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Gary Dinowitz,
Complainant(s)
against

Director, State of Connecticut, Office of Audit, Compliance and Ethics, University of Connecticut; and State of Connecticut, Office of Audit, Compliance and Ethics, University of Connecticut,
Respondent(s)

Notice of Meeting

Docket #FIC 2012-645

May 29, 2013

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, June 26, 2013.** 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 June 14, 2013***. 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, the Commission requests that an **original and fourteen (14) copies** be filed ***ON OR BEFORE June 14, 2013.*** **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 June 14, 2013,*** 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: Gary Dinowitz
Holly J. Bray, AAG

5/29/13/FIC# 2012-645/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Gary Dinowitz,

Complainant

against

Docket #FIC 2012-645

Director, State of Connecticut, Office of Audit, Compliance and Ethics, University of Connecticut; and State of Connecticut, Office of Audit, Compliance and Ethics, University of Connecticut,

Respondents

May 21, 2013

The above-captioned matter was heard as a contested case on April 18, 2013, 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. It is found that, by email dated October 22, 2012, the complainant sent the respondents the following request:

> I want the [email addresses] for the undergrads of UConn Storrs, I do not need anything else except the [email addresses], hopefully in an excel database. I would like the [email addresses] of the UConn Storrs Grad Students as a file; I would like the [email addresses] of the UConn Hartford Branch undergrad students as a file; and I would like the [email addresses] of the UConn Hartford Branch Grad Students as a file.

3. It is found that, by letter dated October 23, 2012, the respondents acknowledged the complainant's request and informed him that responsive records would be compiled

and reviewed, and any non-exempt records would be provided to him.

4. It is found that, by letter dated November 15, 2012, the respondents denied the request for records described in paragraph 2, above.

5. By email dated and filed November 15, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for records.

6. 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.

7. 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.

8. 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."

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

10. The complainant contends that the respondents improperly withheld the email addresses from him, that this kind of information is essentially "directory information" to which he is entitled, and that the email addresses requested are easily obtained by way of the internet or otherwise.

11. The respondents contend that the requested records are exempt from disclosure pursuant to §§1-210(b)(11), and 1-210(b)(17), G.S.

12. Section 1-210(b)(17), G.S., provides, in relevant part, that the FOI Act shall not require mandatory disclosure of:

> Educational records which are not subject to disclosure under the Family Education Rights and Privacy Act, 20 USC 1232g ("FERPA")[.]

13. 20 U.S.C. §1232g(b)(1) provides, in relevant part, as follows:

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

14. 20 U.S.C. §1232g(a)(5)(B), provides, in relevant part, as follows:

> Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

15. 20 U.S.C. §1232g(d), entitled "Students' rather than parents' permission or consent," provides, in relevant part, as follows:

> . . . whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

16. With regard to the disclosure of directory information, 34 C.F.R. §99.37 provides, in relevant part, as follows:

> (a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:
>
> (1) The types of personally identifiable information that the agency or institution has designated as directory information;
> (2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of these types of information about the student as directory information; and
> (3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.
>
> . . . .
>
> (d) In its public notice to parents and eligible students in attendance at the agency or the institution that is described in paragraph (a) of this section, an educational agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both. When an educational agency or institution specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both, the educational agency or institution must limit its directory information disclosures to those specified in its public notice. . . .

17. It is found that, under FERPA, an educational institution may designate the information that it considers to be directory information. It is also found that FERPA's regulations allow educational institutions to adopt directory information policies that limit the disclosure of directory information. It is further found that FERPA's regulations permit, but do not require, educational institutions to adopt limited directory information policies that allow the disclosure of directory information to specific parties, for specific purposes, or both.

18. It is found that, at the time the complainant made his request for records, the respondent university's definition of directory information included "addresses." Based on the testimony, it is found that the respondents interpreted the reference to "addresses" to

include email addresses, in addition to other physical locations.

19. The respondents contend that, regardless of whether their definition of directory information was written and had been interpreted to include email addresses, the release of directory information remains, at all times, within the discretion of the educational institution. Therefore, the respondents contend that they could deny a request for directory information even if the request was for records that fell within their current definition of directory information, students had not exercised their right to opt out of the disclosure, and no limitation had been imposed with regard to whom such information could properly be disclosed. It is found that to adopt the respondents' contention in this regard would be to eviscerate the detailed notice and opt-out provisions set forth in the federal statutory and regulatory law concerning the disclosure of directory information.[1]

20. It is therefore found that the email addresses requested by the complainant are not exempt from disclosure pursuant to §1-210(b)(17), G.S., and FERPA.

21. Section 1-210(b)(11), G.S., provides that the FOI Act shall not require mandatory disclosure of:

> Names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older . . . , provided this subdivision shall not be construed as prohibiting the disclosure of the names or addresses of students enrolled in any public school in a regional school district to the board of selectmen or town board of finance, as the case may be, of the town wherein the student resides for the purpose of verifying tuition payments made to such school[.]

22. It is found that the email addresses of the students at the respondent agency are generally in the following format: first name, period, last name, @uconnn.edu. It is found that, because of the format used for email addresses, to disclose student email addresses in this case would be equivalent to disclosing the "[n]ames. . . of students enrolled in any public. . . college without the consent of each student whose name. . . is to be disclosed," in violation of the provisions set forth in §1-210(b)(11), G.S.

23. In addition, in Hartford Board of Education v. Freedom of Information Commission, et al., CV 95-0555646-S, 1997 Conn. Super. LEXIS 75, at*6-7 (Conn. Super. Ct. Jan. 9, 1997), wherein the request for records was for the names, addresses, and phone

[1] It is worth noting that UConn's current policy continues to define directory information as including student email addresses, however, the policy further clarifies that this kind of information will only be disclosed to entities that have a direct affiliation with UConn. According to the respondents, the following four entities are the only entities that have a direct affiliation with UConn: The UConn Foundation, The Law School Foundation, The UConn Co-op, and The Alumni Foundation.

numbers of the parents of all students in the Hartford Public School System, the court held that §1-210(b)(11), G.S., permissibly prohibits the release of the requested information because it would "inevitably lead to the disclosure of the prohibited student information in the majority of cases." In this case, it is found that it is even clearer that the email addresses themselves would directly reveal the names of the students enrolled in the respondent university.

24. It is therefore found that the requested email addresses are exempt pursuant to the provisions of §1-210(b)(11), G.S.

25. It is concluded that the respondents did not violate the FOI Act 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 hereby dismissed.

Valicia Dee Harmon

Valicia Dee Harmon
as Hearing Officer