

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Torrey Townsend,

Complainant

against

Docket #FIC 2015-732

Superintendent of Schools,
New Haven Public Schools; and
New Haven Public Schools,

Respondents

August 10, 2016

The above-captioned matter was heard as a contested case on June 29, 2016, at which time 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. By letter of complaint filed October 30, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to respond to her requests for information.
3. It is found that the complainant made an October 22, 2015 request to the respondents for the following information:
 - a. a list of all Board of Education members for the past 20 years;
 - b. all changes to the scoring system for students in the city of New Haven for the past 20 years;
 - c. the names of all Board members who voted on changes and current standards to the scoring system;
 - d. the meaning of the letter "P" on a student transcript.
4. It is found that the complainant was seeking to understand the transcripts of her children, who were students in the New Haven Public Schools.
5. It is found that the complainant went to the offices of the Board of Education to get the answers to her questions, that the staff of the respondents were unable to satisfactorily answer the complainant's questions, and the staff told her to put her questions in writing.

6. It is found that the complainant reduced her questions to writing in her October 22, 2015 request, described above in paragraph 3, but that respondents did not timely reply to the complainant's October 22, 2015 request for information.

7. It is found that the respondents in fact did not reply to the complainant until a Notice of Hearing and Order to Show Cause was issued by this Commission six months later, and forwarded by the respondents to their attorney.

8. It is found that the respondents' attorney sent the complainant an email on May 10, 2016, explaining that the respondents did not maintain a list of its members for the past 20 years, but further explaining that the complainant could ascertain the answer to her question by reviewing the minutes of the Board's meeting. The attorney provided a contact and phone number so that the complainant could arrange for a convenient time to review those minutes.

9. It is found that the May 10, 2016 email also explained that the answer to the complainant's questions about changes to the scoring system for the past 20 years, and the names of all Board members who voted on such changes, could be ascertained from the minutes of the Board's Curriculum Committee. The attorney explained that once the complainant reviewed those minutes, the respondents would be happy to expedite any request for copies of particular minutes.

10. It is found that the May 10, 2016 email additionally explained that a passing score for any New Haven Public School class was 60.

11. It is found that the May 10, 2016 email asked the complainant to indicate which school or schools her child or children attended, and that the respondents would put the principal of that school in touch with her to resolve any unanswered questions.

12. Additionally, it is found that the respondents' attorney sent another email, on May 12, 2016, attaching an electronic copy of the Student Parent Handbook, which contained an explanation of a passing score. The May 12 email suggested that the FOI Commission was "not usually the best forum in which to settle academic issues involving public schools issues," and asked the complainant to consider getting in touch with either the Superintendent's office or her child's school.

13. It is found, however, that the complainant had in fact begun her inquiry at the respondents' offices some six months earlier, been told to put her request in writing, and then received no response.

14. 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.

15. 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.

16. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

17. The respondents contend that the lack of any response to the complainant's request was due to a vacancy in the office of the communications director for essentially the entire 2015-2016 school year.

18. The Commission observes that the respondents' FOI Act obligations cannot be entirely suspended for a school year based on staffing vacancies.

19. However, it is also found that the complainant's requests were either questions that could only be answered after doing research, or for a list that did not exist.

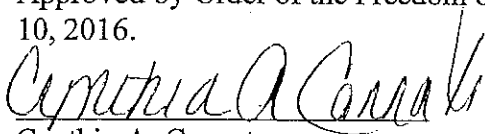
20. It is well settled that the FOI Act does not require that a public agency respond to questions that can only be answered after doing research, or to create lists.

21. It is therefore concluded that, despite the failure of the respondents to timely reply to the complainant's requests for information, the respondents did not violate the FOI Act by failing to timely answer her questions.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 10, 2016.



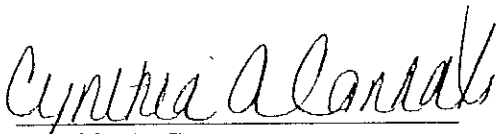
Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Torrey Townsend
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New Haven, CT 06511

Superintendent of Schools, New Haven Public
Schools; and New Haven Public Schools
c/o Kathleen Foster, Esq.
Assistant Corporation Counsel
165 Church Street
New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission