

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

Laura Terry,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-544

David Freedman, as Member, Newtown Board of Education; Kathy Hamilton, As Member, Newtown Board of Education; and Newtown Board of Education,
Respondent(s)

April 8, 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, May 11, 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 April 29, 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 April 29, 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 April 29, 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: Laura Terry
Attorney Mark Sommaruga
Attorney Henry Zaccardi

2016-04-08/FIC# 2015-544/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Laura Terry,

Complainant

against

Docket #FIC 2015-544

David Freedman, as Member,
Newtown Board of Education; and
Kathy Hamilton, as Member,
Newtown Board of Education,

Respondents

April 7, 2016

The above-captioned matter was heard as a contested case on January 25, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2015-771, Laura Roche v. David Freedman et al.

At the hearing, the Newtown Board of Education, which had been named as a respondent by the Commission, moved for a dismissal on the grounds that the complaint was against individual Board of Education members only, and not against the Board as a whole. Without objection, the motion was granted, and the caption of the case has been amended to remove the Board as a respondent.

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. By letter of complaint filed November 23, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with her requests for certain public records.
4. It is found that the respondents, probably by email, released other Board of Education communications, consisting of emails and text messages among Board members, to individuals outside of the Board of Education.

5. It is found that the complainant made an October 29, 2015 request to the respondents for any communications related to the release by the respondents of other Newtown Board of Education communications.

6. It is found that the respondents did not satisfy the complainant's request.

7. It is found that the release of the communications by the respondents was not authorized by the Board of Education, and the release was not in furtherance of the Board's business.

8. It is found that the release of the communications was to expose actions or communications of the Board of Education.

9. It is found that the complainant principally seeks to know the identities of the individuals to whom the Board's communications were exposed, believing that the respondents' actions were improper.

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:

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.

12. 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.”

13. It is found that the requested communication by which the respondents disclosed the Board's communications was not itself information relating to the conduct

of the public's business within the meaning of §1-200(5), G.S. Rather, it was a political act taken to expose actions or communications by the respondents. See Bromer v. Herrmann et al., Docket #FIC 2013-376 (letter to newspaper signed by selectmen was political action seeking to refute statements made by adversaries, and was not a matter over which the agency had supervision, control, jurisdiction or advisory power). While the underlying Board communications are public records, those underlying communications are not the records sought by the complainant. Rather, the complainant seeks to identify the *recipients* of the leaked communications.

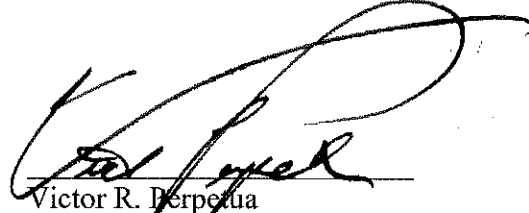
14. It is concluded that the requested records are not public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

15. It is therefore concluded that the respondents did not violate the FOI Act as alleged.

16. Although the requested communications existed as documents at the time the underlying communications were disclosed, the respondents also maintain that those communications no longer exist, having been deleted from private email accounts. However, in light of the findings and conclusions above, no finding regarding the current existence of the requested communications is necessary.

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

1. The complaint is dismissed.



Victor R. Perpetua
as Hearing Officer