



# FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2016-0757

Commissioner, State of Connecticut, Department of  
Education; and State of Connecticut, Department of  
Education

Respondent(s)

September 6, 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 **2:00 p.m. on Wednesday, September 27, 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 September 15, 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 September 15, 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 September 15, 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

Wendy R.B. Paradis  
Acting Clerk of the Commission

Notice to: Ray Rossomando and the Connecticut Education Association  
Assistant Attorney General Ralph E. Urban

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ray Rossomando and The Connecticut  
Education Association,

Complainants

against

Docket #FIC 2016-0757

Commissioner, State of Connecticut,  
Department of Education; and State  
of Connecticut, Department of  
Education,

Respondents

September 5, 2017

The above-captioned matter was heard as a contested case on April 25, 2017, 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 letter dated October 25, 2016 and filed on October 27, 2016, the complainants appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with their October 7, 2016 records request.
3. It is found that by letter dated October 7, 2016, the complainants made a request to be provided with the following:

Any and all written communication (including emails) regarding charter schools received, or sent, by Robert Kelly, State Department of Education Charter School Programs Manager, for the period beginning July 1, 2015 until the present.

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

8. It is found that, by letter dated October 14, 2016, the respondents responded to the complainants’ request stating that due to the anticipated high volume of responsive records, they could not state when any responsive records would be provided, but that they would provide the complainants with an update once the scope of responsive records was determined.

9. It is found that the respondents conducted a search for responsive records using search terms which search produced over 7,000 emails. It is found that at the time of the hearing, the respondents had reviewed 1,600 of those records and eliminated records that were not “communications”, or were subject to an exemption pursuant to the FOI Act and redacted others pursuant to FERPA. It is found that under cover letters dated December 7, 2016 and January 25, 2017, the complainants were provided with a total of two flash drives which contained 1,057 emails between them that were responsive to their October 7, 2016 request.

10. It is found, however, that upon their review of the records, the complainants found that a series of emails, which they received from another source, was not included in the records provided to them by the respondents.

11. It is found that, additionally, the respondents had not reviewed the remaining 5,400 records compiled from the search described in paragraph 9, above. It is found that when the data was transferred from DOIT to the respondent department's attorney who reviewed the records, only 1,600 were actually delivered. It is found that the attorney reviewing the records was not aware that she was missing over 5,000 records and that she engaged and completed her view with the belief that she had all of the records.

12. It is found that in an effort to resolve the matter of the series of emails the complainants knew were missing, the complainants narrowed the scope of their request by providing search terms they believed would result in the production of the missing emails. It is found that the complainants expected that the new search terms would be applied to the 7,000 records that were already compiled as a result of the first search.

13. It is found, however, that the respondents could not apply the new search terms to the 7,000 records that were already compiled, but did apply them to the original universe of records. It is found, however, that the narrower search resulted in approximately 1,200 *more* records than that of the original broader search.

14. Consequently, the parties were left with the issue of whether to continue the review process of the original 7,000 emails, which would require the respondents to review all 7,000 emails (including the 1600 that were already reviewed and provided, because they have no method to identify the 5,400 that failed to be delivered to the attorney by DOIT); or begin the review and production process of the 8,200 records that were compiled as a result of the second search.

15. It is found that by email dated March 10, 2017, the respondents asked the complainants if they should continue to review and provide records that were compiled from the original search or if they would rather the respondents begin the review process of records that were compiled from the second search. It is found that as of the date and time of the hearing, the complainants had not responded with an answer.

16. At the hearing on this matter, the parties agreed to a continuance in order to resolve the matter. Specifically, the complainants were to provide new terms and conditions to the respondents who would conduct a search for records responsive to the complainants' modified request based on those new terms and conditions; the respondents were to conduct the search and begin the review process of the records that were produced from the search and provide responsive, non-exempt records to the complainants on a rolling basis; and the respondents were to provide an estimate of the time it would take to fully comply with the complainants' request.

17. By letter dated, August 7, 2017 and received by this Commission on August 8, 2017, the respondents provided a status report, which stated that as of the date of their report, the complainants have been provided with:

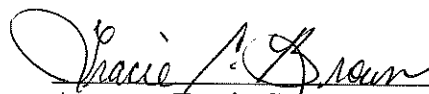
- a. a flash drive containing 423 emails, two pdf documents with 56 pages of redacted emails, and a log of exempt emails which was provided on June 2, 2017; and
- b. a flash drive containing 620 emails, a pdf document with 28 pages of redacted emails, and an additional log of exempt documents which was provided on July 23, 2017.

The respondents indicated in their letter that there are approximately 200 remaining emails that must be reviewed by the respondents' staff and that the final installment of records is expected to be provided to the complainants within the next 30 days.

18. It is found that the complainants did not submit a written status report to the hearing officer.

19. It is found, based on all of the evidence and the entire record in this case, that the respondents have been appropriately responsive to the complainants' request and have made reasonable efforts to promptly comply with a voluminous records request. It is found that while there was a blunder initially with the content and number of records that were provided to the complainants, the respondents made reasonable efforts to correct the mistake.

On the basis of the record concerning the above-captioned matter, and the specific facts and circumstances of the case, which indicate that the respondents were, and remain, committed to providing the records responsive to the complainants' request, no order is recommended.

  
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Attorney Tracie C. Brown  
as Hearing Officer