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FREEDOM OF INFORMATION



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Alexander Wood, Lauren Quirici, Doreen Guarino
and the Manchester Journal Inquirer,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-210

Superintendent of Schools, Stafford Public Schools; and
Stafford Public Schools,
Respondent(s)

January 29, 2016

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, February 24, 2016**. 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 February 11, 2016**. 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 February 11, 2016**. **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 **fifteen (15) copies** be filed **ON OR BEFORE February 11, 2016**, 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: Alexander Wood, Lauren Quirici, Doreen Guarino and the Manchester Journal Inquirer
Attorney Anne H. Littlefield

2016-01-29/FIC# 2015-210/Trans/wrbp/PSP/VB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Alexander Wood, Lauren Quirici,
Doreen Guarino and the Manchester
Journal Inquirer,

Complainants

Docket # FIC 2015-210

against

Superintendent of Schools,
Stafford Public Schools; and
Stafford Public Schools,

Respondents

January 29, 2016

The above-captioned matter was heard as a contested case on August 18, 2015, at which time the complainants and 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 facsimile sent on February 12, 2015, complainant Lauren Quirici, as a staff writer for the complainant Manchester Journal Inquirer, made a request to the respondent Superintendent of Schools for:

[A]ccess to records of disciplinary action involving any school employees that was taken from Jan. 1, 2015 to Feb. 12, 2015.

This request includes, but is not limited to, records involving reprimands, admonitions, suspensions, reductions in compensation, and dismissals.

It is further found that the complainants submit regular monthly requests to the respondents for records of disciplinary action involving employees.

3. It is found that, by email dated February 13, 2015, the Superintendent acknowledged Ms. Quirici's February 12, 2015 request, described in paragraph 2, above.

4. It is found that on February 17, 2015, the Superintendent informed Ms. Quirici that “there were no disciplinary actions involving reprimands, admonitions, suspensions, reductions in compensation, or dismissals imposed upon Board of Education employees from January 1, 2015 through February 12, 2015.”

5. It is found that on March 16, 2015, the respondents issued a written statement stating that they learned that same day “that one of its teachers at Stafford Elementary School, Mr. Todd Kelliher, was arrested for sexual assault in the fourth degree, risk of injury to a minor, and disorderly conduct.” The statement further read that “[o]n January 23, 2015, building administrators received reports from students about inappropriate behavior involving Mr. Todd Kelliher and male and female students” and that “Mr. Kelliher was immediately placed on *administrative leave* and steps were taken to ensure that he would not come onto school property, contact students, faculty or staff members, or take any action on behalf of the district.” [Emphasis added]. In addition, the statement read that “[c]oncurrently, the district promptly made a report to the Department of Children and Families (DCF) in accordance with state law and Board of Education policy. The police were also notified. State and local authorities began an investigation into this matter and district officials have cooperated fully with the investigation and will continue to do so.”

6. It is found that on March 16, 2015, Ms. Quirici emailed the Superintendent inquiring as to why the complainants did not receive “notification of the suspension of Kelliher” in response to their February 12, 2015 request as such situation “falls under the umbrella of information which was requested.” In a separate letter to the Superintendent, also dated March 16, 2015, Ms. Quirici requested to review the personnel file of Mr. Kelliher.

7. It is found that, by email dated March 17, 2015, the Superintendent provided Ms. Quirici with a copy of a letter dated January 26, 2015, from the Superintendent to Mr. Kelliher (the “administrative leave letter”). The Superintendent also informed Ms. Quirici that the respondents did not consider such document to be responsive to the newspaper’s February 12th request as described in paragraph 2, above.

8. It is found that in the administrative leave letter, described in paragraph 7, above, the Superintendent referred to a meeting that took place on January 23, 2015 at which Mr. Kelliher and the Superintendent, among others, were present. In the administrative leave letter, the Superintendent also informed Mr. Kelliher that “[a]s a result of the information discussed during the meeting, I am placing you on *administrative leave with pay and without prejudice, pending final determination* concerning the matters in question. Your administrative leave will continue until further notice from me.” [Emphasis added].

9. By facsimile received and filed on March 19, 2015, after receiving the administrative leave letter described in paragraphs 7 and 8, above, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to provide them with copies of the records described in paragraph 2, above. In their post-hearing briefs, the complainants also alleged that the respondents violated the promptness provisions of the FOI Act.

10. 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.

