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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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Gale Courey Toensing,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-223

Chairman, All Boards Chairs Committee,
Regional School District #1; and All Boards
Chairs Committee, Regional School District #1,
Respondent(s)

January 6, 2014

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 Tuesday, February 11, 2014**. 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 January 30, 2014**. 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 January 30, 2014**. **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 January 30, 2014**, 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: Gale Courey Toensing
Attorney Gary Brouchu

January 6, 2014/FIC# 2013-223/Trans/wrbp/LFS//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Gale Courey Toensing,

Complainant

against

Docket #FIC 2013-223

Chairman, All Boards Chairs Committee,
Region One School District; and All
Boards Chairs Committee, Region One
School District,

Respondents

January 2, 2014

The above-captioned matter was heard as a contested case on November 26, 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. It is found that the Region One School District comprises six towns (Canaan, Cornwall, Kent, North Canaan, Salisbury, and Sharon).
2. It is found that each of the six towns maintains an elementary school consisting of grades K-8 under an autonomous board of education.
3. It is found that the superintendent of Region One School District serves the individual town boards of education, as well as the Region One School District Board of Education, which maintains the Housatonic Valley Regional High School.
4. It is found that in order to evaluate the performance of the superintendent, the chairs of each of the individual boards of education and of the Region One board of education convened as a committee for such purpose. It is found that the committee was the All Boards Chairs ("ABC") Committee, a respondent in this matter.
5. It is found that all the respondents are public agencies within the meaning of §1-200(1), G.S.
6. It is found that on February 26, 2013, the complainant requested a copy of all documents concerning the superintendent's evaluation.

7. It is found that on February 27, 2013, the respondent chair of the ABC committee told the complainant that “the evaluation is not complete and I will need to pull all the documents together. When it is ready I will have Central Office call you.”

8. It is found that on March 29, 2013, the complainant wrote to the respondent chair, asking when she could expect to receive the records responsive to her request, noting that she had learned that the evaluation and recommendations concerning the superintendent were complete.

9. It is found that, in a letter dated April 3, 2013 but postmarked May 2, 2013, the chair informed the complainant that “there were no documents” responsive to the complainant’s request. It is found that the chair added that any requested documents would be exempt from disclosure as “preliminary notes or drafts.”

10. It is found that on April 10, 2013, the complainant, having not received the chair’s letter (because it was postmarked on May 2, 2013), again wrote to the chair, asking when she could expect a response to her February 26, 2013, request.

11. By letter filed May 3, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with copies of the records she requested.

12. 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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 ... (3) receive a copy of such records in accordance with section 1-212.

14. 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.”

15. It is concluded 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.

16. Section 1-210(b)(1), G. S., provides: “Nothing in the Freedom of Information Act shall be construed to require disclosure of ... preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure”

17. Section 1-210(e)(1), G.S., provides in relevant part:

Notwithstanding the provisions of subdivisions (1) ... of subsection (b) of this section, disclosure shall be required of:

(1) Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency;

18. It is found that each of the individual boards of education completed an evaluation worksheet concerning the superintendent’s performance. It is found that the evaluation worksheet used by the individual members consists of 74 performance criteria, and the superintendent’s performance as to each criteria was assigned a number based on a key representing how satisfactorily the superintendent performed the task.

19. It is found that each member of the ABC committee brought the completed evaluation form from his or her board of education to the ABC committee meeting at which the committee evaluated the superintendent’s performance.

20. It is found that at such meeting the ABC committee entered executive session to discuss the superintendent’s performance.

21. It is found that in the executive session, each of the committee members shared the results of his or her board of education’s evaluation.

22. It is found that as the members shared their boards’ evaluation results, the chair of the ABC committee kept a tally of the results on a blank evaluation worksheet.

23. It is found that the chair used the evaluation sheet that she completed during the executive session to write a two-paragraph evaluation of the superintendent.

24. It is found that the members of the ABC committee did not give their individual evaluation worksheets to the chair, and neither the chair nor the committee itself maintains such records.

25. It is found that the chair maintains the final evaluation worksheet that she prepared during the committee’s executive session.

26. The respondents claim that the worksheet is a preliminary draft or note, because the chair used the worksheet to prepare the final written evaluation report, which the respondents have made available to the public. The respondents claim the worksheet was the chair's personal notes; alternatively, they claim that the worksheet was a preliminary draft.

27. It is found that the chair did not testify in person at the hearing in this matter.

28. It is found that the chair submitted an affidavit in which she averred that she "determined that the public interest in retaining my personal notes and preliminary draft clearly outweighed the public interest in disclosure."

29. "[P]reliminary drafts or notes reflect that aspect of the agency's function that precedes formal and informed decisionmaking....It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass." (Citation omitted.) Shew v. FOI Commission, 245 Conn. 149, 165 (1998).

30. It is found that the worksheet is a contemporaneous recording of the ABC committee's discussion. It is found that the chair compiled the worksheet during, not preceding the committee's formal and informed decisionmaking.

31. It is found that the chair did not change the worksheet or the numerical ratings of the superintendent when she wrote the written evaluation report. It is found that the evaluation report summarized the ratings (e.g., there were five criteria for which the superintendent received a rating of "2").

32. It is found that the worksheet is not a preliminary draft or note.

33. It is concluded that §1-210(b)(1), G.S., does not exempt the worksheet from disclosure.

34. Moreover, it is found that the worksheet is a report comprising part of the process by which governmental decisions and policies are formulated, and is not a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, within the meaning of §1-210(e)(1), G.S.

35. It is concluded that the respondents violated §§1-210(a) and 1-212, G.S., by failing to provide the chair's worksheet to the complainant.

36. With respect to the members' individual worksheets, it is found that the respondents do not maintain such records, and did not maintain such records at the time of the complainant's request. It is concluded, therefore, that the respondents did not violate the FOI Act by not providing such records to the complainant.

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

1. Forthwith, the respondents shall provide to the complainant a copy of the chair's completed evaluation worksheet, described in the findings of fact, above.

2. Henceforth, the respondents shall comply with §§1-210(a) and 1-212, G.S.


Lisa Fein Siegel
as Hearing Officer