FREEDOM OF INFORMATION COMMISSION
STATE OF CONNECTICUT

18-20 Trinity Street, Suite 100
Hartford, Connecticut 06106

Peter Prowda
Complainant(s)

against

Commissioner, State of Connecticut, Department of Education; and State of Connecticut, Department of Education
Respondent(s)

Notice of Rescheduled Commission Meeting

Docket #FIC 2016-0397

February 3, 2017

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, January 25, 2017 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2:00 p.m.** on **Wednesday, March 8, 2017.**

Any brief, memorandum of law or request for additional time, as referenced in the December 15, 2016 Transmittal of Proposed Final Decision, should be received by the Commission on or before February 24, 2017**.**

By Order of the Freedom of Information Commission

W. Paradis,
Acting Clerk of the Commission

Notice to:
Peter Prowda
Assistant Attorney General Darren P. Cunningham

Phone: (860) 566-5682 Fax: (860) 566-6474
Email: foi@po.state.ct.us Internet: www.state.ct.us/foi/
An Equal Opportunity Employer

Since 1975
It's Your Right to Know

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

Peter Prowda,
Complainant(s)

against

Commissioner, State of Connecticut, Department of Education; and State of Connecticut, Department of Education,
Respondent(s)

Notice of Rescheduled Commission Meeting

Docket #FIC 2016-0397

December 29, 2016

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, January 11, 2017 at 2:00 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2:00 p.m.** on **Wednesday, January 25, 2017.**

Any brief, memorandum of law or request for additional time, as referenced in the December 15, 2016 Transmittal of Proposed Final Decision, must be received by the Commission on or before January 13, 2017.

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Peter Prowda
Assistant Attorney General Darren P. Cunningham

2016-12-29/FIC# 2016-0397/ReschedTra/wrbp/MS/LFS/PSP

Since 1975
FREEDOM OF INFORMATION
It's Your Right to Know

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

Peter Prowda,
Complainant(s)
against

Commissioner, State of Connecticut, Department of Education; and State of Connecticut, Department of Education,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0397

December 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, January 11, 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 December 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 December 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 December 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: Peter Prowda
Assistant Attorney General Darren P. Cunningham

FIC# 2016-0397/Trans/wrbp/MS/LFS/PSP/2016-12-15

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by | Report of Hearing Officer

Peter Prowda,

Complainant

against | Docket #FIC 2016-0397

Commissioner, State of Connecticut, Department of Education; and State of Connecticut, Department of Education,

Respondents | December 9, 2016

The above-captioned matter was heard as a contested case on October 19, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts 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), G.S.

2. It is found that on May 19, 2016, the complainant requested "the most recent aggregated data of enrollment by grade and school district, ordered by district code, of students enrolled in the school district only. The listing should include the district name." It is found that on a separate, contemporaneous form on the respondents' website, the complainant asked for the data from October 2015.

3. By letter filed May 26, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records he requested.

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, ...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:

> 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, ... 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: "Any 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 the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the requested records are the respondents' most recent aggregate enrollment data, listed by school district and grade.

9. It is found that on June 28, 2016, the respondents provided redacted records to the complainant. It is found that the respondents concede that the records were not produced promptly. It is concluded that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S.

10. The complainant alleges that the respondents should have provided the records without any redactions.

11. The respondents claim that the redactions were necessary to comply with the requirements of the Federal Education Rights and Privacy Act ("FERPA").

12. Section 1-210(b)(17), G.S., provides, in relevant part, that the FOI Act shall not require disclosure of: "Educational records which are not subject to disclosure under the Family Education Rights and Privacy Act, 20 USC 1232g ("FERPA")[.]"

13. 20 U.S.C. §1232g(b)(1) provides, in relevant part, as follows:

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein) ... to any individual, agency, or organization[.]

14. "Education 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. 34 CFR §99.3 provides that the term "Personally Identifiable Information" ("PII") 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. (Emphasis added.)

16. It is found that the enrollment data requested by the complainant are "education records," within the meaning of FERPA. The respondents claim that some of the data contains PII, pursuant to the definition PII in subsection (g) of 34 CFR §99.3 (see paragraph 15, above.)

