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Geoffrey Akers,
Complainant(s)
against

President, State of Connecticut, University of Connecticut;
and State of Connecticut, University of Connecticut,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0204

January 25, 2017

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, February 22, 2017.** 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 7, 2017***. 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 7, 2017***. **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 February 7, 2017***, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Geoffrey Akers
Attorney Holly J. Bray

FIC# 2016-0204/Trans/wrbp/TCB//TAH/2017-01-25

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Geoffrey Akers,

Complainant

against

Docket #FIC 2016-0204

President, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut,

Respondents

January 19, 2016

The above-captioned matter was heard as a contested case on June 9, 2016 and on September 13, 2016, at which times the complainant and the respondents appeared, stipulated to certain facts 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 February 26, 2016 to the respondents, the complainant requested records and information related to applicants for admission to the University of Connecticut School of Law in 2012 and 2013. It is found that the complainant sought records and information containing demographic information of applicants and records concerning his application.

3. By letter dated and filed on March 14, 2016, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request.

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.

5. 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.

6. 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."

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

8. It is found that the complainant's February 26, 2016 letter included a request for "a clean copy of his law school application" which he was provided.

9. It is found that the respondents maintain no other records responsive to the complainant's letter of request. For example, the complainant requested "data for [the] number of students (any degree) with at least 3 years of prior professional work experience before law school …." It is found that information with respect to an applicant's "prior professional work experience" is not maintained in a discrete database or contained in a currently-existing record. It is found that to obtain that information, to the extent it exists, the application of every admitted student would have to be read and then a new document would have to be created containing that information.[1] In addition, the complainant asked to be provided with "the data for the graduate degree distribution of the age categories of the 2012/2013 application years." It is found that the respondents do not possess records that specifically provide such aggregated data, however, they

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[1] Nothing in the FOI Act requires a public agency to create records. See Docket #FIC 2015-591; Jason Goode v. Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction; Docket #FIC 2015-168; Joseph J. Bango and Connecticut Kids First v. Superintendent of Schools, Cheshire Public Schools; and Cheshire Public Schools; Docket # FIC 2002-288; Jane Anastasio v. Ann Clark, Superintendent of Schools, Bristol Public Schools; Michael Wasta, Assistant Superintendent of Schools, Bristol Public Schools; William Smyth, Business Manager, Bristol Public Schools; and Richard Saporito, Chairman, Board of Education, City of Bristol.

voluntarily amassed and provided the data to the complainant. Likewise, it is found that the respondents also provided a copy of certain data grids but those records are not maintained by the respondents but rather are maintained by the Law School Admissions Council. It is found that the respondents downloaded the grids from the Council's website and provided the complainant with a copy as a courtesy.

10. It is found that to the extent the respondents determined that they could reasonably compile the information requested by the complainant, they voluntarily did so and provided it to the complainant.

11. It is found that notwithstanding the respondents' provision of much of the information the complainant requested, they withheld any information that could lead to the identification of any specific student – such as a student's possession of an unusual degree, or unusual age for a law school student. The respondents claimed that such information is contained in the student's educational records and that pursuant to the Family Educational Rights and Privacy Act, 20 USC 1232g, ("FERPA"), such information cannot be disclosed.

12. At the hearing on this matter, the complainant strongly objected to the respondents' contentions countering with his own contention claiming that such information is only "directory information" and that FERPA actually permits the disclosure of the type of directory information the respondents withheld.

13. It is found that "directory information" is defined by FERPA as "personally identifiable information that is not generally considered harmful or an invasion of privacy if disclosed and includes, but is not limited to:

a. name, address, telephone listing, electronic mail address;
b. date and place of birth;
c. photographs;
d. participation in officially recognized activities and sports;
e. field of study;
f. weight and height of athletes;
g. enrollment status (full-, part-time, undergraduate, graduate);
h. degrees & awards received;
i. dates of attendance;
j. most recent previous school attended; and
k. grade level.

14. It is concluded that the information withheld by the respondents is not "directory information."

15. Additionally, §1-210(b)(17), G.S., provides that "[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g."

16. It is found that the withheld information is information found in the educational records of the respective students and that such information is permissibly exempt pursuant to §1-210(b)(17), G.S.

17. It is concluded that the respondents did not violated the FOI Act as alleged by the complainant.

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.

Tracie C. Brown

Attorney Tracie C. Brown
as Hearing Officer

FIC2016-0204/hor/tcb/20161017