

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Jack Shea, Linnet Myers and The
Hartford Courant,

Complainants

Report of Hearing Officer

against

Docket #FIC80-89

Mansfield Training School; and
Superintendent of Mansfield
Training School,

September 4, 1980

Respondents

The above captioned matter was heard on May 14, 1980, at which time the complainants and 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 complaint filed with the Commission April 9, 1980, the complainants alleged violation of the Freedom of Information Act as codified in Chapter 3 of the General Statutes when they were refused access to certain records.
3. The records sought by the complainants are records of allegations of physical injury and neglect and the investigation and disposition of such allegations by the direct-care staff of Mansfield Training School; any and all reports of investigation into injuries or deaths of residents; and in addition, the names and addresses of all direct-care staff employed at the school on January 1, 1979, June 1, 1979, and January 1, 1980.
4. The Mansfield Training School is a state institution for retarded persons.
 - a. A majority of the residents have a mental age less than that of two years olds.
 - b. Residents in the training school have more difficulty than most people in understanding their rights and in protecting themselves from physical and emotional abuse.
 - c. Residents' claims of abuse are not typically articulate or reliable because residents are handicapped by perceptual problems and/or low intelligence.
 - d. Most complaints concerning abuse or neglect are made by either the parents or guardians of residents.

5. Care for the residents at Mansfield Training School is provided by medical professionals and staff aides.

6. The Mansfield Training School has 900 staff-aide positions with a high turnover in the lower levels of aides.

7. The human rights office of the Mansfield Training School, which is the custodian of most of the records requested by the complainants, provides a protected environment in which to handle residents' problems.

8. The complainants who bring this complaint are investigative reporters who are looking into recent allegations that the residents of the training school have been subject to abuse and neglect by employees of the school.

9. The complainants were willing to allow the names of complainants which appeared in the records to be masked but not the names of members of the direct-care staff.

10. The names and addresses of current employees are contained in an automated data system and the names of separated employees are found in personnel files.

11. The respondents claimed that locating the records of names and addresses which were stored in the personnel files was too burdensome for the agency.

12. It is found that no language in the Freedom of Information Act as codified in Chapter 3 of the General Statutes permits an agency to withhold records merely because locating the records would be difficult.

13. It is, therefore, found that the respondents failed to prove that the names and addresses of the present and past direct-care staff of Mansfield Training School are not public records within the meaning of §§1-18a(d), 1-15 and 1-19(a), G.S.

14. The respondents claimed that the records concerning allegations, the investigations thereof and the disposition of allegations of physical injury and neglect by the direct-care staff as well as reports of investigations into injuries and deaths were exempt as preliminary drafts and notes within the meaning of §1-19(b)(1), G.S.

15. §1-19(b)(1), G.S. provides in relevant part that "[n]othing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be construed to require disclosure of (1) preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure...."

16. It is found that the respondents failed to prove that the documents sought by the complainants were preliminary drafts or notes.

17. Furthermore, there was no evidence that any mechanism exists to monitor institutional procedures in abuse and neglect cases other than public access to the records concerning same.

18. It is found that the conclusion which the respondent agency reached, that the public interest in withholding such agency documents clearly outweighs the public interest in disclosure, is patently unfounded.

19. The respondents claimed that disclosure of the requested records is barred by §1-19(b)(2) which exempts from disclosure "personnel, and medical files or similar files the disclosure of which would constitute an invasion of personnel privacy."

20. It is found that the records sought by the complainants are similar to personnel and medical files; however, in order for any portion of such records to be exempt from disclosure it is necessary that it be found that disclosure would constitute an invasion of personal privacy.

21. The records sought by the complainants contain the names of residents and some facts which may identify the complainants or the victims of the alleged mistreatment, and the names of employees who are alleged to have mistreated residents.

22. Since the complainants do not seek the names of persons filing complaints it is not necessary to determine whether their names are exempt from disclosure under §1-19(b)(2), G.S.

