

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joseph Dinegar,

Complainant

against

Docket #FIC 2017-0730

Superintendent, State of Connecticut,  
Connecticut Technical High School  
System; and State of Connecticut,  
Connecticut Technical High School System,

Respondents

June 27, 2018

The above-captioned matter was heard as a contested case on February 15, 2018 and April 17, 2018, at which times 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 email dated November 15, 2017, the complainant requested from the respondents documentation in any format concerning:
  - (a) the availability of the chemistry and physic [sic] positions at Grasso THS as of November 9, 2017;
  - (b) any and all rubrics used in scoring my performance in all parts of the interview process;
  - (c) any and all notes or other communications by the panelists regarding my performance in the interview process;
  - (d) any and all documentation considered by you or the committee relative to my candidacy which might exist that was not disclosed to me as part of the official application process;
  - (e) how many other candidates for each position were interviewed and what were their names and contact information;

- (f) the writing prompt for the interview process;
- (g) the interview questions from the interview process, both pages with my notes.

3. It is found that, by email dated November 16, 2017, the respondents acknowledged the request, which was forwarded to the human resources department. It is found that, by email dated November 20, 2017, the respondents attempted to inform the complainant that they would conduct a search for responsive records, determine whether any such records were exempt from disclosure, and respond accordingly; however, the complainant did not receive such email because it was inadvertently sent to the wrong email address.

4. By letter dated December 5, 2017, and filed December 7, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the requested records.

5. Section 1-200(5), G.S., provides:

“[p]ublic 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.

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

[e]xcept 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 inspect such records promptly during regular office or business hours...or (3) receive a copy of such records in accordance with section 1-212. (Emphasis added).

7. 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.”

8. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, by letter dated January 9, 2018, the respondents provided to the complainant certain responsive records, including job postings, employment applications of

three individuals, including the complainant, an interview schedule, an interview summary sheet, with redactions, and redacted interview rating sheets.

10. The respondents also informed the complainant in the January 9<sup>th</sup> letter, that the remainder of the records, and portions of certain records responsive to his request, were exempt from disclosure pursuant to §1-210(b)(6), G.S.

11. At the hearing in this matter, the complainant argued that the respondents failed to provide the records, described in paragraph 9, above, promptly, and that the respondents improperly withheld certain other responsive records, or portions thereof, from him.

12. By notice dated February 16, 2018, the hearing officer ordered the respondents to submit the records they claimed were exempt from disclosure to the Commission for in camera inspection, along with an index indicating the specific exemption(s) claimed.

13. On March 5, 2018, the respondents submitted the records for in camera inspection with an index.

14. The in camera records consist of what the respondents identified as a scoring rubric, test questions, responses to test questions, interview questions, interviewer notes/evaluations, and scoring keys for the complainant and other candidates for employment.

15. On the index, and at the hearing, the respondents claimed that the records are exempt from disclosure pursuant to §1-210(b)(6), G.S., which 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.”

16. In Washington v. Freedom of Information Commission, et. al., 25 Conn. L. Rptr. 334 (1999), the Superior Court concluded that, “[b]ased on the testimony at the FOIC hearing,” oral board panelists’ scoring sheets were “the equivalent of a scoring key” which is specifically exempted from disclosure under §1-210(b)(6), G.S.

17. The Commission has interpreted Washington to mean that certain oral examination data for employment positions are exempt from disclosure pursuant to §1-210(b)(6), G.S. See Docket #FIC 2000-501, Randal Edgar et al. v. Paul Sequeira, Superintendent of Schools, Waterbury Public Schools (March 28, 2001) (scores assigned by interviewers to each candidate for the position of superintendent of schools constitute examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2001-006, Dennis Murray v. Director of Personnel, City of Hartford (April 11, 2001) (scoring sheets of each oral board panelist for each candidate constitute examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2003-377, Joseph R. Casey, Jr. v. Commissioner, State of Connecticut, Department of Correction (April 14, 2004) (forms containing questions asked by the interview panel, candidates’ responses, ratings given by the interview panel members and any comments made by such members constituted test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2008-525, David Glidden and the Connecticut State Employees

Association v. Commissioner, State of Connecticut, Department of Environmental Protection, Human Resources Division; and State of Connecticut, Department of Environmental Protection, Human Resources Division (July 22, 2009) (interviewer notes, interview questions, and interview reports and recommendations for hiring/promotions constitute test questions, scoring keys and other examination data within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2009-123, Richard Malley v. Commissioner, State of Connecticut, Department of Environmental Protection; and State of Connecticut, Department of Environmental Protection (February 24, 2010) (DEP interviewer's report and recommendations for hiring or promotion constitutes examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S.); Docket #FIC 2013-064, Alireza Jamalipour v. Commissioner, State of Connecticut, Department of Transportation; and State of Connecticut, Department of Transportation (September 25, 2013) (recommendations for selection, or the explanation for the selection or non-selection of the candidates included in an Interview Selection Report were permissively exempt from disclosure pursuant to §1-210(b)(6), G.S.); and Docket# FIC 2014-197, George Winter v. Commissioner, State of Connecticut, Department of Motor Vehicles; and State of Connecticut, Department of Motor Vehicles (January 14, 2015) (oral interview questions, scores, rankings and the criteria used in development of the questions found to be test questions, scoring keys and other examination data used to administer an examination for employment.).

18. Based upon a careful review of the in camera records, and the testimony of the respondents' witnesses at the hearings in this matter, it is found that such documents, and the claimed portions thereof, are test questions, scoring keys and other examination data used to administer an examination for employment within the meaning of §1-210(b)(6), G.S. It is concluded that such in camera records, or portions thereof, as indicated on the index, are permissively exempt from disclosure pursuant to §1-210(b)(6), G.S. Accordingly, it is concluded that the respondents did not violate §§1-210(a) or 1-212(a), G.S., as alleged.

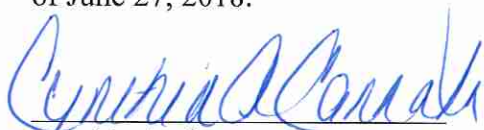
19. With regard to the complainant's claim that the records, described in paragraph 9, above, were not provided to him promptly, it is found that, immediately upon receipt of the complainant's request, the respondents began the process of gathering the responsive records. Although, thereafter, a delay ensued, it is found that such delay was unintentional and resulted from the request essentially "falling through the cracks." It is found that there was no attempt to delay or avoid processing the request in this case. It found that when the respondents realized that the request had not been fulfilled, they immediately gathered and reviewed the records and provided all non-exempt records to the complainant.

20. Based upon the specific facts of this case, the Commission finds that the promptness requirements in §§1-210(a) and 1-212(a), G.S., were not violated.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 27, 2018.



Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**JOSEPH DINEGAR**, 364 Main Street, Portland, CT 06480

**SUPERINTENDENT, STATE OF CONNECTICUT, CONNECTICUT TECHNICAL HIGH SCHOOL SYSTEM; AND STATE OF CONNECTICUT, CONNECTICUT TECHNICAL HIGH SCHOOL SYSTEM**, c/o Assistant Attorney General Darren P. Cunningham, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata  
Acting Clerk of the Commission