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FREEDOM OF INFORMATION



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Marissa Lowthert,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-265

Gary Richards, Superintendent of Schools, Wilton Public Schools; Cheryl Jensen-Gerner, Principal, Miller Driscoll School, Wilton Public Schools; and Wilton Public Schools,
Respondent(s)

March 23, 2015

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, April 8, 2015**. 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 March 30, 2015**. 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 March 30, 2015**. **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 March 30, 2015**, 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: Marissa Lowthert
Anne Littlefield, Esq.

2015-03-23/FIC# 2014-265/Trans/wrbp/VDH//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Marissa Lowthert,

Complainant

against

Docket #FIC 2014-265

Gary Richards, Superintendent of
Schools, Wilton Public Schools;
Cheryl Jensen-Gerner, Principal,
Miller Driscoll School, Wilton
Public Schools; and Wilton
Public Schools,

Respondents

March 23, 2015

The above-captioned matter was heard as a contested case on December 8, 2014, 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 the Docket #FIC 2014-260; Marissa Lowthert v. Gary Richards, Superintendent of Schools, Wilton Public Schools; and Wilton Public Schools; Docket #FIC 2014-276; Marissa Lowthert v. Gary Richards, Superintendent of Schools, Wilton Public Schools; Cheryl Jensen-Gerner, Principal, Miller Driscoll School, Wilton Public Schools; and Wilton Public Schools; and Docket #FIC 2014-289; Marissa Lowthert v. Gary Richards, Superintendent of Schools, Wilton Public Schools; and Wilton Public Schools.

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 April 4, 2014, the complainant sent the following request for copies of public records to Maria Jane Giresi, a teacher at Miller Driscoll School:

- a. **Document(s) or notification you relied upon from any source to announce my resignation;**
and

- b. **Copies of communications including e-mails, letters, newsletters, etc. for the period beginning 10-1-13 and continuing through to the date of your response to this request.**¹

(All emphasis in original).

3. With regard to the requested records described in paragraph 2, above, the complainant stated that she was requesting that the “documents be provided digitally.” In addition, the complainant clarified that she was seeking all of Ms. Giresi’s communications sent to or received² from any of the following individuals:

- a. **Principal Jensen-Gerner;**
- b. **Superintendent Richards** (or his Secretary Molly Robinson);
- c. **BOE Chairman Bruce Likely;**
- d. **Any other BOE member:** i.e., C. Stroup, C. Finkelstein, L. Schwemm, G. Hemmerle, L. Rothstein, and, prior to 12-5-2013, G. Bray or K. Birch;
- e. **Special Services Director Ann Paul;**
- f. **Guidance Counselor Elena White;** and
- g. **Any member of the MD PTA Board:** i.e., Susan Price, Clarissa Cannavino, Sue Totten, Gretchen Jeanes, Kerri Mimms, or Kendra Drozd.

(Emphasis in original).

4. It is found that, by email dated April 9, 2014, the respondents acknowledged the complainant’s request. It is further found that the acknowledgment indicated that the request had been forwarded to Principal Jensen-Gerner for a response. It is further found that the acknowledgment indicated that, with regard to the request in paragraph 2.a, above, the respondents had no responsive records. Finally, it is found that the respondents’ April 9th email attached one document, but sought clarification and a

¹ The Commission notes, and it was explained at the contested case hearing, that the end date of the requests in this case was the date of the records request itself—April 4, 2014.

² In the request, the complainant further defined the scope of the communications she was seeking from Ms. Giresi, as follows: “1. Communications addressed to you individually or collectively as part of a group from anyone listed in [paragraph 3, above]; 2. E-mails received by you as cc or bcc recipient from anyone listed in [paragraph 3, above]; 3. E-mails or other communications you sent to any one listed in [paragraph 3, above] individually or collectively as part of a group or as cc or bcc recipient; 4. Forwarded to you from a 3rd party BUT originally issued by or forwarded by anyone listed in [in paragraph 3, above]; 5. Received by you from anyone listed in [paragraph 3, above], BUT forwarded by you to [by] any 3rd party; 6. Sent to your WPS e-mail account used for this request (i.e., e-mail address listed above) or any other e-mail account you have ever used for any WPS communications including a personal account; and 7. Send from your WPS account above or any other e-mail account you have ever used for WPS communications.” (All emphasis in original).

narrowing of the part of the request set forth in paragraph 2.b, above.

5. It is found that, by separate memorandum also dated April 9, 2014, Superintendent Richards acknowledged the request, indicating that the respondents would “work on responding to this request,” but sought “clarification as to specific records that would be responsive” in light of the “broad scope” of the request.

6. It is found that, by email dated April 14, 2014, the complainant responded to the respondents’ requests for clarification, stating that she did not believe her request was “unreasonably broad,” and inquiring when she could expect to receive records responsive to the request as written.

7. It is found that, by email dated April 23, 2014, Superintendent Richards responded to the complainant’s April 14th email, stating that the respondents were in the process of searching their files for responsive records, but, given the volume of records they were required to review, they were unable to provide a date certain as to when all responsive records would be provided to the complainant. It is further found that the superintendent informed the complainant that he believed the respondents would be providing responsive records on a rolling basis, and that an installment would be ready within a week’s time.

