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FREEDOM OF INFORMATION



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Nancy Chapman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-281

Shirley Mosby, Member, Board of Education, Norwalk
Public Schools; and Board of Education, Norwalk Public
Schools,

Respondent(s)

January 15, 2016

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 10, 2016**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE January 29, 2016**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE January 29, 2016**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE January 29, 2016**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Nancy Chapman
Alexa J.P. Lindauer, Esq. and Kathleen Eldergill, Esq.
Thomas B. Mooney, Esq., Melika Forbes, Esq. and Christopher Tracey, Esq.

2016-01-15/FIC# 2015-281/Trans/wrbp/VDH/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Nancy Chapman,

Complainant

against

Docket #FIC 2015-281

Shirley Mosby, Member,
Board of Education, Norwalk
Public Schools; and Board of
Education, Norwalk Public
Schools,

Respondents

January 15, 2016

The above-captioned matter was heard as a contested case on August 20, 2015 and October 26, 2015, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the matter was consolidated with Docket #FIC 2015-261; Peter Torrano v. Shirley Mosby, as Member, Board of Education, Norwalk Public Schools; and Board of Education, Norwalk Public Schools.

At the August 20, 2015 contested case hearing, counsel for the respondent Board (the "Board") appeared and moved to be dismissed from this matter. The Board contended that it had not received the request for records at issue in this case and that it was not in possession of any of the requested records. The complainant conceded that her request had been directed solely to Respondent Mosby ("Mosby" or the "respondent") and that, when she filed her appeal with the Commission, she was appealing solely from Mosby's denial of her request. The complainant represented that she had no objection to the motion to dismiss being granted as long as the case proceeded against Mosby. Based on these arguments and representations, the Board's motion was granted.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. It is found that, by email dated March 29, 2015, the complainant requested that the respondent provide her with access to certain emails, as follows:

I am told that it's possible that public emails have been collected to support Shirley Mosby's claim of racism against

the Board of Education. Under the Freedom of information, I request access to those emails. . . .

3. By email dated April 19, 2015 and filed April 20, 2015, the complainant appealed to this Commission, alleging that the respondent violated the Freedom of Information (“FOI”) Act by failing to provide her with access to the emails described in paragraph 2, above.

4. Section 1-200(5), G.S., provides:

“Public 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.

5. Section 1-210(a), G.S., provides in relevant part that:

Except 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 (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

7. It is found that Mosby is a member of the Board.

8. It is also found that, in her private capacity, Mosby is a member of the Norwalk Branch of the National Association for the Advancement of Colored People (“NAACP”). The Commission takes administrative notice of the fact that the NAACP is a non-profit civil rights organization.

9. It is found that sometime after Mosby became a member of the Board, she and two other Board members (the “co-complainants”) filed a joint complaint with the Norwalk Branch NAACP Legal Redress Committee alleging, among other things, discrimination and disparate treatment by the Board against African-American and Hispanic female Board members.

10. It is found that Mosby obtained certain records that she believed evidenced discrimination and disparate treatment against female Board members of color. It is found that some of the records came from the Board, while other records were newspaper clippings and letters unrelated to Mosby's position as a Board member. It is found that Mosby copied all of these records, some of which were emails, and placed them into a notebook.

11. In addition, it is found that Mosby's co-complainants also gathered and copied records that they believed evidenced discrimination and disparate treatment against female Board members of color, and that they provided these records to Mosby. It is found that Mosby placed the records that she received from her co-complainants in the notebook along with the records that she had gathered.

12. It is found that, at or around the time they filed their complaint with the NAACP, Mosby and her co-complainants met with a representative from the NAACP to review the notebook and to discuss their case. It is found that, while the notebook was reviewed by the NAACP representative, it was never filed or lodged with the organization itself, although the purpose of the notebook was to supply evidence in support of the filed complaint.

13. According to the complainant, subsequent to the filing of the NAACP complaint, and during a press conference outside of Norwalk's city hall, a representative of the NAACP held up the notebook and alleged that it contained evidence of discrimination and disparate treatment by the Board against female Board members of color.

