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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Eric Handel,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0457

First Selectman, Town of Portland; Town of Portland;  
Superintendent of Schools, Portland Public Schools; and  
Portland Public Schools,

Respondent(s)

January 25, 2017

### 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 22, 2017**. 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 February 7, 2017**. 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 February 7, 2017**. **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 February 7, 2017**, 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: Eric Handel  
Attorney Kari L. Olson  
Attorney Rebecca Santiago

FIC# 2016-0457/Trans/wrbp/VDH/VRP/2017-01-25

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Eric Handel,

Complainant

against

Docket #FIC 2016-0457

First Selectman, Town of Portland;  
Town of Portland; Superintendent of  
Schools, Portland Public Schools; and  
Portland Public Schools,

Respondents

January 18, 2017

The above-captioned matter was heard as a contested case on September 9, 2016, at which time 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 2016-0458; Eric Handel v. First Selectman, Town of Portland; and Town of Portland.

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, by letter dated June 15, 2016, the complainant requested that the Superintendent of Schools for Portland Public Schools (the "Superintendent")<sup>1</sup> provide him with access to and copies of the following records:
  - a. All medical, academic, attendance, and disciplinary records concerning his minor son;

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<sup>1</sup> At the start of the contested case hearing, the complainant withdrew the complaint in the instant matter against the First Selectman for the Town of Portland and the Town of Portland, as his complaint against these two respondents would be heard in connection with Docket #FIC 2016-0458; Eric Handel v. First Selectman, Town of Portland; and Town of Portland.

- b. All communications that the school has had with Jerri Aronson, Victoria Lanier, the GAL, or anyone at the Valley View School or Gildersleeve School; and
- c. All documentation that supports your statement from June 13, 2016 that I may not communicate with my son; that I am a safety risk; that the police need to be called to meet me when I arrive to pick up my son; that the police were entitled to be provided confidential information from my son's medical records; and that it is proper for the police to be present during a conversation between me and my son's social worker.

3. In addition, it is found that, in the June 15, 2016 letter, the complainant also posed the following question to the Superintendent: "Please also substantiate why it is acceptable for the principal (Mrs. Katz) to ignore communication from the father during several attempts during the academic year, and there has been no communication from his teacher."

4. By email dated and filed June 22, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with access to and copies of records.

5. 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.

6. 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.

7. 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.”

8. It is found that some of the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. As an initial matter, the Commission finds that the complainant’s request for “substantiation” in paragraph 3, above, is actually a request that the Superintendent answer certain questions. Because it is found that the FOI Act does not require the Superintendent to answer questions, the Commission will not address the issues raised in paragraph 3, above.

10. In addition, the Commission finds that the complainant’s request in paragraph 2.c, above, would require the Superintendent to exercise discretion in determining what records “support” certain statements that the Superintendent allegedly made. It is concluded that the FOI Act does not require that a public agency exercise such discretion in responding to freedom of information requests. See Wildin v. Freedom of Information Commission, 56 Conn. App. 683, 746 A.2d 175 (1999) (analysis is a component of research). Accordingly, the Commission will not address the issues raised in paragraph 2.c, above.

11. With regard to the request in paragraph 2.a, above, it is found that the respondents disclosed eighteen pages of records to the complainant, including responsive medical, attendance and disciplinary records. It is found that, in order to disclose these records to the complainant, the respondents sought and received permission from the complainant’s minor son’s guardian.

12. The respondents contend that the records responsive to request 2.b, above, and, to the extent that they exist, disciplinary records responsive to request 2.a, above, are exempt from disclosure pursuant to §1-210(b)(17), G.S.

13. Section 1-217(b)(17), G.S., provides that nothing in the FOI Act should be construed to require the disclosure of “[e]ducational records which are not subject to disclosure under the Family and Educational Rights and Privacy Act, 20 USC 1232g.”

14. “Educational records” are defined at 20 U.S.C. §1232g (a)(4)(A) as those records, files, documents, and other materials which (i) contain information directly related to a student and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

15. This Commission has concluded that 20 U.S.C. §1232g prohibits public schools that receive federal funds from disclosing information concerning a student that would personally identify that student, without the appropriate consent. See Brenda Ivory v. Vice-Principal Griswold High Sch., Griswold Pub. Sch.; and Griswold Pub. Sch., Docket #FIC 1999-306 (Jan. 26, 2000).

16. 34 C.F.R. §99.3 provides, in relevant part, as follows:

Personally Identifiable Information

The term includes, but is not limited to--

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

17. It is found that, in this case, all of the records at issue are “education records” within the meaning of 20 U.S.C. §1232g (a)(4)(A). It is further found that the consent for the disclosure of these records has not been given.

18. Accordingly, it is concluded that the responsive records that have not been disclosed are exempt from disclosure pursuant to §1-210(b)(17). It is further concluded that the respondents did not violate the FOI Act as alleged in the complaint.

19. Finally, before the contested case hearing in this matter concluded, the complainant indicated that what he really wanted from the respondents were the records in their possession that demonstrated that “he does not have legal access to his son.”


20. By way of a post-hearing letter, the respondents informed the hearing officer that, subsequent to the contested case hearing, the respondents contacted the student’s

guardian to determine if she would provide consent to disclose such records to the complainant. It is found that the respondents were able to obtain the guardian's consent for the disclosure of such records and that such records have been provided to the complainant.

21. In this regard, the Commission commends the respondents for such efforts.

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

1. The complaint is dismissed.

  
Valicia Dee Harmon  
as Hearing Officer