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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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Lee Smith,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-538

Superintendent of Schools, Middletown Public  
Schools; and Middletown Public Schools,  
Respondent(s)

April 11, 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 Wednesday, May 8, 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 April 26, 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 April 26, 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 April 26, 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: Lee Smith  
Anne H. Littlefield, Esq.

4/11/13/FIC# 2012-538/Trans/wrbp/PSP/TCB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lee Smith,

Complainant,

Docket # FIC 2012-538

against

Superintendent of Schools,  
Middletown Public School; and Middletown  
Public Schools,

Respondents

April 10, 2013

On March 14, 2013, the respondents moved to dismiss this matter for lack of subject matter jurisdiction. The complainant filed an objection to such motion on March 16, 2013.

This matter was heard as a contested case on March 19, 2013, at which time the complainant and respondents appeared, and presented testimony and argument on the motion to dismiss.

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 on or about May 7, 2012, and May 8, 2012, the complainant made a request to the respondents for a list of the number of verified acts of bullying maintained by the Middletown Public Schools since 2003.
3. By letter received and filed by the Commission on October 3, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records, described in paragraph 2, above, which each school is required to maintain pursuant to §10-223d, G.S.
4. On or about November 2, 2012, the Commission notified the complainant that his correspondence received on October 3<sup>rd</sup>, described in paragraph 3, above, would not be scheduled for a hearing because the complainant had not filed his complaint within thirty days of the alleged violation pursuant to §1-206, G.S. The Commission also informed the complainant that no further action would be taken on the complaint at that time. However, if he nevertheless wished to pursue his complaint, the Commission requested that the complainant provide a written response within two weeks' time.

5. Subsequently, by letter dated November 6, 2012, the complainant submitted a response to the Commission's November 2<sup>nd</sup> correspondence, described in paragraph 4, above. The complainant's November 6<sup>th</sup> letter to the Commission indicated that he received a written response from the respondent Superintendent on October 19, 2012, including a list of the number of verified acts of bullying in the Middletown Public Schools that appeared to be incomplete, inaccurate and misleading. In his November 6<sup>th</sup> letter, the complainant further requested that the Commission assist him in obtaining the entire statistical list of verified acts of bullying. The November 6<sup>th</sup> letter did not contain information regarding whether the complainant had made a follow-up request or was denied access to records within 30 days prior to the filing of his complaint.

6. The respondents contend that the Commission lacks subject matter jurisdiction in this matter since the complaint was not timely filed.

7. Section 1-206, G.S., provides, in pertinent part that:

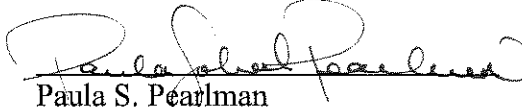
(b)(1) Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial....

8. At the hearing, the complainant testified that he has made repeated requests to the Middletown Public Schools for the records described in paragraph 2, above. However, no evidence was provided by the complainant as to whether such records requests were made to or denied by the respondents within 30 days prior to the filing of his complaint with the Commission on October 3, 2012.

9. It is found that the notice of appeal in this matter was filed more than thirty days after the alleged denial of the request described in paragraph 2, within the meaning of §1-206, G.S. Accordingly, it is concluded that the Commission lacks subject matter jurisdiction in this matter.

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 for lack of subject matter jurisdiction.

  
Paula S. Pearlman  
as Hearing Officer