23. It is found that disclosure of residents' names and those facts which would identify either residents, persons who filed complaints, or persons who were the alleged victims of abuse, would constitute an invasion of personal privacy.

24. It is concluded, therefore, that residents' names and facts which would identify residents, persons who filed complaints, or persons who were the alleged victims of abuse should be masked or otherwise deleted from such records if they are to be released to the complainants.

25. It is found that the public has a legitimate interest in the quality of care provided residents at Mansfield Training School.

26. It is further found that the only effective way for the public to monitor the care provided residents is by access to the particulars of investigations into alleged abuse including the names of employees.

27. It is concluded that there is no invasion of privacy if the records requested by the complainants specifically name or otherwise provide data which tends to identify present or past employees who are alleged to have abused, or who did abuse, residents of the school.

28. It is therefore concluded that the portions of the records sought by the complainants which do not contain the residents' names or the facts which identify residents, persons who filed complaints, or the alleged victims of abuse, are not exempt from disclosure under §1-19(b)(2), G.S.

29. The Mansfield Training School is a recipient of medicaid funds.

30. The respondents claim that the records sought by the complainants are exempt from disclosure under federal regulations found at C.F.R. §442.502, applicable to intermediate care facilities for the mentally retarded which receive medicaid funds.

31. The federal regulations claimed by the respondents at C.F.R. §442.502 provide:

(a) The ICF/MR (intermediate care facility for the mentally retarded must keep confidential all information contained in a resident's records, including information contained in an automated data bank.

(b) The record is the property of the ICF/MR which must protect it from loss, damage, tampering or use by unauthorized individuals.

(c) The ICF/MR must have written policies governing access to, duplication of, and release of information from the record.

(d) The ICF/MR must obtain written consent of the resident, if competent, or his guardian before it releases information to individuals, not otherwise authorized to receive it.

32. The main file on each of the residents at the Mansfield Training School is a central file, but the institution has additional decentralized files including those which are maintained in the human rights office.

33. It is found that the respondents proved neither that the Mansfield Training School was an "intermediate care facility for the mentally retarded" nor that the records sought by the complainants were residents' records within the meaning of C.F.R. §442.502.

34. It is concluded, therefore, because of the respondent's failure to prove the applicability of these key terms, that C.F.R. §442.502 does not bar the complainants from receiving the records they seek.

35. The respondents provided no evidence that Mansfield Training School had complied with the requirement of the Federal regulations at C.F.R. §442.502(c) that it have written policies governing access to duplication of, and release of, information from the records of clients.

36. It is concluded, therefore, that Mansfield Training School has no written policies regarding access to and release of information in residents' records.

37. It is further found that deletion or masking of the residents' names and other material in the records which could be used to identify the residents achieves the purpose of the federal regulations because it protects the privacy interests of the residents by concealing their identities.

38. It is concluded, therefore, that even if C.F.R. §442.502 were applicable to the records sought by the complainants, in the absence of written policies regarding access to and release of residents' records, C.F.R. §442.502 would not prevent disclosure.


39. The respondents further claimed the records are exempt because the records requested have a direct bearing on cases in federal court, the preparation of a defense plan for those cases, and finally that the records are protected from disclosure by the attorney-client privilege.

40. The respondents failed to prove that all or some of the documents sought by the complainant were protected by the attorney-client privilege or had a direct bearing upon the development of the defense plan with respect to any case in federal court.

41. Based upon all of the foregoing it is concluded that the complainants are entitled to have access to the records requested by them with the exception of the materials which are exempt under §1-19(b)(2), G.S. as set forth at paragraphs 18 and 19.

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

1. The respondents shall provide the complainants with access to the records requested by them except that the respondents may delete from those records the names of the residents and other material which could be used to identify the residents, persons who filed complaints, or persons who were the alleged victims of abuse or neglect.



Commissioner Donald Friedman
as Hearing Officer

As approved by Order of the Freedom of Information Commission
at its regular meeting of October 8, 1980.



Wendy Rae Briggs
Clerk of the Commission