



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-663

Superintendent of Schools, Bethel Public School and
Bethel Public Schools,
Respondent(s)

May 12, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, June 8, 2016**. 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 May 27, 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 May 27, 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 May 27, 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: Attorney Matthew J. Grimes, Jr.
Attorney Rebecca Santiago

2016-05-12/FIC# 2015-663/Trans/wrbp/VDH//PSP

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Matthew Paulsen,

Complainants

against

Docket #FIC 2015-663

Superintendent of Schools,
Bethel Public Schools; and
Bethel Public Schools,

Respondents

May 6, 2016

The above-captioned matter was heard as a contested case on December 29, 2015, at which time the complainants 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. By email dated and filed October 7, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by charging him \$20.00 for a session to copy five years of expense reports and receipts with his iPhone.

3. 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.

4. 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.

5. Section 1-212, G.S., entitled “Copies and scanning of public records. Fees,” provides, in relevant part, as follows:

(a) Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. . . .The fee for any copy provided in accordance with the Freedom of Information Act:

...

(B) By all other public agencies [that is, municipal public agencies], as defined in section 1-200, [the fee] shall not exceed fifty cents per page. . . .

...

(g) Any individual may copy a public record through the use of a hand-held scanner. A public agency may establish a fee structure not to exceed twenty dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner. As used in this section, “hand-held scanner” means a battery operated electronic scanning device the use of which (1) leaves no mark or impression on the public record, and (2) does not unreasonably interfere with the operation of the public agency. . . .

6. In his appeal to the Commission, the complainant contended that an iPhone is not a hand-held scanner and that the respondents were not entitled to charge him \$20.00 for the copying session. In addition, at the contested case hearing, the complainant contended that the respondents had failed to “establish a fee structure,” within the meaning of §1-212(g), G.S., and, accordingly, improperly required the complainant to pay \$20.00 for the copying session.

7. The respondents countered that, because the FOI Act does not mention cell phones or cameras as a means of copying public records, they could have rightfully denied the complainant's request to use his iPhone to copy, or more precisely, photograph the requested records. However, the respondents reasoned, that, because a copying session with an iPhone is an activity that closely resembles a copying session with a hand-held scanner, it would be in the spirit of open government to allow the complainant to use his iPhone to photograph the records and to charge the fee associated with the most similar activity.

8. The respondents' Superintendent of Schools and Director of Fiscal Services appeared and testified at the contested case hearing.

9. It is found that, by email dated June 10, 2015, the complainant sent the respondents the following request for public records:

I would like to make an appointment to visit the Board of Education offices one day next week between the hours of 12:00 noon and 1:00 pm to examine. . . [a]ll completed travel expense reports and associated receipts for all schools administrators between the years 2010-2015. I will likely be making photocopies of some of the documents, so in your response to me with the date that is best for you, please also advise a per-page cost for copies.

10. By letter dated June 12, 2015, the respondents acknowledged the complainant's request, indicating that, because the request would require the school district staff to examine several years of records and because many of the records from previous years were archived, it would take the respondents some time to prepare the records for the complainant's review. In addition, the respondents informed the complainant that the following week was the close of the school year and the next few weeks were the close of the fiscal year and, as a result, the respondents' staff would be very busy during the next several weeks. Accordingly, the respondents requested that the complainant set up an appointment to review the records sometime after July 1, 2015.¹

11. It is found that, by email dated June 19, 2015, the respondents contacted the complainant to inform him that July 2, 2015 at noon was available and, if such date and time was convenient, the respondents requested that the complainant confirm as much with them.

12. It is found that, by email dated June 19, 2015, the complainant responded to the respondents, in relevant part, as follows:

¹ It is found that many of the records that were responsive to the complainant's request had to be copied, redacted and copied again, before they could be made available to the complainant, as the responsive expense reports and travel receipts contained private credit card and bank routing numbers. The Commission notes that the respondents did not charge the complainant for any of the per page costs they incurred in preparing the responsive records for the complainant's review.

