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FREEDOM OF INFORMATION



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Linda Lambeck and the Connecticut Post,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-677

Chairman, Board of Education, Bridgeport
Public Schools; and Board of Education,
Bridgeport Public Schools,
Respondent(s)

October 2, 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, October 22, 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 October 14, 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 October 14, 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 October 14, 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: Diego Ibarguen, Esq.
Joshua J. Wyatt, Esq. and William Ruggiero, Esq.

2014-10-02/FIC# 2013-677/Trans/wrbp/MS/PSP/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Linda Lambeck and the Connecticut Post,

Complainant

Docket # FIC 2013-677

against

Chairman, Board of Education,
Bridgeport Public Schools; and
Board of Education,
Bridgeport Public Schools,

Respondents

October 2, 2014

The above-captioned matter was heard as a contested case on May 23, 2014, and July 29, 2014, at which times the complainants and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After the hearing on this matter, pursuant to §1-21j-38 of the Regulations of Connecticut State Agencies, the respondents filed one after-filed exhibit that is marked as follows: Respondents' Exhibit 2 (identification only), Copies of two news articles (published 11/1/2013 and 11/3/2013).

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 October 16, 2013, the complainant Linda Lambeck made a request to the superintendent of the Bridgeport Public Schools for "copies of all three security video tapes [that] were submitted as evidence in the Carmen Perez Dickson termination hearing."
3. It is found that, by letter dated October 17, 2013, the respondents denied Ms. Lambeck's request, described in paragraph 2, above, on the grounds that the requested videos constitute student records and were exempt from disclosure pursuant to §1-210(b)(17), G.S. In addition, the respondents informed Ms. Lambeck that the disclosure of student records to Ms. Lambeck was impermissible pursuant to the Federal Education Rights and Privacy Act ("FERPA") because she was not a school official who had a legitimate educational interest in the records.

4. It is found that the requested security video tapes are recordings of certain events that transpired in February and March 2012 at the Jettie Tisdale School in Bridgeport, Connecticut, involving Principal Carmen Perez-Dickson and two elementary school aged students.

5. By email dated and filed on October 29, 2013, the complainants appealed to the Commission alleging that the respondents violated the FOI Act by failing to provide them with copies of the records, described in paragraph 2, above.

6. Section 1-200(5), G.S., defines “public records or files” as:

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 . . . (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 “any 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 complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. At the hearings and in their post-hearing briefs, the respondents maintained that the requested video recordings were “educational records” containing personally identifiable student information and were exempt from disclosure pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g and under §1-210(b)(17), G.S. The respondents argued that FERPA prevented the respondents from disclosing the records at issue because the respondents reasonably believed that the complainants knew of or could have discovered the identity of the students involved. The respondents contended that this was a highly-publicized hearing with heavy media coverage. Immediately following the May 23, 2014 hearing on this matter, the respondents submitted copies of the requested records to the Commission for an in camera inspection. The records submitted for in camera inspection consist of two DVDs with a total of three recordings. One DVD contains a surveillance video for an incident that took place in

February 2012. A second DVD contains surveillance videos for incidents that took place on March 16, 2012 and March 23, 2012, respectively. Subsequently, having had difficulty viewing the DVDs submitted in camera, the hearing officer requested that the respondents re-submit copies of the requested records for an in camera inspection. On September 8 and 9, 2014, the respondents submitted a second copy of the records at issue for an in camera inspection. For identification purposes, the in camera records have been designated as IC-2013-677 CD-1, IC-2013-677 CD-1A, IC-2013-677 CD-2, and IC-2013-677 CD-2A.

