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FREEDOM OF INFORMATION



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George Schober,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-471

Janet Tyler, Superintendent,
Lebanon Public Schools; and Board of
Education, Lebanon Public Schools,
Respondent(s)

May 17, 2012

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 13, 2012**. 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 1, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE June 1, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE June 1, 2012**, 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: George Schober
Gary R. Brochu, Esq.

5/17/2012/FIC# 2011-471/Trans/wrbp/TCB//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

George Schober,

Complainant

against

Docket #FIC 2011-471

Janet Tyler, Superintendent,
Lebanon Public Schools;
Board of Education, Lebanon
Public Schools,

Respondents

May 8, 2012

The above-captioned matter was heard as a contested case on January 26, 2012 at which time the complainant 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. It is found that the complainant appealed to this Commission, by letter dated September 7, 2011 and filed on September 9, 2011, alleging that the respondents violated the Freedom of Information ("FOI") Act:
 - a. by failing to fairly apprise the public of the business to be transacted at the August 23, 2011 special meeting of the respondent board;
 - b. by failing to promptly comply with his August 12, 2011 request to inspect public records; and
 - c. by failing to promptly comply with his September 6, 2011 request for a copy of a two-page record.

The complainant requested that the maximum civil penalty be imposed against the respondent superintendent.

3. With respect to the complainant's allegation described in paragraph 2a, above, §1-225(d), G.S., provides in relevant part that "[n]otice of each special meeting of every public agency . . . shall specify the time and place of the special meeting and the business to be transacted."

4. In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC et al., Superior Court, Docket No. CV 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views," and that "[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing."

5. It is found that the respondent board held a special meeting on August 23, 2011, the agenda for which provided in relevant part as follows:

VIII. Executive Session

1. Update from legal counsel.

6. At the hearing on this matter, counsel for the respondents conceded, and it is found that, the agenda failed to fairly and sufficiently apprise the public of the business to be transacted with respect to item VIII of the agenda, as described in paragraph 5, above.

7. Consequently, it is concluded that the respondents violated the notice provisions of §1-225(d), G.S.

8. With respect to the complainant's allegation described in paragraphs 2b and 2c, above, it is found that by letter dated August 12, 2011, the complainant made a request for access to inspect fifteen (15) categories of records.

9. It is found that after corresponding with counsel for the respondents and with the respondent superintendent, the complainant determined to inspect the requested records at the respondent superintendent's office on September 6, 2011.

10. It is found, however, that the respondents had only compiled the records responsive to two of the fifteen categories in the complainant's request.

11. It is found that at the conclusion of his inspection on September 6, 2011, the complainant requested a copy of two pages from the records he inspected.

12. It is found, however, that the respondent superintendent's administrative assistant refused to make the copies stating that she had been instructed not to make any copies for the complainant but to ask him to make a list of the records he wanted which records would be copied and provided to him at a later time.

13. It is found that the complainant left the respondent superintendent's office without the requested copies and filed this complaint.

14. 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.

15. 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.

16. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record."

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

18. It is found that at the time of the hearing in this matter, the only records that remained outstanding were those responsive to the complainant's request for "[e]ach and every email and/or correspondence relating to any Board of Education matter sent by or received ...by...Janet Tyler, the Board, each and every member of the Board, ...the Board's agents...and/or employees...from July 1, 2010 through the date of this request."

19. It is found that after the respondents' IT officer testified at the hearing on this matter that the records responsive to the complainant's request described in paragraph 18, above, numbered over two hundred thousand, the complainant amended his request to inspect all board of education members' emails and the emails of Janet Tyler between September 1, 2010 and July 1, 2011.

20. However, the complainant maintained his contention that compliance with his August 12, 2011 request was not prompt and that he should have been provide with a copy of the two-page record at the time he requested it on September 6, 2011.

21. With respect to the timeliness of the respondents' compliance, the meaning of the word "promptly" is a fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority.

22. The advisory opinion describes some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

23. It is found that the respondents received the complainant's request on August 15, 2011 and promptly sent a response to the complainant on August 16, 2011 stating that his request had been received.

24. It is found, however, that during the week of August 15, 2011 many employees of the respondent board were on vacation and there was a very limited number of staff who could conduct the search for records responsive to the complainant's request. It is found that the following week was the week before school started which week was consumed with student registration, teacher orientation, and the respondents responding to parents' inquiries. Further, it is found that on or about August 26, hurricane warnings in the area were issued for the hurricane that hit on August 27 and that preparation for the schools to be used as shelters was required. Finally, it is found that as a result of the hurricane, the respondents' offices were without power until September 2 which was a

Friday. It is found that the first day of school was the following Monday, September 5, one business day before the complainant arrived to inspect the requested records.

25. Based upon the facts and circumstances, it is found that there were a number of unforeseeable obstacles that prevented the respondents from fully complying with the complainant's request by September 6, 2011.

26. It is found that, by the time of the hearing in this matter, the respondents had provided the complainant with access to inspect records responsive to fourteen of the fifteen categories in his request.

27. It is found that the complainant's request was voluminous and broad and that the complainant admitted to making it broad in an effort "to leave no stone unturned."

28. It is also found, and the complainant conceded, that his request included categories of records for which exemptions to disclosure were applicable and that time was required to review and redact those records.

29. It is found that, under the circumstance in this case, the respondents did not unduly delay compliance with the complainant's August 12, 2011 request to inspect records.

30. Furthermore, it is found that while the respondent superintendent provided the instructions described in paragraph 12, above, it is found that it was not her intention to delay compliance with a request for a copy of only two pages. It is found that the complainant scheduled his visit to the respondent superintendent's office on the second day of school - just one business day after power had been restored to the area. It is found that the respondent superintendent anticipated that the complainant would request volumes of copies on one of the busiest days of the school year. It is found that it was reasonable for her to try to manage the work load that she reasonably anticipated her staff would be under on that day. The respondent superintendent testified, and it is found, that had she been in the office at that time, she would have provided the complainant with a copy of the requested record.

31. It is found that, while the administrative assistant showed a regrettable lack of judgment, it would not be in the interest of fairness to hold the respondents accountable in this regard.

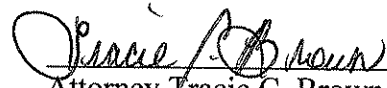
32. It is concluded, therefore, that the respondents did not violate the FOI Act as alleged by the complainant in paragraphs 2b and 2c, above.

33. The Commission declines to consider the complainant's request for the imposition of a civil penalty.

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

1. Henceforth, the respondents shall strictly comply with the notice provisions of §1-225(d), G.S.

2. The Commission notes that the respondents agreed to allow the complainant access to inspect the records responsive to his amended request as described in paragraph 19 of the findings, above.



Attorney Tracie C. Brown
as Hearing Officer