

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Roy Thomas,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-218

Principal, East Lyme High School, East Lyme
Public Schools; East Lyme Public Schools;
Principal, Stonington High School, Stonington
Public Schools; and Stonington Public Schools,
Respondent(s)

February 28, 2013

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 Thursday, March 28, 2013**. 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 March 15, 2013**. 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 March 15, 2013**. **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 March 15, 2013**, 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: Roy Thomas
Frederick Doresey, Esq.

2013-02-28/FIC# 2012-218/Trans/wrbp/SDL/PSP/KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Roy Thomas,

Complainant

Docket # FIC 2012-218

against

Principal, East Lyme High School,
East Lyme Public Schools;
East Lyme Public Schools;
Principal, Stonington High School,
Stonington Public Schools; and
Stonington Public Schools,

Respondents

February 27, 2013

The above-captioned matter was heard as a contested case on October 17, 2012, at which time the complainant and 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, by facsimile dated March 20, 2012, the complainant made a request to the respondents Principal, East Lyme High School and East Lyme Public Schools for a list of the names and addresses of all 11th grade students at East Lyme High School and informed them that such list would be used to send promotional photography postcards to next year's seniors.
3. It is found that, by email dated March 28, 2012, the complainant, having received no response to his March 20th request described in paragraph 2, above, followed-up on such request with the respondent East Lyme High School principal.
4. It is found that, by email dated March 29, 2012, the respondent East Lyme High School principal informed the complainant that he had received the complainant's March 20th request, was in the process of reviewing the East Lyme Board of Education policies to ensure

that he responded appropriately, and would follow-up with the complainant once he had a response.

5. It is found that, by letter dated March 30, 2012, the Superintendent for the respondent East Lyme Public Schools denied the complainant's request. The superintendent informed him that East Lyme High School Board Policy 5125.1 specifically limits their release of directory information to "a private profit-making entity other than employers, prospective employers and representatives of the new media." He further informed the complainant that directory information may be released to "federal, state and local government agencies; representatives of the news media, including but not limited to newspapers, magazines and radio and television stations; employers or prospective employers; nonprofit youth organizations." In addition, he informed the complainant that the Freedom of Information ("FOI") Act does not require the release of such information to any person, except in the case where a school district has a policy that allows such release.

6. It is found that on or about March 20, 2012, the complainant also made a request to the respondents Principal, Stonington High School and Stonington Public Schools for a list of names and addresses of all 11th grade students at Stonington High School.

7. It is found that, by email dated April 4, 2012, the respondent Stonington High School principal denied the complainant's request, described in paragraph 6, above, claiming that §1-210(b)(11) of the FOI Act exempts the disclosure of the records sought by the complainant.

8. By letter dated April 23, 2012, and filed April 25, 2012, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with copies of the requested records, described in paragraphs 2 and 6, above.

9. 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.

10. 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.

11. 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.”

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

13. The crux of the complainant’s complaint is that the respondents improperly denied him access to “directory information” and that the respondents’ policies limiting access to “directory information” to certain entities and under certain situations are subjective and in violation of the FOI Act.

14. With respect to the complainant’s records request to the East Lyme respondents, the East Lyme respondents claim that the requested records are exempt pursuant to §§1-210(b)(11) and 1-210(b)(17), G.S., and the Family Educational Rights and Privacy Act (“FERPA”).

15. Section 1-210(b)(17), G.S., provides, in relevant part, that:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(17) Educational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g....

16. Section 20 U.S.C. §1232g(b)(1) 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 permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents....

17. Section 20 U.S.C. §1232g(b)(2) also 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 and the student if desired by the parents....

18. Section 20 U.S.C. §1232g(a)(5)(B) further provides that:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

19. In addition, 34 C.F.R. §99.37 provides, in relevant part, that:

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution...

(d) In its public notice to parents and eligible students in attendance...an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice....

