

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert Goodrich and the
Radical Advocates for
Cross-Cultural Education,

Complainants

Docket # FIC 2016-0345

against

Superintendent of Schools, Waterbury Public
Schools; and Waterbury Public Schools,

Respondents

April 12, 2017

The above-captioned matter was heard as a contested case on September 9, 2016, at which time the complainants and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After the hearing in this matter, at the request of the hearing officer and without objection from the respondents, the complainants filed one after-filed exhibit which was marked as follows: Complainants' Exhibit 3: Two-page email exchange (most recent dated April 6, 2016).

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), G.S.
2. It is found that, on September 11, 2015, the complainants emailed the respondents and requested the following:

Per our discussion at our meeting on 9/3/15 can you send the requested data for students in Special Education, students in Honors Courses/Programs and above, BDLC, and the male student suspension data. Please disaggregate the data by Elementary, Middle, K-8, and High Schools, as well as by gender and race.

("September 11th request). The September 11th request did not specify the year for which the records were sought.

3. It is found that on or about October 22, 2015, the respondents provided the complainants with 300 pages of documents, free of charge, in response to the complainants' September 11th request.

4. It is found that, on November 3, 2015, the complainants emailed the respondents regarding their September 11th request, and the respondents' response thereto. The complainants informed the respondents that hard copies of the data requested limited their ability to effectively analyze the data. The complainants also informed the respondents that it was unclear as to what years the data corresponded, which further complicated their data analysis. The complainants amended their September 11th request, and requested that the data be provided in an electronic format. The November 3rd email identified that the data previously requested in the September 11th request was for the 2012-13, 2013-14 and 2014-15 school years.

5. It is found that, by email dated April 6, 2016, the complainants followed-up on the status of their records request, described in paragraphs 2 and 4, above.

6. It is found that, by email dated April 8, 2016, the respondents informed the complainants that the 300 pages which were previously provided to the complainants, as described in paragraph 3, above, were responsive to the complainants' original request. In addition, with respect to the complainants' request that the records be provided in electronic format, the respondents informed the complainants that the original records request was clearly for data, which was produced, and that the agency is not required to convert a paper copy into an electronic copy.

7. By email dated May 5, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with records responsive to their request described in paragraphs 2 and 4, above.

8. Section 1-200(5), G.S., defines "public records or files" as:

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.

9. Section 1-206(b)(1), G.S., provides, in pertinent part that:

[a]ny person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial....

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

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

11. Section 1-211(a), G.S., provides that:

[a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made....

12. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

13. It is found that the records requested by the complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a), 1-211(a) and 1-212(a), G.S.

14. At the hearing, the respondents raised the issue that the Commission lacks subject matter jurisdiction because the complainants failed to file their complaint in this matter within thirty days of the alleged denial of a records request, as required under §1-206, G.S.

15. It is found that the complainants’ last correspondence with the respondents concerning their records request occurred on April 8, 2016, as described in paragraph 6, above, and that the complainants filed their complaint less than 30 days later, on May 5, 2016. It is further found that the notice of appeal was filed within the meaning of §1-206, G.S. Accordingly, it is concluded that the Commission has jurisdiction in this matter.

16. The complainants contended that the respondents failed to provide them with records that were responsive to their request. Robert Goodrich, one of the complainants, testified that the records produced were missing certain identifiable data such as dates, students enrolled in honors and advanced courses or programs, students enrolled in behavior disorder learning centers, aggregate population of students by race, gender or grade level, and participants in the school district’s special education programming. He also testified that based on a discussion that he had with the respondents’ Chief Academic Officer, among others, at a meeting on September 3,

2015, he understood that multiple reports already existed containing the data that they requested. In addition, he argued that the respondents already have the ability to extract this information as it is mandated by the state to be produced throughout the school year, and that generating the documents sought would simply require copying and pasting data into a Word document.

17. The respondents contended that while data may be run and reorganized in the fashion requested by the complainants, an agency is not required to create a new document or computer database, merge different computer databases, nor to produce, disaggregate and arrange data, in order to satisfy a records request, including the complainants' request.

18. The Director of Information Technology ("IT") for the School District testified that the respondents would need to merge data from different databases (such as the "student master database" "race database" "grading database" "course database" and/or "master schedule database"), and create a new database, in order to generate documents that contain the criteria and aggregate the data that was requested by the complainants. The IT Director also testified that the 300 pages provided to the complainants did not previously exist and required merging two databases into a new database.

19. Under the facts and circumstances of this case, it is found that in order to respond to the complainants' request, the respondents would have to create a new document that contains all of the criteria and aggregates the data in the manner sought by the complainants. It is concluded that the FOI Act does not require public agencies to create records in response to a FOI request.

20. It is concluded, therefore, that the respondents did not violate the disclosure provisions of the FOI Act.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 12, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Robert Goodrich and the Radical Advocates
For Cross-Cultural Education
14 Stanrod Avenue
Waterbury, CT 06704

Superintendent of Schools, Waterbury Public Schools;
and Waterbury Public Schools
Kevin J. Daly, Esq.
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Cynthia A. Cannata
Acting Clerk of the Commission