17. The respondents claim that, although the data reveals only the number of students enrolled in each grade at a particular school in a particular district, disclosure of any number equal to or less than 5 would, alone or in combination with other information, allow identification of a student or students.

18. It is found that, while the complainant had received the requested records in the past without any redaction of information, the respondents recently adopted guidelines that suggest redaction of "cell counts" (the number in the intersection between a row and a column on a spreadsheet) where the value is five or less. The guidelines also suggest "complementary" redaction of "cell counts" where, for instance, the value is greater than five, because in some cases, redacted numbers can be calculated by subtracting reported cell totals from all-student totals.

19. It is found that the respondents adopted their guidelines after some consultation with the U.S. Department of Education (USDE) and the Privacy Technical Assistance Center ("PTAC") within the USDE.

20. It is found that the respondents made redactions to the enrollment data provided to the complainant, in accordance with their recently adopted guidelines.

21. The complainant claims that the respondents' blanket approach to all kinds of educational data is not necessary to protect PII, and that disclosure of the unredacted enrollment

data he requested would not reveal PII. The complainant contends that there is a much smaller chance of identification of a particular student from enrollment data than from data that reports student achievement results.

22. It is found that PTAC was established by the USDE "as a 'one-stop' resource for education stakeholders to learn about data privacy, confidentiality, and security practices related to … uses of student data." *http://ptac.ed.gov/About* (accessed October 28, 2016).

23. It is found that on April 21, 2016, PTAC's Office of the Chief Privacy Officer issued a formal letter ("letter") to the Louisiana Department of Education.

24. Such letter is the complainant's Exhibit H in the administrative record of this case, and is also available on PTAC's website, at: *http://ptac.ed.gov/sites/default/files/ED%20OCPO%20Response%20to%20Louisiana%20-%202016-04-21_508.pdf* (accessed October 28, 2016).

25. It is found that the letter is referenced by USDE as "Office of Chief Privacy Officer Response to Louisiana on Enrollment Data and Disclosure Avoidance."

26. It is found that the letter states, "Some data elements carry a greater risk of reidentification than others. For example, variables relating to socio-economic status, disability, and discipline are accorded stronger protections than other, less sensitive data elements."

27. It is found that the letter continues:

> [T]he data published by the National Center for Education Statistics (NCES) in the Common Core of Data (CCD) are published with statistical disclosure limitations; the only data in the CCD to which NCES does not apply disclosure avoidance are basic school and school district enrollment counts at grade level, disaggregated by gender and race/ethnicity. NCES' decision to publish this limited sub-set of the CCD without statistical disclosure limitations reflects its determination that this publication poses a low risk of reidentification given the low sensitivity of the enrollment counts, the fact that these data have been released in this manner for 30 years without complaint, and the substantial 12-18 month time delay between data collection and publication. Other data elements in the CCD, however, receive privacy protections, including the counts of students eligible for FRPL, students with disabilities, and students who are deemed English learners (Els). A State educational agency (SEA) publishing State enrollment counts could (but is not required to) determine that basic enrollment counts may be published without disclosure avoidance. (Emphasis added.)

28. It is found that the complainant's requested records are basic school and school district enrollment counts at grade level. It is found that these data have been released in this manner for many years to the complainant and to other members of the public without complaint, and it is found that there is a substantial time delay between data collection and publication of the requested records.

29. It is found, based on the letter's conclusions, that PTAC and USDE permit the respondents to disclose unredacted basic enrollment counts, and that PTAC and USDE have concluded that such disclosure does not violate FERPA.

30. It is found that the respondents' one-size-fits-all approach resulted in unnecessary redactions to the records requested by the complainant.

31. It is found, therefore, that §1-210(b)(17), G.S., does not exempt the redacted information from disclosure.

32. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the requested records without redaction.

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

1. The respondents shall forthwith provide the most recent aggregated data of enrollment by grade and school district, ordered by district code, of students enrolled in the school district only. The listing should include the district name.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Commissioner Matthew Streeter
as Hearing Officer

2016-0397/hor/ms/lfs010312016