20. It is found that under FERPA, school districts may designate the information that they consider to be directory information. It is also found that FERPA's regulations allow school districts to adopt directory information policies that limit the disclosure of directory information. FERPA's regulations permit, but do not require, school districts to adopt limited directory information policies that allow the disclosure of directory information to specific parties, for specific purposes, or both.¹

21. It is found that respondent East Lyme Public Schools has adopted a specific policy and regulations regarding the limited release of student directory information. The respondent's regulations identify student names and addresses as directory information, limit the release of such information to specific entities (e.g., federal, state and local governmental agencies, representatives of the news media, employers or prospective employers, and nonprofit youth

¹ The comments to these regulations, in 76 FR 75630, explain that "neither the disclosure of directory information nor the adoption of a limited directory information policy is required by the [FERPA] regulations. The regulations make clear that if a school chooses to adopt a limited directory information policy, then it must limit its directory information disclosures to those specified in its public notice." It is up to individual schools or school districts to decide whether to adopt limited directory information policies and how to implement them. See U.S. Department of Education, "December 2011 – Revised FERPA Regulations: An Overview for Parents and Students" and "December 2011- Revised FERPA Regulations: An Overview for SEAS and LEAS."

organizations), and identify specific parties to whom such information will not be disclosed (e.g., private profit-making entities).

22. It is found that under the East Lyme respondents' policy and regulations, the information sought by the complainant as described in paragraph 2, above, constitutes directory information.

23. It is also found that the complainant's photography business is a private profit-making entity, which is specifically excluded from receiving directory information under respondents East Lyme Public School's policy, described in paragraph 21, above.

24. It is further found that the East Lyme respondents did not obtain consent to disclosure of directory information from students or parents because its policy and regulations do not allow disclosure to private, profit-making entities.

25. It is found that the information sought by the complainant from the East Lyme respondents is exempt from disclosure under §1-210(b)(17), G.S. It is therefore concluded that the East Lyme respondents did not violate the FOI Act as alleged in the complaint.²

26. With respect to the complainant's records request to the Stonington respondents, the Stonington respondents claim that §1-210(b)(11), G.S., exempts from disclosure the information being sought by the complainant.³

27. Section 1-210(b)(11), G.S., provides, in relevant part, that:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(11) Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age....

28. The Stonington respondents claim they have not received any specific consent from the 11th grade Stonington high school students, parents or guardians to release their names and addresses to the complainant. In addition, the Stonington respondents claim that even though some of the students, parents or guardians may have consented to the disclosure of such information when they completed their annual student registration packet, such "optional" consent was limited, permitting the use of such information for "school-related" or

² In view of the conclusion in paragraph 25, above, there is no need to address any further exemption with respect to the complainant's request to the East Lyme respondents.

³ At the hearing and on brief, the Stonington respondents noted that §1-210(b)(17), G.S., need not be considered because Stonington Public Schools has not designated any information as "directory information" as permitted, but not required, by FERPA.

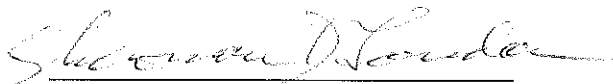
“educationally related” purposes only, and therefore, remains exempt from mandatory disclosure under §1-210(b)(11), G.S.

29. It is found that the Stonington respondents provide students, parents and guardians a “Student Handbook,” informing them that, under FERPA, “[s]chools may disclose, without consent, ‘directory’ information such as a student’s name, address, telephone number.... However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them.” In addition, the Stonington respondents provide students, parents and guardians with an annual student registration packet that includes several forms that must be filled out and returned at the time of registration. With respect to the release of student information (e.g., names and addresses), the packet contains two relevant forms where parents and guardians may consent to the disclosure of such information. Specifically, in a section labeled “Permissions” on a form titled “Family Information,” parents and guardians are asked: “May student’s name and address be released for school related directory information? Yes No.” They are also asked: “If educationally related, may your child’s image be in a video, in a newspaper article or on a school website? Yes No.” In addition, on a form titled “Authorization for Release of Information,” parents and guardians may identify individuals and/or entities to whom and from whom the Stonington Public Schools may release and/or receive from, information regarding the student. Parents and guardians may also check off the type of information for which authorization is being provided.

30. Based on the facts and circumstances of this case, it is found that to the extent that students, parents and/or guardians consented to having a student’s name and address released, such consent was limited to using the student’s name and address for “school-related” or “educationally related” purposes only. Accordingly, it is found that the list of the names and addresses at issue in this matter is exempt from disclosure pursuant to §1-210(b)(11), G.S., since the necessary consent under that exemption is lacking. It is therefore concluded that the Stonington respondents did not violate the FOI Act by withholding such information from the complainant.

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

1. The complaint is hereby dismissed.



Commissioner Sherman D. London
as Hearing Officer