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Gary Dinowitz,
Complainant(s)
against

Special Assistant, Office of Special Assistant to the President, State of Connecticut, Central Connecticut State University; and State of Connecticut, Central Connecticut State University,
Respondent(s)

Notice of Meeting

Docket #FIC 2012-605

May 29, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, June 26, 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 June 14, 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 June 14, 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 June 14, 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: Gary Dinowitz
Mary K. Lenehan, AAG

5/29/13/FIC# 2012-605/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Gary Dinowitz,

Complainant

against

Special Assistant, Office of the Special Assistant to the President, State of Connecticut, Central Connection State University; and State of Connecticut, Central Connecticut's State University,

Respondents

Report of Hearing Officer

Docket #FIC 2012-605

May 21, 2013

The above-captioned matter was heard as a contested case on April 18, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above-captioned matter was consolidated with docket #FIC 2012-624, Gary Dinowitz v. Labor Relations and Employment Officer, State of Connecticut, Office of Labor Relations, Southern Connecticut State University; and State of Connecticut, Southern Connecticut State University.

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 email dated October 22, 2012, the complainant sent the respondents the following request:

> This is my formal request seeking the [email addresses] of CCSU undergrad and graduate populations, hopefully in an excel database. . . .

3. It is found that, by email dated October 24, 2012, the respondents acknowledged the complainant's request, and informed him that they would conduct a review for responsive records and contact him shortly.

4. It is found that, by email dated November 2, 2012, the respondents informed the complainant that his request for records was denied.

5. By email dated and filed November 2, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for records.

6. 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.

7. 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.

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

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

10. The complainant contends that the respondents improperly withheld the email addresses from him, that this kind of information is essentially "directory information" to which he is entitled, and that the email addresses requested are easily obtained by way of the internet or otherwise.

11. The respondents contend that that the requested records are exempt from disclosure pursuant to §§1-210(b)(11), and 1-210(b)(17), G.S.

12. Section 1-210(b)(17), G.S., provides, in relevant part, that the FOI Act shall not require mandatory disclosure of:

> Educational records which are not subject to disclosure under the Family Education Rights and Privacy Act, 20 USC 1232g ("FERPA")[.]

13. 20 U.S.C. §1232g(b)(1) provides, in relevant part, as follows:

> 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 students without the written consent of their parents to any individual, agency, or organization, other than to the following--

14. 20 U.S.C. §1232g(a)(5)(B), provides in relevant part, as follows:

> 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.

15. 20 U.S.C. §1232g(d), entitled "Students' rather than parents' permission or consent," provides, in relevant part, as follows:

> . . . whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

16. With regard to the disclosure of directory information, 34 C.F.R. §99.37 provides, in relevant part, as follows:

> (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 of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;
(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of these types of information about the student as directory information; and
(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

. . . .

(d) In its public notice to parents and eligible students in attendance at the agency or the institution that is described in paragraph (a) of this section, 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. . . .

17. It is found that, under FERPA, an educational institution may designate the information that it considers to be directory information. It is also found that FERPA's regulations allow educational institutions to adopt directory information policies that limit the disclosure of directory information. It is further found that FERPA's regulations permit, but do not require, educational institutions to adopt limited directory information policies that allow the disclosure of directory information to specific parties, for specific purposes, or both.

18. It is found that, at the time the complainant made his request for records, the respondent university defined directory information as follows: "student's name, permanent mailing address, telephone number, dates of attendance, class standing, photographs, academic major, minor and concentration, degree candidacy, degree(s) earned, graduation date and any awards or honors received." It is found that the respondent university's definition with regard to directory information also provided the following: "Additional information that is also considered directory information includes

participation in officially recognized activities and sports, and the weight and height of members of athletic team."

19. It is found that, because the respondent university never designated student email addresses as directory information, pursuant to 34 C.F.R. §99.37(a)(1), students necessarily have never been provided with the opportunity to "opt out" of this disclosure, as is their right pursuant to 34 C.F.R. §99.37(a)(2) and (3).

20. It is therefore found that the requested email addresses are not directory information, and are exempt from disclosure pursuant to the provisions of §1-210(b)(17), G.S., and FERPA.

21. It is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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.

Valicia Dee Harmon

Valicia Dee Harmon
as Hearing Officer