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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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Jay Hardison

Complainant(s)

against

Notice of Meeting

Docket #FIC 2017-0036

Superintendent of Schools, Darien Public Schools; and
Darien Public Schools

Respondent(s)

October 24, 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, November 15, 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 November 3, 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 November 3, 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 November 3, 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: Jay Hardison
Attorney Thomas B. Mooney
Brian Zuro

FIC# 2017-0036/ITRA/VRP/TAH/WRBP/2017-10-24

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jay Hardison,

Complainant

Docket # FIC 2017-0036

against

Superintendent of Schools, Darien Public
Schools; and Darien Public Schools,

Respondents

October 24, 2017

The above-captioned matter was heard as a contested case on May 18, 2017, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2017-0068, Jay Hardison v. Darien Public Schools et al. Brian Zuro, the father of the student who is a subject of the records sought by the complainant, requested and was granted intervenor status. A copy of the October 1, 2015 security camera video recording that is the subject of the complainant's request was submitted to the Commission for an in camera inspection on June 5, 2017.

On August 3, 2017 the complainant made a request that the hearing in this matter be reopened because the the complainant believed that the respondent's witness had committed perjury. The complainant offered no reason to question the credibility of the witness's testimony, or any explanation of how any particular testimony was relevant to any issue before the Commission. The request to reopen was denied on August 14, 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. By letter of complaint filed January 19, 2017, the complainant appealed to the Commission, alleging that the respondents denied his requests for two security video recordings.
3. It is found that the complainant made an October 20, 2016 request for "the release of the [October 1, 2016] security camera video, which purportedly shows the incident for which our football coach has been suspended (twice)."

4. It is found that the October 1, 2016 security video depicts a high school football game. During the third quarter of the game, a student player became “entangled” with another player on the opposing team. As a result, the referee directed the coach to remove the student before the student was ejected from the game. As the student left the field, the coach struck the student on the helmet.¹

5. It is found that the respondents denied the October 20, 2016 request for the October 1 security camera video on October 21, 2016.

6. It is found that the complainant also made a December 5, 2016 request for “[a]ccess to all Darien High School Security Camera Video recorded on October 15, 2016.”

7. It is found that the October 15, 2016 security video recording depicts another high school football game.

8. It is found that the respondents acknowledged the December 5 request on December 8, 2016.

9. It is found, however, that the respondents mistook the complainant’s December 5, 2016 request as a second request for the October 1, 2016 video recording, and denied the request on December 9, 2016.

10. It is found that the respondents, realizing their error after receiving the complainant’s January 19, 2017 appeal to the Commission, informed the complainant that day that the October 15, 2016 security video had been taped over, pursuant to the respondents’ practice to tape over security video that is not needed for any purpose after four to six weeks.²

11. 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.

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 . . . (3) receive a copy of such records in accordance with section 1-212.

¹ The descriptions of the incident in this paragraph are taken from Respondents’ Exhibit 1 and Respondents’ June 15, 2017 brief.

² The Commission takes administrative notice of the fact that six weeks after October 15, 2016 (the date the requested video was recorded) was November 26, 2016, nine days before the complainant’s December 5, 2016 request.

13. 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.”

14. It is found that the October 15, 2016 security video recording no longer exists.

15. It is found that the October 1, 2016 security video recording requested by the complainant is a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

16. The respondents contend that the requested video recording is an “educational record” containing personally identifiable student information, and is therefore exempt from disclosure pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g and §1-210(b)(17), G.S.

17. Section 1-217(b)(17), G.S., provides that disclosure is not required of “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g....”

18. The Family Educational Rights and Privacy Act, 20 U.S.C. §1232g(b)(2), provides in relevant part that:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless –
 (A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents

19. “Education 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.” Further, Title 34, §99.3 of the Code of Federal Regulations provides that:

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.

20. It is found that the requested video recording is maintained by the respondents.

21. The Commission has previously concluded that school surveillance videos that depict students are education records protected by FERPA when they relate directly to an individually identifiable student. See Docket #FIC Baltimore v. Cromwell Public Schools et al. (videotape of incident in a high school cafeteria); Docket #FIC 2012-047, Walsh v. Bethel Public Schools et al. (video recording of students on school bus).

22. Contrarywise, in Docket #FIC 2013-677, Lambeck v. Bridgeport Public Schools, the Commission concluded that a video depicting events between a school principal and two students was not an education record because the recording related directly to the conduct of the school principal and not to the students who appeared in the video, and because the identify of the students who appear in the recordings could not be discerned.

23. At least one court has concluded that as long as a video “pertains to actions committed or allegedly committed by or against the student and contain[s] information identifying the student,” it directly relates to a student and therefore must be considered an education record under FERPA. Bryner v. Canyons Sch. District, 351 P.3d 852, 858 (Utah 2015) (citing U.S. v. Miami Univ., 91 F. Supp. 2d 1132, 1149 (S.D. Ohio 2000)) (internal quotations omitted).

24. It is found that the October 1, 2016 video was requested because of the actions that were committed by or against a specific identified student, and that therefore the student’s identity is known.

25. It is further found that the name of the specific student, as well as the names of the other student athletes depicted, may also be learned from the numbers on their uniforms.

26. It is therefore concluded that the requested security video recording is an education record that contains personally identifiable information, because it depicts actions committed or allegedly committed by or against the student, within the meaning of Bryner, above, and because the recording targets an already identified student, as well as depicting information identifying that and other students.

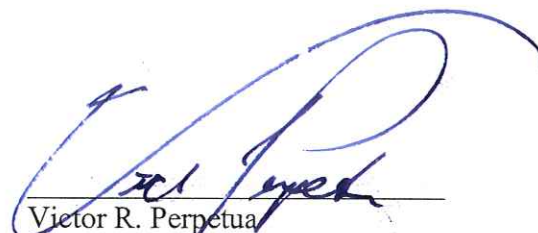
27. It is also found that the targeted student’s identity cannot be masked by simply redacting or blurring the student’s face or uniform number, as he has already been identified as the subject of the video.

28. It is therefore concluded that the requested surveillance video recording is exempt from disclosure pursuant to FERPA and §1-210(b)(17), G.S.

29. Accordingly, it is concluded that the respondents did not violate the FOI Act when they declined to provide the complainant with a copy of the requested record.

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.



Victor R. Perpetua
as Hearing Officer