



# 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

Frances Taylor; and the Reminder News,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-180

Superintendent of Schools, East Hartford Public  
Schools; and East Hartford Public Schools,  
Respondent(s)

September 28, 2012

## 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, October 24, 2012**. 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 October 12, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE October 12, 2012**. 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 October 12, 2012**, 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: Frances Taylor  
Joan Hunt  
Scott R. Ouellette, Esq.

9/28/12/FIC# 2012-180/Trans/wrbp/CAL/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Frances Taylor; and  
The Reminder News,

Complainant

against

Docket # FIC 2012-180

Superintendent of Schools, East  
Hartford Public Schools; and East  
Hartford Public Schools,

Respondents

September 10, 2012

The complainant Frances Taylor filed the complaint on behalf of herself and the complainant, The Reminder News. Subsequently, Frances Taylor left her employment at The Reminder News. At the hearing, Ms. Taylor and The Reminder News appeared as separate complainants. The caption of the case, above, has been amended to indicate that Frances Taylor is now an individual complainant.

The above captioned matter was heard as a contested case on August 23, 2012, 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. It is found that by letter dated March 7, 2012, the complainants made a request to the respondents for “access to and copies of school district reports pertaining to the investigation of the school pool drowning at East Hartford High School of freshman student Marcum Asiamah on Jan. 11 2012 [sic]” (the “requested records”).
3. It is found that by letter dated March 12, 2012, counsel for respondents denied the complainants’ request, citing six exemptions, including the exemption set forth at §1-210(b)(17), G.S., for educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act.
4. It is found that, by letter dated March 28, 2012 and filed with the Commission on March 30, 2012, the complainants appealed to the Commission, alleging that the

failure of the respondents to provide the requested records violated the Freedom of Information Act ("FOIA").

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. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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

8. At the hearing, the respondents agreed to submit the requested records for an in camera inspection. Such records were filed on August 30, 2012 and are hereby identified as IC-2012-180-1 through IC-2012-180-31.

9. The respondents claim that §1-210(b)(17), G.S., exempts the requested records from mandatory disclosure. Section 1-210(b)(17), G.S., provides that disclosure is not required of "[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g . . ." ("FERPA"). The respondents further claim that the requested records are "education records" under FERPA which contain "personally identifiable information" about a student, as defined in the regulations implementing FERPA at 34 C.F.R. §99.3.

10. "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.

11. Title 34, §99.3 of the Code of Federal Regulations provides that:

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. (emphasis added)

12. Based upon the use of the relevant student's name in the letter of request (see paragraph 2, above), it is found that the complainants know the identity of the student to whom the requested records relate.

13. Based upon inspection of the in camera records that the respondents claim to be exempt pursuant to FERPA, it is found that the entirety of the requested records relate to Marcum Asiamah and his death. None of the requested records would even have been compiled by the respondents, who maintain the records, but for the fact of Marcus Asiamah's death.

14. It is therefore concluded, pursuant to the broad definition at 34 C.F.R. §99.3(g), that all of the requested records constitute "personally identifiable information".

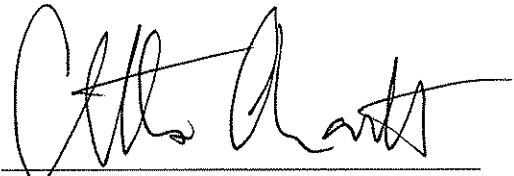
15. It is also concluded that the requested records constitute "education records" as defined at 20 U.S.C. §1232g(a)(4)(A).

16. It is finally concluded, therefore, that the requested records are exempt from disclosure pursuant to §1-210(b)(17), G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the requested records.

17. Because the requested records are held to be exempt from mandatory disclosure pursuant to §1-210(b)(17), G.S., the Commission declines to adjudicate the respondents' alternative claims of exemption.

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.



---

Clifton A. Leonhardt  
as Hearing Officer