So much flexibility and compromise on your part. It's absolutely mind boggling that you need three weeks to assemble the documents. I can pull together my work travel expenses over the last five years in under an hour but it takes a school administrator 21 days. Incredible! . . . I will be there at noon on July 2 and expect all five years of records to be made available for me for every administrator employed by the Bethel Board of Education during that time—no exceptions and no excuses. I will be taking a camera to take photos of the records.

13. It is found that, by email dated July 2, 2015, the complainant informed the respondents that he would not be showing up that day as scheduled, stating: "I will need to reschedule today's visit as my travel plans have changed. I will be back in Bethel in October and will have more time to dedicate to this project at that time."

14. It is found that, sometime after the email referred to in paragraph 13, above, the complainant contacted the respondents to set up a new appointment for October 7, 2015.

15. It is found that, by email dated September 14, 2015, the respondents sent the complainant an email attempting to confirm the October 7th appointment. It is found that the complainant did not reply to this email.

16. Thereafter, by email dated September 30, 2015, the respondents sent the complainant another email to confirm the October 7th appointment. It is found that, by reply email, the complainant confirmed the appointment.

17. It is found that, by email dated October 6, 2015, one day before the scheduled appointment, the respondents' Director of Fiscal Services informed the complainant that, if he wanted paper copies of the relevant records, the fee would be fifty cents per page, and, if he wanted to scan or photograph the records, the fee would be a flat \$20.00.

18. It is found that, by email dated October 6, 2015, the complainant responded as follows:

I will be taking copious handwritten notes and deciding at a later date and time what I want hard copies of. On a separate note, please provide me with the specific act with the FOI statute that allows you to charge me \$20 for using my own camera/phone to take photos, since there is no cost to the town for this, unlike copying/scanning.

19. It is found that, upon the conclusion of the October 7th session, during which time the complainant took photographs of selected records, the respondents' Director of Fiscal Services informed the complainant that he owed the respondents \$20.00 for the copying session. It is found that the complainant paid the respondents the requested fee in cash.

20. In this case, it is found that the most salient portions of the definition of a “hand-held scanner,” as such term is defined in §1-212(g), G.S., are those that require the device be an electronic device that is held in one’s hand, which leaves no mark or impression on the public record that is being copied and which does not unreasonably interfere with the operation of the public agency. See Germain v. FOIC and Town of Manchester, 135 Conn. App. 202, 208 (May 1, 2012).

21. It is found that the General Assembly, when it enacted §1-212(g), G.S., in 2002, did not contemplate the use of smartphones that would take high resolution photographs or use downloadable scanning applications (also known as scanning “apps”), because such technology was still on the horizon.² Now, however, it is found that such technology is commonplace.

22. Nonetheless, it is found that the evidence elicited at the contested case hearing reveals that the complainant used his smartphone in this instance as a camera, rather than as a hand-held scanner. It is found that a camera, without a downloaded scanning app, is not a “hand-held scanner,” within the meaning of §1-212(g), G.S. Because the use of a camera to photograph public records is not a right conferred by the FOI Act, it is found that the respondents were acting within their discretion when they determined that using a camera was a permissible option for copying records in a session setting. Moreover, it is therefore concluded that the respondents did not violate the FOI Act by charging the complainant for such session.

23. It is further concluded that the respondents did not violate 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.

2. The Commission notes that this case represents a situation wherein the provisions of the FOI Act have not caught up with technology and the availability of modern day devices that enable the public to personally reproduce public records, in a way that is easy, eliminates the need to expend significant state or municipal resources and, most importantly, does not jeopardize the integrity of such records. Although the Commission concluded in this case that the use and regulation of copying fees associated with these new technologies (such as the iPhone utilized as a camera in this case) are not currently within the scope of the FOI Act, the Commission encourages public agencies to both permit the use of such new technologies and to assess fees, *if any*, at a cost that is reasonable and in keeping with the spirit of open government.



Valicia Dee Harmon
as Hearing Officer

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² See Public Acts 2002, No. 02-137, §3.