

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Christopher Cevetillo,

Complainant

against

Docket #FIC 2018-0308

Superintendent of Schools,
Oxford Public Schools; and
Oxford Public Schools,

Respondents

March 27, 2019

The above-captioned matter was heard as a contested case on September 11, 2018, 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 April 2, 2018, the complainant requested that Ana Ortiz, the Superintendent of Oxford Public Schools, provide him with copies of the following: "Any and all emails with the subject 'Maintaining SAFE school climate includes TEACHERS,' between the dates of August 1, 2017 and September 5, 2017." The complainant specified that he wanted only those emails sent and received from the following addresses: "rnja@comcast.net; amy.cote4@gmail.com; Melissa.cole112@gmail.com; diane.soracco@gmail.com; Stephen.brown142@gmail.com; shelly.laceycastelot@gmail.com; susan.obrien145@gmail.com; William.miller145@gmail.com; susan.kiernan4@gmail.com; hibberta@oxfordpublicschools.org; and ortiza@oxfordpublicschools.org." In addition, the complainant indicated that, if any of the requested emails contained student names or addresses, the respondents should redact such information.

3. It is found that, by email dated April 3, 2018, the respondents acknowledged the complainant's request, and indicated that they were processing the request.

4. It is found that, by email dated April 13, 2018, the complainant requested that Superintendent Ortiz provide him with a status update on his request.

5. It is found that, by email dated April 13, 2018, Superintendent Ortiz informed the complainant that the respondents' email system had experienced a system failure and that, at the moment, the requested records could not be accessed.¹

6. It is found that, by email dated May 10, 2018, the complainant again requested that Superintendent Ortiz provide him with a status update on his request.

7. It is found that, by email dated May 10, 2018, Superintendent Ortiz informed the complainant that she received the requested records and that she was going to review them and then contact the complainant.

8. It is found that, by email dated May 21, 2018, Superintendent Ortiz informed the complainant that the respondents had no responsive records.

9. It is found that, by email dated May 31, 2018 the complainant asked Superintendent Ortiz to explain how the respondents could now claim that there were no responsive records.

10. By email dated and filed June 12, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records responsive to the request described in paragraph 2, above.

11. 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.

¹ Subsequent to receiving Superintendent Ortiz's April 13th email regarding a system failure, the complainant began communicating with the respondents' Network Systems Manager, Derrick Martin. It is found that the complainant inquired of Mr. Martin whether the respondents had experienced a malfunction with their email server on April 13th or had experienced any problem retrieving archived emails. It is found that Mr. Martin informed the complainant that, to his knowledge, there had been no server problems on April 13th, and that the respondents had no problem retrieving archived email using their "archive appliance."

12. 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.

13. 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.”

14. 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.

15. At the start of the contested case hearing, the complainant contended that the respondents have responsive records and that such records should have been disclosed to him.

16. Superintendent Ortiz appeared and testified at the contested case hearing.

17. It is found that, on May 10, 2018, responsive records were electronically forwarded to Superintendent Ortiz for review. However, it is further found that, on this day, Superintendent Ortiz could not open the file containing the records. See ¶5, above.

18. It is found that, shortly after May 10, 2018, Superintendent Ortiz was able to open the file and review the responsive records.

19. It is found that, on or around May 21, 2018, the respondents determined that that responsive records were exempt from disclosure pursuant to §1-210(b)(17), G.S.²

20. The respondents contend that, because the complainant knows the identity of the student involved in the incidents described in the requested records and was himself personally involved in the incidents, disclosure of the records, even in redacted form,

² Because Superintendent Ortiz believed that all of the responsive records were exempt from disclosure and should not be disclosed to the complainant, she thought it was best to inform the complainant that the respondents did not maintain responsive records. See ¶8, above. It is found that the respondents informing the complainant that there were no responsive records, after having acknowledged that they did maintain responsive records, created confusion for the complainant. In the future, the Commission advises that it would be best to acknowledge the existence of responsive records, but to inform the requester that the respondents believe that such records are exempt from public disclosure.

would reveal “personally identifiable information” about the student.

21. At the conclusion of the hearing, the respondents submitted the records at issue to the Commission for an in camera inspection. The in camera records will be referred to as IC-2018-0308-1 through IC-2018-0308-392.

22. Section 1-210(b)(17), G.S., provides that nothing in the FOI Act shall be construed to require the disclosure of “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232b.”

23. “Educational 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.

24. This Commission has concluded that 20 U.S.C. §1232g prohibits public schools that receive federal funds from disclosing information contained in education records concerning a student that would personally identify that student, without the appropriate consent. See Brenda Ivory v. Vice-Principal Griswold High Sch., Griswold Pub. Sch.; and Griswold Pub. Sch., Docket #FIC 1999-306 (Jan. 26, 2000).

25. 34 C.F.R. §99.3 provides, in relevant part, as follows:

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 supplied).

26. After a careful in camera review, it is found that all of the in camera records contain discussions concerning allegations made by a student against the complainant. It found that the complainant is a former teacher. The complainant conceded at the contested case hearing that he knows the identity of the student whose allegations are discussed in the in camera records. It is found that, at the time of the events described and discussed in the in camera records, the complainant was this particular student's teacher.

27. It is found that the respondents cannot meaningfully redact the in camera records because, pursuant to 34 C.F.R. §99.3 (g), such redaction could not adequately protect the confidentiality obligations that the respondents have to the student discussed in said records.

28. It is found that the parents of the student discussed in the in camera records did not provide consent for the complainant to obtain copies the education records pertaining to their child.

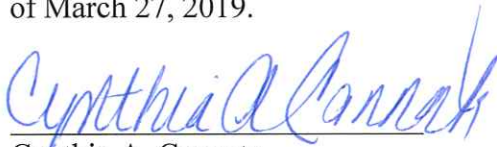
29. It is found the in camera records are exempt from disclosure pursuant to the provisions of §1-210(b)(17), G.S., and FERPA.

30. It is 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.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 27, 2019.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

CHRISTOPHER CEVETILLO, 26 Silva Terrace, Oxford, CT 06478

SUPERINTENDENT OF SCHOOLS, OXFORD PUBLIC SCHOOLS; AND OXFORD PUBLIC SCHOOLS, c/o Attorney Zachary Schurin, Pullman & Comley, LLC, 90 State House Square, Hartford, CT 06103-3702



Cynthia A. Cannata
Acting Clerk of the Commission