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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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Lisa Treat-Perry,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-226

Superintendent of Schools, East Haddam Public Schools;  
and East Haddam Public Schools,  
Respondent(s)

October 28, 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, November 18, 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 November 6, 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 November 6, 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 **fifteen (15) copies** be filed **ON OR BEFORE November 6, 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: Lisa Treat-Perry  
Superintendent of Schools, East Haddam Public Schools;  
East Haddam Public Schools

2015-10-28/FIC# 2015-226/Trans/wrbp/CAL//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lisa Treat-Perry,

Complainant

against

Docket #FIC 2015-226

Superintendent of Schools, East Haddam  
Public Schools; and East Haddam Public Schools,

Respondents

October 2, 2015

The above-captioned matter was heard as contested case on August 17 and September 22, 2015, at which times 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 email dated March 9, 2015, the complainant made a request to the respondent Superintendent for access to all records “about the Common Core Smarter Balanced Assessment Consortium Opt-Out/refusal issue that were written, sent or received by the East Haddam School District” from the State Department of Education between January 1, 2015 and March 9, 2015 (the “requested records”). By additional emails dated March 12 and March 18, 2015, the complainant repeated her request with slightly different descriptions of the State Department of Education as well as a slightly different end date of her request. These small differences are not material to this case.
3. It is found that, by email dated March 25, 2015 and filed with the Commission on March 26, 2015, the complainant appealed to the Commission, alleging that the failure of the respondents to provide access to requested records violated the Freedom of Information Act (“FOIA”).

4. 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. (emphasis added)

5. 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.

6. 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.

7. It is found that on March 11, 2015 the respondents made available a package of approximately fifty pages of responsive records to the complainant and that she picked this package up the following morning. Also on March 12, 2015, by email, the complainant alleged that the records disclosed were “not even close to what I requested” and, as stated at paragraph 2, above, reiterated her request.

8. At the August 17, 2015 hearing, the complainant produced three records that she claimed should have been disclosed in response to her requests. The three records were not part of the package provided on March 11, 2015.

9. At the September 22, 2015 hearing, the respondents produced records showing, and it is found, that two of the records which the complainant had produced at the August 17, 2015 hearing were not transmitted to the respondents. Instead, the respondents were provided a record not within the scope of the request that stated the address of an internet link for a record that would have been within the scope of the complainant’s request, and another record that stated optional instructions to subscribe to a publication that would have been within the scope of the complainant’s request.

10. It is also found that the third record that the complainant produced at the August 17, 2015 hearing was an attachment to an email that the respondent Superintendent had received during the time period covered by the request. Because the respondents’ search through many thousands of electronic records was conducted by computer using search terms relevant to the complainant’s records requests, the computer

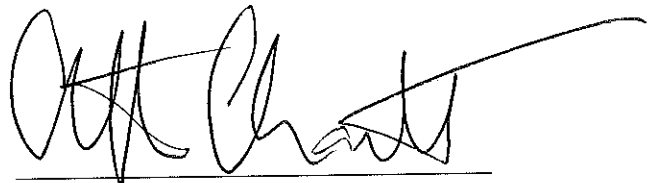
search did not identify an attachment that did address the “opt-out” from “Common Core” testing requirements.

11. Finally, it is found that the respondents were, in general, highly responsive to the complainant’s request for records, attempting in good faith to satisfy FOIA requirements, despite a difficult underlying dispute concerning Common Core testing as it applied to the complainant’s child in the respondent Public Schools.

12. It is concluded that the respondents had not “received or retained” records, pursuant to §1-200(5), G.S., where the respondents maintain records that only show the address of an internet link to a record within the scope of the complainant’s request or only show optional subscription instructions to a publication within the scope of the complainant’s request.

13. It is also concluded that an attachment to a record is itself a record “received or retained”, pursuant to §1-200(5), G.S. Accordingly, a single requested record was not provided promptly to the complainant, causing the respondents to technically violate §§1-210(a) and 1-212(a), G.S.

No order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.



Clifton A. Leonhardt  
as Hearing Officer