14. Thereafter, it is found that the complainant in the instant case made a request for copies of the emails in the notebook.

15. At the hearing, the complainant contended that she was entitled to review the emails contained in the notebook because such records were alleged to be proof of racial and ethnic discrimination. According to the complainant, Mosby should be required to show her proof, not just talk about it. Mosby contended, however, that the emails are not "public records" subject to disclosure under the FOI Act.

16. At the conclusion of the August 20, 2015 hearing, the hearing officer issued an order for Mosby to submit to the Commission for an in camera inspection copies of the emails contained in the notebook that she received or had access to because of her position as a Board member. The in camera order did not encompass emails that were provided to Mosby by her co-complainants.

17. On September 2, 2015, Mosby submitted the records described in paragraph 16, above, to the Commission. The in camera records, which may be referred to as IC-2015-281-1 through IC-2015-281-6, are fairly described as four pages of emails and one two-page attachment. In addition, on October 26, 2015, Mosby, realizing that an attachment to one of the emails submitted to the Commission on September 2, 2015 was missing, submitted supplemental in camera records to the Commission. These in camera records, which may be referred to as IC-2015-281-7 through IC-2015-281-14, are fairly described as an eight-page email attachment.

18. Mosby contends that none of the emails contained in the notebook should be disclosed to the complainant because when she compiled the records she was not discharging a duty or fulfilling an obligation that she derived from her membership in the Board. Rather, the notebook was created in connection with the filing of a private complaint by private individuals. Mosby further contends that the copies of the emails that she placed in the notebook were obtained, copied and compiled by her during her personal time. Mosby also contends that the copies of the emails that were given to her by her co-complainants were given to her outside of work and in her capacity as a private citizen and not as a member of the Board.

19. According to the Board's Bylaws, the scope of Mosby's authority to act as a member of or on behalf of the Board is extremely narrow. Board Bylaw, § 9010, entitled "Limits of Authority," provides, in relevant part, as follows:

The Board of Education does not exist between meetings.
Board members have no authority except at a Board
meeting or when discharging an assignment made by the
Board. . . .

20. It is found that, when Mosby obtained copies of certain records from the Board and compiled the notebook, she was not discharging an assignment that had been given to her by the Board. It is further found that none of Mosby's activities with regard to obtaining and copying the records were performed in connection with any Board meeting. Rather, it is found that, when Mosby obtained and copied the records, and compiled them in the notebook, she did so in her private capacity and during her personal time, with the goal of filing a private complaint against the Board.

21. It is further found that when Mosby's co-complainants provided her with their copies of their records they were not discharging an assignment given to them by the Board, nor were they providing these records to Mosby in connection with a Board meeting. Rather, it is found that they too were acting in their private capacities and during their personal time, with the goal of filing a private complaint against the Board.

22. It is found that the Board did not fund the filing of the NAACP complaint. Rather, it is found that Mosby and her co-complainants paid all administrative and other fees associated with the filing of the complaint.

23. In short, it is found that the Board had no involvement in Mosby's and her co-complainants' filing of the complaint with the NAACP.

24. The complainant believes that she should be able to have access to any email contained in the notebook that originates from the Board. What the complainant is actually seeking, however, is access to *copies* of the emails that Mosby and her co-complainants deemed relevant to their private complaint against the Board.

25. In this case, it is found that, at all times since its creation, the notebook has been maintained by Mosby in her capacity as a private citizen. It is found that the notebook was not prepared by a public agency, but rather a private citizen who happens to be a Board

member. Finally, it is found that the notebook was not used by a public agency, but rather by private citizens to facilitate the filing of a private complaint.

26. Based on the foregoing, it is concluded that the notebook is not a public record within the meaning of §1-200(5), G.S. It is further concluded that the respondent did not violate the FOI Act by declining to permit the complainant access to the emails contained in the notebook.

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.



Valicia Dee Harmon
Valicia Dee Harmon
as Hearing Officer