

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
Jane E. Wilkins, Complainant) Report of Hearing Officer
)
against) Docket #FIC77-56
)
Board of Education of the Town) April 14, 1977
of Stonington and Superintendent)
of Schools of the Town of)
Stonington, Respondents)

The above captioned matter was heard as a contested case on April 12, 1977, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies within the meaning of §1-18a(a), G.S.

2. By letter dated February 18, 1977 and addressed to the acting superintendent of the respondent board, the complainant requested information relating to the type, date, age, grade, grouping and percentile results, as available, of all standardized tests administered to Stonington's elementary school students over the past 5 to 6 years.

3. By letter of reply dated March 1, 1977, the acting superintendent outlined the procedures whereby the parents and students personally concerned with the same could obtain release from the schools of test score result information. The acting superintendent did not make available to the complainant any of the requested information.

4. From such reply, the complainant appealed to this Commission by letter filed on March 8, 1977, alleging that she had been wrongfully denied the information requested.

5. At the hearing herein and under oath, the complainant testified to all of the above facts. She then closed her factual presentation, whereupon counsel for the respondents moved to dismiss the matter.

6. Motion to dismiss denied. The Commission on the basis of the above facts did have jurisdiction to continue its investigatory hearing concerning the complainant's allegations of wrongful denial.

7. At the hearing, the respondents produced, copy to the complainant, a one page document designated Respondent's Exhibit 1 describing the grade, name of test, type of test

and date of administration at the elementary level for the year 1977-78.

8. Respondents' Exhibit 1 is kept in the files of the respondents, as stated by its acting superintendent.

9. No legal defense was raised to the disclosure of Respondents' Exhibit 1.

10. In view of the fact that Respondents' Exhibit 1 falls within the purview of the complainant's initial request, it is found that the respondents have failed to comply with the time requirements of §1-15, G.S. concerning the production of copy upon written application therefor.

11. The respondents keep and maintain in their files the results of standardized exams administered at the elementary school level.

12. Achievement on the aforesaid written tests is measured either by grade level or by percentile.

13. The normed examination results are grouped in a variety of ways depending upon the particular standardized exam: by class, by school or by youngster.

14. The complainant, both in her February 18, 1977 letter of request and at the hearing herein, made it clear that she is not seeking results referenced by youngster, but rather, asks that the youngsters' names be deleted from such data. The complainant is seeking results referenced by class or school without deletion.

15. The issue before this Commission is whether or not the documents requested fall within any of the exemptions of §1-19(a) and §1-19(b), G.S.

16. The respondents first contend that they are not required to disclose the requested results under §1-19(b)(1) on the ground that they constitute preliminary drafts or notes.

17. Each set of results constitutes the ranked achievement of the child or group of children relative to a distinct examination which exam was completed by the student after being duly administered to them by the schools. The requested exams are therefore found not to be preliminary drafts or notes within the meaning of §1-19(b)1, G.S.

18. The respondents next contended that the requested documents are not public records under 20 USC §1232g, as provided for in §1-19(a), G.S.

19. 20 USC §1232g, commonly known as the Buckley Amendment, provides in pertinent part that no federal funds shall be made available to state and local educational agencies that have a policy or practice of permitting the release of education records or personally identifiable information of students, unless prior consent is obtained.

20. The aforesaid federal prohibition against disclosure is not compulsory or mandatory. It is merely a condition precedent to the granting of funds.

21. The exclusion from the definition of public records stated in §1-19(a), G.S., refers to provisions of federal law which are compulsory and mandatory as to public agencies.

22. It is found that the Buckley Amendment is not such a compulsory and mandatory provision of federal law as to exclude the requested documents from the category of public records under §1-19(a), G.S.

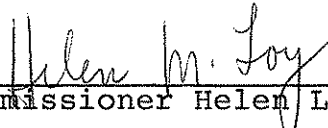
23. It is therefore concluded that the requested documents are public records as defined in §1-18a(d) and §1-19(a), G.S.

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

1. The respondent board shall forthwith provide the complainant with copies of the exam results herein requested, in accordance with §1-19(a), G.S.

2. If the names of particular students appear on such documents, the copies required in paragraph 1 of this Order shall be subject to the right of the respondent board to delete or conceal the same.

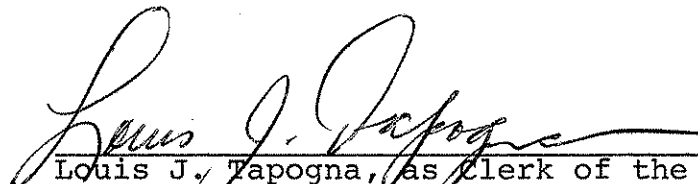
3. In accordance with the finding in paragraph 10 hereinabove, henceforth the respondents shall strictly comply with the time requirements imposed by §1-15, G.S. concerning the disclosure of all non-exempt public records.



Commissioner Helen Loy

as Hearing Officer

Approved by order of the Freedom of Information Commission on
April 27, 1977.



Louis J. Tapogna, as Clerk of the
Freedom of Information Commission