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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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Anne Manusky,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0224

Commissioner, State of Connecticut,
Department of Education; and
State of Connecticut, Department of
Education,

Respondent(s)

October 6, 2016

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 16, 2016**. 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 4, 2016**. 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 4, 2016**. **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 4, 2016**, 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: Anne Manusky
Attorney Ralph Urban

FIG# 2016-0224/Trans/wrbp/KKR/VB/2016-10-06

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Anne Manusky,

Complainant

against

Docket #FIC 2016-0224

Commissioner, State of Connecticut,
Department of Education; and
State of Connecticut, Department of
Education,

Respondents

July 11, 2016

The above-captioned matter was heard as a contested case on June 13, 2016, 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), G.S.
2. It is found that, by letter dated March 10, 2016, and hand-delivered to the respondents on March 11, 2016, the complainant requested to inspect:

any and all materials providing validity and reliability of the Smarter Balanced Assessments, and also the 'deep psychometric study' used to change the Smarter Balanced Assessments [referenced in a February 25, 2016 article in the Hartford Courant].

3. It is found that, on March 11, 2016, the complainant appeared at the office of the respondent Commissioner and handed the request, described in paragraph 2, above, to an assistant in the office. It is found that the complainant informed the assistant and two attorneys in the office that she wished to inspect the records responsive to her request immediately that day. The attorneys informed the complainant she would not be permitted to inspect the records that day, because they needed to search for any responsive records and review them before providing access to them. It is found that the attorneys also informed the complainant that she is not entitled, under the law, to immediate access to inspect records on demand.

4. It is found that, by email dated March 14, 2016, at 9:30 a.m., the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that they were “reviewing files to determine what records are responsive to [the] request...[and] the applicability of FOIA and its exemptions...” They further informed the complainant that any responsive, non-exempt records would be provided to her via the email address she provided.

5. It is found that, by email dated March 14, 2016, at 2:08 p.m., the complainant responded: “[m]y request of the aforementioned Smarter Balanced information was needed immediately and is time sensitive in nature. These materials can be emailed to me today by close of business, or I can return tomorrow during regular business hours to review the materials.”

6. It is found that, by email dated March 14, 2016, at 4:30 p.m., the respondents informed the complainant that they were still in the process of reviewing and compiling the records she requested and that the records would not be available for inspection the following day.

7. By letter dated March 14, 2016, and filed March 17, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her immediate access to the records responsive to the request, described in paragraph 2, above.

8. 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.

9. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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 or . . . (3) receive a copy of such records in accordance with section 1-212. (Emphasis added).

10. 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.”

11. It is found that the records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

12. It is found that, by emails dated March 16 and March 30, 2016, the respondents provided records to the complainant in response to the request, described in paragraph 2, above.

13. At the hearing in this matter, the complainant contended that the records provided to her on March 16 and March 30, 2016, were not the records she was seeking, and argued that the respondents should have additional records responsive to her request. The complainant continued to claim that the respondents violated the FOI Act by denying her request to immediately inspect any responsive records.

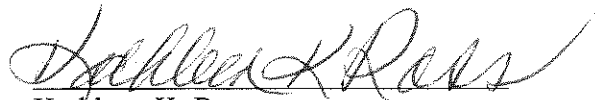
14. Based upon the credible testimony of the respondents’ witness, it is found that the respondents conducted a thorough search for responsive records and provided to the complainant a copy of all records responsive to the request, described in paragraph 2, above, that they maintain.

15. With regard to the complainant’s claim that the denial of her request to immediately inspect records violated the FOI Act, it is well settled that the law does not require “immediate” access to records upon demand, but rather, permits a person the right to receive a copy of or to inspect records “promptly.” See, e.g., Bradshaw Smith v. Stephen Mitchell, Chairman, Greater Hartford Transit District, et al., Docket #FIC 2014-184 (October 8, 2014); Suzanne Carlson and the Journal Inquirer v. Mayor, Town of Vernon, et al., FIC 2011-542 (May 23, 2012) (“nothing in the FOI Act requires the employees of a public agency, or public officials, necessarily, to interrupt their work in order to immediately fulfill a request to inspect or copy records”).

16. Based upon the facts and circumstances of this case, it is concluded that the respondents did not violate the FOI Act by refusing to permit immediate inspection of the requested records. Moreover, it is concluded that the respondents provided to the complainant prompt access to all responsive records they maintain. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., 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 dismissed.



Kathleen K. Ross
as Hearing Officer