded that the respondent violated §§1-15 and 1-19(a), G.S. when it failed to provide the complainants with the requested records promptly upon request.

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

1. The respondent shall forthwith provide the complainants with access to inspect or copy both the evaluation forms completed by members of the respondent and the composite document created by the chairman of the respondent based upon such evaluation forms.

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