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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Joseph Zawawi and the
Connecticut Education Association,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0715

Elaine Stancliffe, Executive Director,
Odyssey Charter School; and
Odyssey Charter School,
Respondent(s)

June 5, 2017

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 28, 2017**. 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 June 16, 2017**. 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 June 16, 2017**. **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 June 16, 2017**, 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 Adrienne DeLucca
Attorney Christine Chinni

FIC# 2016-0715/Trans/wrbp/PSP/TAH/2017-06-05

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Joseph Zawawi and
the Connecticut Education
Association,

Complainants

Docket # FIC 2016-0715

against

Elaine Stancliffe,
Executive Director,
Odyssey Charter School;
and Odyssey Charter School,

Respondents

May 17, 2017

The above-captioned matter was heard as a contested case on February 16, 2017, at which time the complainants appeared and presented testimony, exhibits and argument on the complaint. The respondents failed to appear despite the hearing being delayed for approximately 20 minutes to give counsel an opportunity to appear.

After the hearing, pursuant to an order of the hearing officer, the complainants submitted two after-filed exhibits which have been marked as follows: Complainant's Exhibit C: Affidavit of Elaine Stancliffe, dated January 4, 2017; and Complainant's Exhibit D: Email Exchange, most recent dated February 8, 2017.

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 on or about September 19, 2016, the complainants made a 22-part request to the respondents. It is found that, among other records, the complainants requested the following:

[a] Copies of any and all correspondence, including emails sent concerning Christopher Bugbee since he was appointed Assistant Principal to the present [;]

[b] Copies of any and all correspondence, including emails sent either from or to Christopher Bugbee since he was appointed Assistant Principal to the present [;]

[c] Copies of any and all emails to or from Renee Hartzog since 2005 to the present [;]

[d] Copies of any and all emails to or from you (Elaine Stancliffe) since you were appointed to the position of Executive Director [; and]

[e] Copy of the notice/agenda of the meeting of the Board of Trustees that took place on Friday, September [2]6, 2016.¹

3. By letter dated October 11, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide them with copies of all of the records responsive to their September 19, 2016 request, described in paragraph 2, above. At the hearing, the only records remaining at issue were the records described in paragraphs 2[a], 2[b], 2[c], 2[d] and 2[e], above.² Subsequently, by facsimile dated February 16, 2017, the complainants informed the hearing officer that the record described in paragraph 2[e], above, was provided to them by the respondents. Accordingly, such record is no longer at issue and will not be further addressed herein.

4. Section 1-200(5), G.S., defines “public records or files” as:

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

¹ At the February 16th hearing, complainant’s counsel represented that there was an error in the original request and that the agenda at issue was for a September 26, 2016 meeting, not a September 16, 2016 meeting.

² At the February 16th hearing, the complainants also alleged that the respondents had not provided them with a copy of an attorney’s bill reflecting third party investigation costs. However, such record was not included in the complainants’ September 19th request, and will not be further addressed herein.

business hours . . . (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 “any 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 the records requested by the complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a), 1-211(a) and 1-212(a), G.S.

8. It is found that by letter dated September 23, 2016, the respondents informed the complainants that with respect to their requests for documents stored electronically, the respondents would have to retain an outside contractor to obtain such documents, and that the complainants would be billed for all charges. Once the respondents received an estimate of the charges, they would forward a copy of the estimate to the complainants.

9. It is found that by letter dated September 29, 2016, the complainants followed up on their September 19th records request and the respondents’ response thereto. With respect to the respondents’ claim regarding electronically stored documents as described in paragraph 8, above, the complainants disputed that the respondents would need to retain an outside contractor as they understood that the respondents employ technology department staff who could easily access such records at no extra cost to the public.

10. It is found that, after the filing of the complaint in this matter, the respondents informed the complainants that they had secured a bid from a private information technology company for the provision of the requested emails in the amount of approximately \$5,000. Subsequently, however, in an affidavit signed and provided to the complainants prior to the February 16th hearing, the respondent Executive Director attested that the respondents were responsible for the cost of retrieving the requested emails.

11. It is found that by email dated February 8, 2017, the respondents informed the complainants that they had retrieved thousands of emails, but that they would have to be redacted for student information and teacher evaluation information prior to providing copies to the complainants.

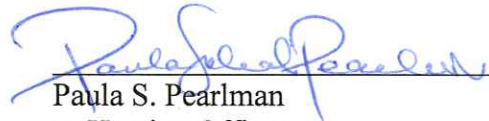
12. It is found that on February 8, 2017, and February 14, 2017, the complainants emailed the respondents inquiring as to the timeframe for receiving the requested emails.

13. It is found that as of the February 16th hearing, the respondents had not provided the complainants with any records responsive to the requests described in paragraphs 2[a], 2[b], 2[c], and 2[d], above. It is therefore concluded that the respondents violated the provisions of §§1-210(a) and 1-212(a), G.S.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. If they have not done so already, the respondents shall forthwith provide the complainants with copies of the records described in paragraphs 2[a], 2[b], 2[c] and 2[d] of the findings, above, free of charge. If the respondents claim exemptions for any of the responsive records, they shall provide a privilege log identifying each of the records claimed to be exempt and the legal basis for each claimed exemption. If the complainants take issue with any of the claimed exemptions, the complainants may file an appeal with the Commission.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.


Paula S. Pearlman
as Hearing Officer