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FREEDOM OF INFORMATION



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Joseph Dinegar,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-692

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

September 13, 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, October 9, 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 September 27, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE September 27, 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 September 27, 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: Joseph Dinegar
Melinda B. Kaufmann, Esq.

9/13/13/FIC# 2012-692/Trans/wrbp/CAL//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Joseph Dinegar,

Complainant

against

Docket # FIC 2012-692

Superintendent of Schools, Hartford
Public Schools; and Hartford Public
Schools,

Respondents

September 13, 2013

The above captioned matter was heard as a contested case on August 22, 2013, at which time the complainant and the respondents appeared 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)(A), G.S.
2. It is found that by letters dated October 13, 2012 and December 8, 2012, the complainant made requests to the respondent Superintendent, Dr. Christina Kishimoto, for an extensive array of records, mostly related to his employment and contract non-renewal as a teacher in the Hartford public schools. Both letters included the same list of ten numbered requests, and the December 8, 2012 letter also requested attorney Melinda Kauffman's communications concerning the complainant. Specifically, the records requested were:

- a. "Your [Dr. Kishimoto's] salary and bonuses since you became employed by HBOE" (Hartford Board of Education);
- b. "Any and all communication of any type between you [Dr. Kishimoto] and Dr. Adamowski regarding me from 2006 to present";
- c. "Any HBOE record of me as a tenured teacher";
- d. "All records of HBOE pertaining to monies (salary, bonuses or fees) paid to Dr. Adamowski to present";
- e. "Any and all communication between any of the following people pertaining to my employment status or in regards to me for any reason:
 1. Yourself, HBOE Assistant Superintendent/Superintendent;
 2. Pedro Segarra, Mayor of Hartford;

3. Zandralyn Gordon, HBOE HPHS Principal;
 4. Jill Cutler-Hodgeman, HBOE Interim Director of Human Resources;
 5. Harriet Merick, HBOE Human Resources;
 6. Natasha Durrant, HBOE Human Resources;
 7. Hanna Melle-Andrews, HBOE Records;
 8. Sheila Blair, HBOE HTLA Vice Principal;
 9. William Chambers, HBOE HPHS Vice Principal;
 10. Jacqueline Ryan, HBOE Engineering and Green Technology Academy former Principal;
 11. Patricia Staszko, HBOE HTLA Principal;
 12. Gail Mangs, CSDE Special Needs Department Adjudication Officer;
 13. Kathleen DeFelice, CSDE Certification Analyst;
 14. Nancy Pugliese, CSDE Commissioner's Office" (Connecticut State Department of Education);
- f. "The disposition of all materials and equipment ordered for my use as the science teacher at HTLA (2008-2009), which order was facilitated by Principal Staszko";
 - g. "Any and all communication between anyone at HBOE and anyone at CSDE regarding my Certification";
 - h. "All communication between Principal Patricia Staszko, you [Dr. Kishimoto], Dr. Adamowski, Sheila Blair, Natasha Durrant and any member and HFT in regards to teacher evaluation and my contract non-renewal";
 - i. "Any records pertaining to Principal Patricia Staszko's separation from HBOE";
 - j. "Any and all records of communication regarding me between any one affiliated with HBOE and anyone affiliated with Capital Community College"; and
 - k. "All communications by attorney Melinda Kauffmann concerning me".

Together, the records described at subsections a through k, above, are the "requested records". The October 13, 2012 request letter also included personal invective directed at the respondent Superintendent, stating that she was "ridiculously juvenile and highly unprofessional... a depraved and weak human being... [as well as] deceptive, vague, and corruptible".

3. It is found that by email dated October 23, 2012, the respondents acknowledged the request. By letter dated November 19, 2012, the respondents provided a substantive response to each of the ten numbered requests in the October 13, 2012 letter and offered 354 emails upon payment of the copying charge.

