

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Gina Maratea,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-805

Administrator, State of Connecticut, Department
of Education, Bureau of Human Resources; and
State of Connecticut, Department of Education,
Bureau of Human Resources,
Respondent(s)

August 20, 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 Wednesday, September 10, 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 August 27, 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 August 27, 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 August 27, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: Gina Maratea
Ralph E. Urban, Esq.

2014-08-20/FIC# 2013-805/Trans/wrbp/KKR//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Gina Maratea,

Complainant

against

Docket #FIC 2013-805

Administrator, State of Connecticut,
Department of Education, Bureau of
Human Resources; and State of Connecticut,
Department of Education, Bureau of
Human Resources,

Respondents

August 15, 2014

The above-captioned matter was heard as a contested case on July 29, 2014, 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 June 11, 2013, the complainant requested copies of "all documents and paperwork relating to an interview that I participated in back in September 2011," as well as "paperwork pertaining to an application that I submitted in order to re-interview for the Eli Whitney position that was re-posted following the original interview process for this school."
3. It is found that, by letter dated June 14, 2013, the respondent administrator acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant that the request and any responsive records would be reviewed to determine whether any exemptions to disclosure applied, and that such review would take approximately two weeks.
4. It is found that, by letter dated July 8, 2013, the respondent administrator informed the complainant that they had identified approximately 401 pages of responsive records and that such records were available to her at a cost of \$100.25. The respondents requested prepayment of the copying fee. It is found that the respondents interpreted the request, described in paragraph 2, above, as a request for records contained in the human resources recruitment files

pertaining to the positions for which the complainant applied. It is found that such interpretation is reasonable.

5. It is found that the complainant received the July 8th letter, described in paragraph 4, above, but that she did not provide payment to the respondents for the copies until sometime in September, 2013.

6. It is found that, upon receipt of payment of the copying fee, an human resources employee with the respondent department copied and provided to the complainant 132 pages of records.

7. It is further found that the respondents, in September, 2013, did not provide the complainant with copies of all non-exempt records responsive to the request, described in paragraph 2, above, and that they mistakenly provided her with copies of records, such as test questions and other examination data.

8. It is found that, between September 19, 2013 and December 6, 2013, the complainant and the respondents communicated back and forth concerning the records that had not been provided to her in September, 2013.

9. By letter dated December 30, 2013 and filed December 31, 2013, the complainant appealed to this Commission, claiming the respondents violated the Freedom of Information (“FOI”) Act by failing to fully comply with the request for records, described in paragraph 2, above.

10. 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.

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

12. 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.”

13. It is found that, on May 5, 2014, and July 7, 2014, the respondents provided the complainant with copies of additional records responsive to the request, described in paragraph 2, above. It is further found that the respondents withheld from the complainant copies of multiple choice tests, writing prompts, responses to writing prompts and other records that would reveal test questions.

14. At the hearing in this matter, the complainant claimed that there may be other records responsive to her request that have not been provided to her, in light of the fact that the respondents’ initial response to her request in September 2013 was incomplete, and that their May 5th response to her request was also incomplete. The complainant stated that an example of a record she believes exists but still has not received is an email from the superintendent of the technical school to the human resources department informing the human resources department of the teaching vacancies. However, it is found that, even if such email exists, it is outside the scope of what the respondents reasonably believed the request, described in paragraph 2, above, encompassed. Contrary to the complainant’s claim, it is found that the respondents provided the complainant with all non-exempt records responsive to the request described in paragraph 2, above, as of July 7, 2014.

15. The complainant also claimed that she is entitled to copies of the test questions, interview questions, writing prompts, responses to the writing prompts, and multiple choice tests given to applicants for the positions for which she applied.

16. It is found that the respondents acknowledged that in their initial response, they mistakenly provided the complainant with copies of certain test questions and responses to the writing prompts. However, at the hearing in this matter, the respondents claimed that all records contained in their files that reveal the test questions given to candidates for employment are exempt from disclosure pursuant to §1-210(b)(6), G.S. In addition to the writing prompts, it is found that the respondents also withheld from the complainant, pursuant to §1-210(b)(6), G.S., interview questions, multiple choice test questions, applicants’ responses to test questions and responses to writing prompts.

17. Section 1-210(b)(6), G.S., provides that disclosure is not required of “[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations...”

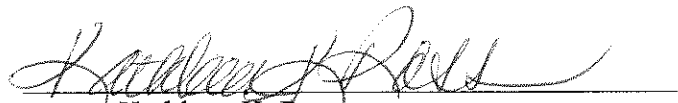
18. It is found that the writing prompts, interview questions, and multiple choice test questions contained in the respondents’ recruitment files, are used over and over again in the respondents’ recruitment process and that their disclosure could give candidates with knowledge of such information an unfair advantage. It is further found that disclosure of the responses to the writing prompts would effectively also disclose the writing prompt itself.

19. It is found that the writing prompts, interview questions, and multiple choice test questions, and responses to the writing prompts contained in the respondents' recruitment files constitute "test questions, scoring keys and other examination data" within the meaning of §1-210(b)(6), G.S., and that therefore they are permissibly exempt from disclosure.

19. Accordingly, based upon the foregoing, 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.



Kathleen K. Ross
as Hearing Officer