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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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Marissa Lowthert,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-260

Gary Richards, Superintendent of Schools, Wilton Public
Schools; and Wilton Public Schools,
Respondent(s)

February 3, 2015

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, February 25, 2015**. 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 February 13, 2015**. 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 February 13, 2015**. **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 February 13, 2015**, 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: Marissa Lowthert
Ann H. Littlefield, Esq.

2015-02-03/FIC# 2014-260/Trans/wrbp/VDH//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Marissa Lowthert,

Complainant

against

Docket #FIC 2014-260

Gary Richards, Superintendent of
Schools, Wilton Public Schools; and
Wilton Public Schools,

Respondents

February 3, 2015

The above-captioned matter was heard as a contested case on December 8, 2014, 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, this matter was consolidated with Docket #FIC 2014-265; Marissa Lowthert v. Gary Richards, Superintendent of Schools, Wilton Public Schools, Cheryl Jensen-Gerner, Principal, Miller Driscoll School, Wilton Public Schools, and Wilton Public Schools; Docket #FIC 2014-276; Marissa Lowthert v. Gary Richards, Superintendent of Schools, Wilton Public Schools, Cheryl Jensen-Gerner, Principal, Miller Driscoll School, Wilton Public Schools, and Wilton Public Schools; and Docket #FIC 2014-289; Marissa Lowthert v. Gary Richards, Superintendent of Schools, Wilton Public Schools, and Wilton Public Schools.

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 April 2, 2014, the complainant sent the following request for records to the Assistant Superintendent for Special Services at Wilton Public Schools:

[C]ould you please **send me a copy of the Child Find Policy for WPS and Miller-Driscoll?** If no such policy exists for WPS or Miller-Driscoll, please advise.
(Bold and underline in original)

3. It is found that, by email dated April 3, 2014, the complainant again sent the request referenced in paragraph 2, above, to the Assistant Superintendent for Special Services, and also forwarded the request to Gary Richards, the former Superintendent of Wilton Public Schools.

4. By email dated and filed May 1, 2014, the complainant appealed to the Commission, alleging that Superintendent Richards violated the Freedom of Information Act ("FOI Act") by denying her a copy of the requested record. In addition, the complainant requested that the following remedies be imposed against the respondents: first, that the Commission order the respondents to provide the requested record to the complainant, or to acknowledge that no such record exists; second, that the Commission impose the maximum civil penalty against Superintendent Richards for withholding a public record; and third, that the Commission admonish Superintendent Richards for failing to discharge his lawful obligations under the FOI Act.

5. 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.

6. 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

7. 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."

8. Section 1-206(a), G.S., provides that:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has

custody or control of the public record, in writing, within four business days of such request. . . . Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

9. It is found that the respondents do not maintain the requested record described in paragraph 2, above. It is further found that, by letter dated November 7, 2014, in addition to addressing several other complaints filed by the complainant against various public agencies with the Town of Wilton, the respondents informed the complainant that “neither Wilton nor the Miller Driscoll Elementary Schools has [the requested] written policy.”

10. It is the complainant’s position that the respondents should have an affirmative obligation to inform her promptly that they did not maintain the requested policy, and that their November 7th letter cannot be considered a prompt response.

11. While the FOI Act does require that a public agency provide a requester with copies of or access to non-exempt public records in its possession promptly, or to provide a requester with a written response denying a request for public records within four business days, there is no requirement that a public agency inform a requester that it does not maintain records within the scope of a request. See Smith v. Freedom of Info. Comm’n, Docket No. CV-11-5015510-S, 2012 Conn. Super. LEXIS 2224, at *7-8 (Conn. Super. Ct. Aug. 30, 2012) (“Smith”).

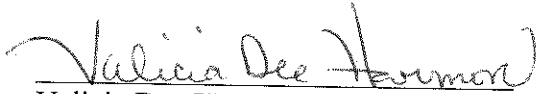
12. The complainant contends that Smith should be overturned because it is bad public policy to allow a public agency to remain silent, rather than requiring it to affirmatively state that it does not maintain or keep on file records that have been requested.

13. This Commission declines to “overrule” its decision in Smith, which decision was sustained by the Superior Court.

14. Based on governing law, it is concluded that the respondents did not violate any provision of the FOI Act.

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

1. The complaint is dismissed.


Valicia Dee Harmon
as Hearing Officer