4. It is found that, by letter dated December 11, 2012 and filed with the Commission on December 13, 2012, the complainant appealed to the Commission, citing both request letters described at paragraph 2, above, and alleging that the respondents violated the Freedom of Information Act ("FOIA").

5. It is found that the respondents initiated a search for the requested records on October 23, 2012, and for about five weeks, Ms. Milly Ramos and her assistant, Sue Hail Aponte, spent about half of their working time searching for the requested records. These efforts resulted in the November 19, 2012 response discussed at paragraph 3 above.

6. It is also found that in early January 2013 Ms. Milly Ramos sent a disc of additional emails to Attorney Melinda Kauffmann for legal review prior to disclosure to the complainant. Somehow, the disc was lost in the interoffice mail system and Attorney Kauffmann personally walked down to receive by hand delivery a second disc that Ms. Ramos prepared for her.

7. It is further found that, by letter dated February 25, 2013, Attorney Kauffmann provided additional emails, which were communications to or from individuals named by the complainant in his records request (see paragraph 2.e, subsections 1 to 14). These emails, printed as paper copies, constituted approximately one inch of additional records. She provided these to the complainant with no copying charge. Attorney Kauffmann also provided a privilege log of items which she claimed to be exempt from mandatory disclosure based upon the attorney-client privilege. Attorney Kauffmann credibly represented that she spent approximately four to five hours preparing the correspondence and enclosures.

8. In response to the request of the hearing officer at the August 22, 2013 hearing, the respondents submitted for an in camera inspection the records claimed to be exempt in the discussion at paragraph 7. Such records are hereby identified as IC-2012-692-1 through IC-2012-692-12, with the numbers 1 through 12 assigned to each email of a specified date in the order shown on the index. On a detailed explanatory index to the in camera records, the respondents claimed the exemption at §1-210(b)(10), G.S., for each of twelve records, except for one record (IC-2012-692-7) which respondents claimed was non-responsive to the request.

9. It is also found that, by letter dated June 14, 2013, Attorney Kauffmann provided to the complainant a disc with her own non-privileged communications regarding the complainant (see paragraph 2.k), except those emails previously provided with her February 25, 2013 letter. The June 14, 2013 letter also forwarded an attachment to an email written by Jill Cutler-Hodgman concerning which the complainant had expressed especial interest. Attorney Kauffmann credibly represented that she spent approximately three to four hours preparing the correspondence and enclosures.

10. At the August 22, 2013 hearing, each of the eleven categories of requested records set forth at paragraph 2 were reviewed individually (subsections a through k), and it is found with reference to each subsection, respectively, that:

- a) the complainant testified that the November 19, 2012 Ramos letter did not include attachments with the requested information; the respondents presented testimony that the referenced enclosures were enclosed and that the complainant did not follow up stating that he failed to receive the enclosures; at the hearing, the respondents provided an additional copy of the November 12, 2012 letter with the enclosures to the complainant;
- b) these records were provided with the February 25, 2013 Kauffmann letter;
- c) the respondents maintained that the complainant was not a tenured teacher and therefore there are no records responsive to this request;
- d) the response at paragraph 10.a addresses this request as well;
- e) the response at paragraph 10.b addresses this request as well;
- f) this request is vague and may require research to determine the relevant materials and equipment; at the hearing, the complainant testified that the relevant equipment included a smart board, a computer to operate the smart board and microscopes, but the respondents were not able to search for relevant records without this information;
- g) the relevant emails have been provided, but not all paper correspondence, generally sent by U.S. mail, has been provided;
- h) the relevant emails have been provided, but not all paper correspondence, generally sent by U.S. mail, has been provided;
- i) the response at paragraph 10.a addresses this request as well;
- j) the evidence at the hearing suggested that all of these records were provided and there was no evidence that these records were not provided; and
- k) these records were provided with the February 25, 2013 Kauffmann letter and the June 14, 2013 Kauffmann letter.