11. In their post-hearing brief, the complainants argued that the video recordings should be released by the respondents because they are not “education records” that are exempt from disclosure under the FOI Act. The complainants contended that the recordings do not directly relate to or focus on the students who appear in them, but rather relate to the conduct of the school principal. The complainants also contended that such recordings were made as part of a surveillance monitoring system used by the school for safety and security purposes, and are not of the sort that are “maintained” under FERPA. In addition, the complainants argued that the images in the recordings are of such low quality that the recordings do not contain any information that could identify the students. At the hearing, Ms. Lambeck also argued that the videos could have been edited to conceal the identity of the students.

12. Section 1-217(b)(17), G.S., provides that disclosure is not required of “[e]ducational records which are not subject to disclosure under the Family Educational Rights and Privacy Act, 20 USC 1232g....”

13. The Family Educational Rights and Privacy Act, 20 U.S.C. §1232g(b)(2), provides in relevant part that:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless – (A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents

14. “Education records” are defined at 20 U.S.C. §1232g(a)(4)(A) as “those records, files, documents, and other materials which -- (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” Further, Title 34, §99.3 of the Code of Federal Regulations provides that:

Personally Identifiable Information

The term includes, but is not limited to --

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

15. FERPA's definition of "education records" excludes "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." 20 U.S.C. §1232g(a)(4)(B)(ii), "Law enforcement unit" is defined, at 34 CFR §99.8(a)(1)(i)(ii), as "any individual, office, department, division or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to – (i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or (ii) Maintain the physical security and safety of the agency or institution."

16. In addition, under the FERPA regulations, "records of law enforcement unit" are "those records, files, documents, and other materials that are (i) Created by a law enforcement unit; (ii) Created for a law enforcement purpose; and (iii) Maintained by the law enforcement unit." 34 C.F.R. §99.8(b)(1). Under the FERPA regulations, however, "records of a law enforcement unit" do not include "(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or (ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution." 34 C.F.R. §99.8(b)(2).

17. It is found that Ms. Lambeck is a reporter for the Connecticut Post who covered the termination hearings of Ms. Carmen Perez Dickson that were held by the Bridgeport Board of Education throughout the summer of 2013. It is found that Ms. Perez Dickson opted to hold such hearings in public session. It is also found that the requested video recordings were viewed and discussed by the Board of Education in executive session during an administrative hearing on June 11, 2013.

18. It is found that copies of the video recordings at issue were obtained by a parent

of one of the children depicted in such recordings, and that copies of such video recordings have been widely distributed by some news organizations on news media websites, including Channel News 12. It is found that, prior to the hearings in this matter, Ms. Lambeck had viewed the video recordings.

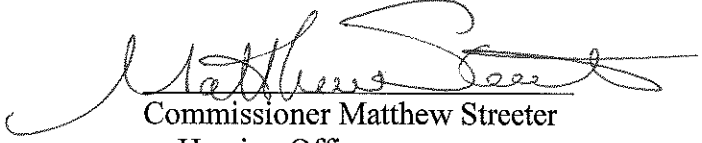
19. It is found, as testified to by the respondents' Chief Information Officer, that the Bridgeport Public Schools conducts video surveillance "mainly for" security and safety, but that such surveillance could also be used in student disciplinary matters. In addition, it is also found that each Bridgeport public school has a DVR that records and stores video surveillance footage locally. The recordings can be stored between two weeks to thirty days. It is also found that the respondents do not own software that can be utilized to edit or alter the surveillance footage. The respondents have the capability to copy video footage and audio onto DVDs, but do not have software that would allow them to manipulate the recordings, including obscuring the images of the students.

20. It is found that the requested records do not contain "personally identifiable information." It is also found that the requested records do not constitute "education records" as defined at 20 U.S.C. §1232g(a)(4)(A).

21. It is found that the requested video recordings are not exempt from disclosure under §1-210(b)(17), G.S. Accordingly, it is concluded that the respondents violated the FOI Act when they declined to provide the complainants with copies of the requested records.

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

1. The respondents shall forthwith provide the complainants with copies of the in camera records, described in paragraph 10 of the findings, above.


Commissioner Matthew Streeter
as Hearing Officer