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 “any 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 to the extent that the respondents maintain the requested records described in paragraph 2, above, such records are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

14. It is found that subsequent to the filing of the complaint in this matter, the respondents received written notification from the Department of Children and Families (“DCF”), that DCF had “substantiated” the allegations of “Sexual Abuse/Exploitation” against Mr. Kelliher. Thereafter, by letter dated April 21, 2015, the Superintendent requested that Mr. Kelliher report to her office to discuss the allegations related to his conduct with students, his arrest, and the results of the DCF investigation. The Superintendent informed Mr. Kelliher that “you have a right to have an [union] representative present during this meeting, *as disciplinary consequences*, up to and including a recommendation for the termination of your employment, *may result*.” [Emphasis added]. It is found that after a meeting on April 24, 2015, the Superintendent notified Mr. Kelliher in writing “that *termination* of your contract of employment is *under consideration*,” (emphasis added) provided him with “a statement of the reasons for [her] recommendation,” and informed him that “[a]ny further proceedings will occur in accordance with Connecticut General Statutes §10-151,” which governs teacher termination proceedings. It is found that Mr. Kelliher resigned his position with the Stafford Public Schools prior to a termination hearing. It is also found that at the time of his resignation Mr. Kelliher was still on paid administrative leave without prejudice, pending a termination hearing.

15. It is also found that the complainants subsequently revised their regular monthly records requests, referenced in paragraph 2, above, to provide further clarification as follows:

Pursuant to Connecticut's Freedom of Information Act I request access to all records related to disciplinary action involving general town government and school system employees during [certain date range].

Further, I request access to any records involving *any leave* other than scheduled vacation or personal time or sick leave of five or fewer workdays taken by or imposed on any of your employees during [certain date range].

Disciplinary action here is meant to include reprimands, admonitions, suspensions, reductions in compensation, and dismissals, but is not limited to those forms. [Emphasis added].

16. At the hearing and in their post-hearing briefs, the complainants maintained that the respondents failed to make prompt disclosure of the January 26th letter placing Mr. Kelliher on paid administrative leave in violation of the FOI Act. The complainants contended that such letter was within the scope of their February 12th request, described in paragraph 2, above, and should have been provided to the complainants. The complainants argued that their request should be interpreted as understood by a layman and that a reasonable interpretation of the language of the February 12th request is that such request included placement on paid and unpaid suspension, which, they contend, is identical to being placed on administrative leave (*i.e.*, both terms describe periods during which an employee is prohibited from reporting to work and performing the duties of his or her position).

17. The respondents, on the other hand, maintained that their response to the February 12th request was proper because the placement of a public employee on paid administrative leave, without prejudice, pending the results of an investigation into whether any misconduct occurred, is not "disciplinary action." According to the respondents, the purpose of placing an employee on paid administrative leave without prejudice allows the employer to conduct an unbiased investigation before making any conclusions as to whether any misconduct occurred and to provide the employee with due process. The respondents also argued that a layperson would understand that "discipline" implies that misconduct occurred for which some sort of punishment or corrective action was warranted, and that Mr. Kelliher's placement on paid administrative leave was not intended to correct or punish his behavior.

18. At the hearing, the Superintendent testified that she is charged with investigating teacher misconduct and making recommendations to the Board of Education regarding disciplinary action. The Superintendent also testified that Mr. Kelliher resigned before a termination hearing was held and was never disciplined in this matter. The Superintendent further testified that had the complainants' February 12th request encompassed the terms "administrative leave," she would have provided the complainants with a copy of the administrative leave letter at issue. In addition, she testified that she would provide a copy of an administrative leave letter in response to the complainants' revised monthly requests, described in paragraph 15, above, because such requests seek records of "any leave."


19. Our Supreme Court has ruled that: “[A]s a practical matter, the FOIA is used repeatedly by members of the public who are unschooled in *technical, legalistic language distinctions*. [I]t would be unreasonable to deny a member of the public access to the FOIA simply because of arguable imperfections in the form in which a request for public records is couched.” Perkins v. Freedom of Information Commission, 228 Conn. 158, 167 (1993) (Emphasis added).

20. Nonetheless, the term “disciplinary” is commonly defined as “intended to correct or punish bad behavior: of or relating to discipline.” “Disciplinary,” *Merriam-Webster*, <http://www.merriam-webster.com/dictionary/disciplinary> (accessed January 29, 2016). Similarly, the term “suspension” means “the act of forcing someone to leave a job, position, or place for a usually short period of time as a form of punishment: the act of suspending someone.” “Suspension,” *Merriam-Webster*, <http://www.merriam-webster.com/dictionary/suspension> (accessed January 29, 2016).

21. Based upon the facts and circumstances of this matter, it is found that the respondents’ interpretation of the complainants’ February 12th request was reasonable and their response to such request proper. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., of the FOI Act.

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.


Paula S. Pearlman
as Hearing Officer