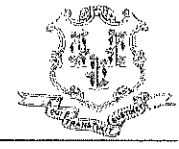




FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

John Mauer and the Stoneforge Chronicles,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-367

Gale Toensing, Member, Board of Education,
Regional School District 1; and Board of
Education, Regional School District 1,
Respondent(s)

March 26, 2014

Transmittal of Proposed Final Decision

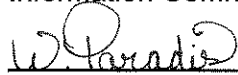
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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, April 23, 2014**. 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 April 11, 2014**. 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 April 11, 2014**. **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 **fourteen (14) copies** be filed **ON OR BEFORE April 11, 2014**, 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: Thomas W. Beecher, Esq.
Gary R. Brochu, Esq.

3/26/14/FIC# 2013-367/Trans/wrbp/CAL/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

John Mauer and The Stoneforge Chronicles,

Complainants

against

Docket #FIC 2013-367

Gale Toensing, Member, Board of Education,
Regional School District 1; and Board of Education,
Regional School District 1,

Respondents

March 13, 2014

The above-captioned matter was heard as contested case on November 20, 2013, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondents are public agencies within the meaning of §1-200(1)(A), G.S.
2. By letter dated June 10, 2013 and filed with the Freedom of Information Commission ("Commission") on June 17, 2013, the complainants appealed to the Commission, alleging that on June 6, 2013, by email from respondent Toensing to all members of the respondent Board, respondent Toensing initiated a meeting of the respondent Board without notice to the public. The complainants alleged the meeting was also not open to the public and violated §1-225, G.S., of the Freedom of Information Act ("FOIA"). The complainant requested the assessment of civil penalties.
3. At the November 20, 2013 hearing, the complainants also requested for relief that the respondents be ordered to publish all emails between members of the respondent Board from April 1, 2013 to the hearing date on the respondent Board's website. They further requested that the respondents be ordered to cease and desist from conducting illegal email meetings, and that FOIA training be ordered for the respondents.
4. Section 1-200, G.S., states in relevant part:
 - (2) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember

public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

5. Section 1-206, G.S., states in relevant part:

(b)(2) In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. (emphasis added)

6. Section 1-225, G.S., states in relevant part:

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken, which minutes shall be available for public inspection within seven days of the session to which they refer.

7. It is found that by email dated June 6, 2013, respondent Toensing communicated with all of the other five members of the respondent Board concerning the agendas for future meetings, but also included a detailed discussion setting forth her argument that Jonathon Moore had not been properly installed as chairman. Moreover, her email stated her view that Mr. Moore had taken certain actions concerning litigation without proper authority, "even if he had been properly elected as chairman...." Finally, respondent Toensing's email requested "the courtesy of a written response...."

8. It is also found that respondent Toensing, by emails dated February 6, 2013, March 10, 2013, and June 11, 2013, communicated with all of the other five members of the respondent Board concerning, respectively, dissenting opinions to the superintendent's evaluation, the participation of the superintendent on the negotiating team for the administrators' union, and the authority of the ABC Committee to refer FOIA complaints to the attorney for the respondent Board.

9. It is further found that Jonathon Moore, a member of the respondent Board, by email dated June 9, 2013, answered respondent Toensing, stating in his first sentence that her June 6, 2013 email violated the FOIA. While his email alleged that her email also violated bylaws, he closed by noting that her email postdated the period for formation of the agenda for a relevant meeting and by stating that "communication included face-to-face talking."

10. At the hearing, Mr. Moore testified and it is found that respondent Toensing's June 6, 2013 email communicating concerning the business of the respondent Board was "not the first" such email and that such communications occurred "a number of other times."

11. It is further found that, despite hearsay allegations, there was no specific evidence of other responses to respondent Toensing's emails described above, beyond Mr. Moore's June 9, 2013 email. Because a complex structure of eight public agencies oversees primary and secondary education in a six town region, and seven boards share one superintendent, there is necessarily communication and coordination between the eight public agencies. Because the District 1 budget had been voted down six times, such coordination was particularly important. But these facts also make it difficult to isolate relevant evidence to support findings concerning the complainants' allegations of verbal communications within a quorum of the respondent Board.

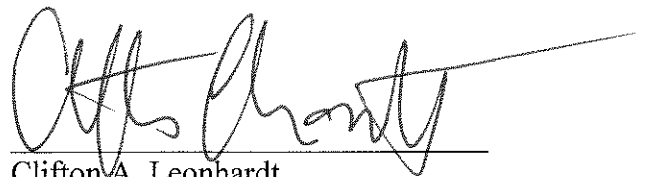
12. Finally, it is found that respondent Toensing was not a candidate for reelection to the respondent Board in 2013 and that her term in office has expired in November 2013.

13. It is concluded that respondent Toensing's June 6, 2013 email was a communication to a quorum of the respondent Board by means of electronic equipment to discuss a matter over which the public agency had supervision. Respondent Toensing's June 6, 2013 email thereby constituted a "meeting" that was not noticed or open to the public in violation of §1-225, G.S.

14. In that no votes or other actions occurred as a result of the illegal June 6, 2013 email, there is no need to reconstruct minutes of the illegal meeting. In that respondent Toensing has left the respondent Board, and there are no findings of violations by other individual members of the respondent Board, there is no need for a cease and desist order or a training order. Civil penalties are also unwarranted.

The following orders by the Commission are hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Respondent Toensing is ordered to search her computer forthwith, and provide to the complainants and the respondent Board copies of all emails that she maintains between members of the respondent Board from April 1, 2013 to the hearing date, November 20, 2013.


Clifton A. Leonhardt
as Hearing Officer