11. Based on these specific findings, it is found more generally that the respondents performed a good faith search for the requested records, and as detailed above, provided extensive records to the complainant. Many aspects of the response to the records request were handled with calm professionalism despite a contentious relationship between the complainant and the respondents. But because the request was for an extensive array of records, and perhaps because of the adverse relationship between the complainant and the respondents, which included a law suit in U.S. District Court, the search for the requested records did have some imperfections. Specifically, concerning paragraph 2, subsections g and h, electronic records were provided, but the search for paper records was not performed.

12. Therefore, at the August 22, 2013 hearing, the hearing officer suggested and the respondents readily agreed to provide a late filed exhibit outlining a proposal to search for all paper correspondence, generally sent by U.S. mail, which is within the scope of the complainant's requests and which has not yet been provided to the

complainant. The complainant was afforded an opportunity to comment on the respondents' proposal. Finally, the respondents agreed to search for tenured teacher lists from 2007-2008 and 2008-2009, and provide such records to the complainant if they exist.

13. It is found that by letter to the hearing officer dated August 30, 2013, counsel for the respondents represented that the respondents do not maintain "a tenured teacher list", but that four specific, relevant records were being provided to the complainant "today". By email also dated August 30, 2013, copies of the relevant records were provided to the Commission. Counsel for the respondents also represented that a review was being performed of the complainant's personnel file, his grievance file and his non-renewal file for paper communications not previously provided. Finally, counsel for the respondents represented that five named current employees of the Hartford Board of Education have been contacted to determine if they have responsive paper records. The complainant did not exercise his opportunity to comment on the respondents' proposal concerning the search for paper records.

14. Section 1-210(b)(10), G.S., permits an agency to withhold from disclosure records of "communications privileged by the attorney-client relationship." The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by Maxwell v. FOI Commission, 260 Conn. 143 (2002), which stated that §52-146r, G.S., codifies "the common-law attorney-client privilege".

15. Section 52-146r(2), G.S., defines "confidential communications" as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

16. The Supreme Court has also stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra at 149.

17. Based upon a review of the in camera records with the index (see paragraph 8), it is found that Melinda Kaufmann, Jill Cutler Hodgman and Ann Bird were attorneys in professional relationships with their public agency clients. It is also found that, with a single minor exception, IC-2012-692-1 through IC-2012-692-12, including IC-2012-692-7, are all communications transmitted in confidence between public employees in

performance of their duties and a government attorney relating to legal advice. The exception is the email from the complainant to Jill Cutler Hodgman, sent on Monday, April 20, 2009 at 5:06 p.m., which appears in several email strings.

18. 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.

19. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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

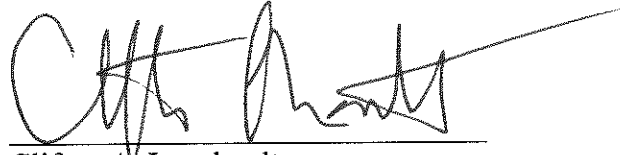
21. Based on the foregoing, it is concluded that the respondents technically violated §§1-210(a) and 1-212(a), G.S., by failing to provide promptly copies of certain requested records which they maintained.

22. It is also concluded that IC-2012-692-1 through IC-2012-692-12 are exempt from mandatory disclosure pursuant to §1-210(b)(10), G.S., except for the email, discussed at paragraph 17, from the complainant to Jill Cutler Hodgman, sent on Monday, April 20, 2009 at 5:06 p.m.

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

1. Forthwith, the respondents shall fully implement the search for all paper correspondence which they outlined in Attorney Kauffman's August 30, 2013 letter to the hearing officer and provide any requested records that are located and have not been previously provided to the complainant without copying charge.

2. If requested by the complainant, the respondents shall forthwith provide him with a copy of the email he sent to Jill Cutler Hodgman, on Monday, April 20, 2009 at 5:06 p.m.

A handwritten signature in black ink, appearing to read 'Clifton A. Leonhardt', written over a horizontal line.

Clifton A. Leonhardt
as Hearing Officer