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FREEDOM OF INFORMATION



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Lisa Treat-Perry,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-034

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

Respondent(s)

August 27, 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, September 24, 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 September 12, 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 September 12, 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 September 12, 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: Lisa Treat-Perry
Daniel P. Murphy, Esq.

2014-08-27/FIC# 2014-034/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Lisa Treat-Perry,

Complainant

against

Docket #FIC 2014-034

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

Respondents

August 26, 2014

The above-captioned matter was heard as a contested case on August 1, 2014, 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, by email dated January 3, 2014, the complainant requested copies of the following records from the respondents:
 - a. The raw data from the parent and student SEEDS [System for Educator Evaluation and Development] survey from all three schools in the district: East Haddam Elementary School, Nathan Hale Ray Middle School, and Hale Ray High School;
 - b. Current Contracts for Marybeth Iacobelli, and J. Eric Spencer; and
 - c. Public record of Mary Beth Iacobelli and J. Eric Spencer including but not limited to discipline history, employment history, application, resume and evaluations available under the Freedom of Information Act in their personnel files.
3. By email dated January 16, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by denying her copies of the records described in paragraph 2.a, above. It is found that the

records requested in paragraphs 2.b, and 2.c, above, are not at issue in this case.

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, 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.

5. 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

6. 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.”

7. It is found that, by email dated January 23, 2014, the respondents acknowledged the complainant’s request in paragraph 2.a, above, but indicated that the requested records were exempt from disclosure pursuant to §10-151c, G.S.

8. Section 10-151c, G.S., entitled “Nondisclosure of records of teacher performance and evaluation. Exceptions,” provides, as follows:

Any records maintained or kept on file by the Department of Education or any local or regional board of education that are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210, provided that any teacher may consent in writing to the release of such teacher's records by the department or a board of education. Such consent shall be required for each request for a release of such records. Notwithstanding any provision of the general statutes, records maintained or kept on file by the Department of Education or any local or regional board of education that are records of the personal misconduct of a

teacher shall be deemed to be public records and shall be subject to disclosure pursuant to the provisions of subsection (a) of section 1-210. Disclosure of such records of a teacher's personal misconduct shall not require the consent of the teacher. For the purposes of this section, "teacher" includes each certified professional employee below the rank of superintendent employed by a board of education in a position requiring a certificate issued by the State Board of Education.

9. The complainant contends that the records are not "records of teacher performance and evaluation," within the meaning of §10-151c, G.S., and therefore are not exempt from public disclosure and should be ordered disclosed. At the contested case hearing, the complainant made a motion to have the hearing officer conduct an in camera review of the records. The hearing officer granted the motion and ordered the records to be produced for an in camera inspection.

10. On August 15, 2014, the respondents submitted the records described in paragraph 2.a, above, to the Commission for an in camera review (hereinafter the "in camera records"). The in camera records can be described as follows: 113 pages records consisting of collated information pertaining to the multiple choice parent and student survey responses, as well as verbatim essay responses. See ¶15, below.

11. It is found that the East Haddam Board of Education evaluates its teachers and administrators on a yearly basis.

12. In connection with the 2013-2014 school year, it is found that the Professional Development and Teacher Evaluation Committee, a subcommittee of the East Haddam Board of Education, formulated a Professional Development and Teacher Evaluation Program (the "Evaluation Program") to evaluate its teachers and administrators. It is found that the Evaluation Program was modeled after the "SEED" program, which is the Connecticut Department of Education's System for Educator Evaluation and Development.

13. It is found that the purpose of the Evaluation Program is to connect teacher evaluations with curriculum development, professional development, student and parent assessments, and school and district goals. Pursuant to the Evaluation Program, it is further found that every teacher's evaluation or "summative performance rating" is the result of the following four component parts and their respective percentages: student growth and development (45%); observation of teacher performance and practice (40%); parent feedback (10%); and student feedback (5%).

14. It is found that the Evaluation Program requires that, for purposes of collecting feedback, a survey be issued to East Haddam Public School students, and that a distinct survey be issued to their parents. In this case, it is found that the respondents had the surveys available on their website. It is found that the respondents instructed parents to fill out one survey for each child that was enrolled in East Haddam Public Schools. It is further found that the respondents informed both the parents and the students that the surveys were to be

completed anonymously.

15. It is found that the student survey is comprised of twenty-four questions, with multiple choice style responses, while the parent survey is comprised of twenty-seven questions, with the same multiple choice style answers. In addition, it is found that both the parent and the student surveys contain four questions at the end of the survey, which invite the survey-taker to provide essay responses. It is found that one such essay question solicits parents and students to recognize a particular teacher and explain why they believed such recognition is merited. Based on an in camera review of the records, it is found that there does not seem to be a limit on the length of the essay responses that parents and students can provide, as some essay responses are confined to one short paragraph, while other responses are over five pages in length.

16. In accordance with the Evaluation Program, it is found that, once the surveys have been submitted to the school, each teacher is required to review the information contained in the surveys, and set individual teaching goals based upon information contained in the surveys. It is further found that, once a teacher has set his or her teaching goals, the teacher then meets with his or her evaluator to discuss the proposed goals, to refine the goals if necessary, and to arrive at some mutual agreements about them.


17. It is found that, at the time of the teacher's yearly performance review, the evaluator determines the extent to which the teacher has met or has failed to meet the predetermined teaching goals. Based on the percentages set forth in the Evaluation Program, (see ¶ 13, above), it is found that fifteen percent of a teacher's annual evaluation is inextricably linked to and derives from information contained in parent and student surveys.

18. It is found that the surveys are an integral part of the respondents' Evaluation Program, which is the process by which teachers are evaluated in the East Haddam Public Schools. It is further found that the surveys are "records of teacher performance and evaluation," within the meaning of §10-151c, G.S., and that therefore such records are not subject to the mandatory disclosure provisions of §1-210(a), G.S.

19. It is therefore concluded that the respondents did not violate the provisions of the FOI Act, as alleged in the complaint.

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