8. By email dated and filed May 2, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with copies of the records described in paragraph 2, above. In her appeal, the complainant alleged that the respondents provided her with one, non-responsive record. In addition, the complainant requested that the Commission consider the imposition of a maximum civil penalty against Superintendent Richards and Principal Jensen-Gerner, as well as various other remedies, including the admonishment of the superintendent and the principal “for repeatedly failing to discharge their lawful obligations” under the FOI Act.

9. 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.

10. 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.

11. 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.”

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

13. It is found that the respondents had no records responsive to the complainant’s request set forth in paragraph 2.a, above.

14. It is found that Principal Jensen-Gerner initially provided the complainant with one record responsive to the request described in paragraph 2.b., above, on April 9, 2014—three days after the request was received by the respondents.

15. It is found that, under cover of email dated May 2, 2014, the respondents provided the complainant with seventy-six pages of records. It is found that, thereafter, under cover of email dated November 6, 2014, the respondents provided the complainant with forty-five additional pages of responsive records.

16. At the start of the contested case hearing, the complainant contended that she believed the respondents’ disclosure of records in this case violated the promptness requirements of the FOI Act. In addition, the complainant contended that, of the seventy-six records that she received on May 2, 2014, only six records were responsive to her request. The complainant further raised an issue with the number of redactions in the records, as well as with the fact that some of the records contained unusually small text and “blank boxes,” both of which should be construed as additional redactions. Finally, the complainant contended that she believed that there should be more responsive records, including “bi-weekly newsletters” issued by Principal Jensen-Gerner.

17. With regard to promptness, the Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11,

1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

18. It is found that Dr. Gary Richards was the Wilton Public Schools' Superintendent of Schools until approximately June 30, 2014. It is found that, on July 1, 2014, Dr. Kevin Smith became the Superintendent of Schools for the Wilton Public Schools and he continues to hold that position. It is further found that Moira Rollinson was the primary assistant to the former superintendent and is the primary assistant to the current superintendent. It is found that one of Ms. Rollinson's responsibilities is responding to FOI Requests.

19. It is found that, in connection with the instant case, Ms. Rollinson spent a total of ten hours reviewing, redacting, and assembling the records responsive to that part of the instant request set forth in paragraph 2.b, above.

20. It is found that, before Ms. Rollinson could review and assemble the records that were ultimately provided to the complainant, the respondents' Information Technology Specialist had to search for and gather all of the electronic records on the respondents' computer system. It is found that the respondents' Information Technology Specialist conducted a search for electronic records pursuant to the terms and parameters set forth in paragraph 2.b, above. It is further found that the respondents' Information Technology Specialist was able to conduct the search and return the search results to Ms. Rollinson within one hour of having received the request. Finally, with regard to certain "bi-weekly newsletters," which the complainant believes should have been disclosed to her, it is found that, had such electronic records been retained by Ms. Giresi, they would have been located during the electronic search for records conducted by the respondents' Information Technology Specialist.

21. It is found that, while no records were withheld in their entirety, some of the records were redacted pursuant to the Family Education Rights and Privacy Act, 20 USC 1232g, et seq. ("FERPA"). The complainant stated that she was not challenging the redactions that the respondents made pursuant to FERPA.

22. With regard to the contention that there were other "redactions" in the records, it is found that some of the email records contained graphic images, which were not fully displayed (or down loaded) and that, as such, sections of some of the emails contained blank boxes. It is also found that one other record contained some written material in very small font. However, it is found that the respondents produced these particular email records to the complainant in the form in which Ms. Giresi received or maintained on them in her computer system. It is further found that no evidence was elicited at the hearing that would tend to suggest that the respondents altered the records before disclosing them to the complainant.

23. Finally, the Commission takes administrative notice of the fact that, at the time of the instant contested case hearing, the complainant had issued numerous requests for records to these respondents (many within days of each other), and, between March 3,

2014 and September 23, 2014, had filed twenty-six appeals with the Commission against these respondents, or other public agencies and individuals associated with the Town of Wilton.


24. It is found that, based on the testimony of all parties, the respondents have produced thousands of pages of records to the complainant. It is further found that, in connection with the totality of the requests for records that the respondents have received from this complainant, they have expended numerous hours reviewing, redacting, and assembling records for this complainant. Furthermore, as regards this case, it is found that all responsive records have been provided to the complainant.

25. Given the multiple requests for records in which the respondents are currently engaged in responding, it is found that the time it took the respondents to provide the complainant with three installments of records—that is, a first installment on April 9, 2014; a second on May 2, 2014; and a third on November 6, 2014—was not unreasonable. See ¶¶ 14 and 15, above.³

26. It is concluded therefore that, based on the totality of the findings above, the respondents did not violate either the promptness or the disclosure provisions of §§1-210(a) and 1-212(a), G.S., 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

³ Finally, although the complainant requested that the records be produced to her digitally, (see ¶ 3, above), the fact the respondents produced hardcopy records to the complainant in each of the three installments instead of digital records was never addressed by the complainant at the contested case hearing. Accordingly, such issue is deemed abandoned.