

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Robert Ferguson,

Complainant

against

Docket #FIC 2018-0105

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

Respondents

October 24, 2018

By motion dated and filed on May 23, 2018, the respondents moved to dismiss the above-captioned matter without a hearing. On May 30, 2018, the hearing officer postponed the hearing that had been scheduled in this matter. By notice dated August 27, 2018 the complainant was advised that he may file any written response to the motion to dismiss on or before September 4, 2018. However, the complainant did not file such response.

1. Section 1-206(b)(4), G.S., provides that:

[n]otwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that the agency has not violated the Freedom of Information Act.

2. The relevant facts as alleged by the complainant are as follows:

- a. the complainant emailed the superintendent and director of human resources for the Weston Public Schools regarding the "March 14th Student Walkout;"
- b. the email was shared with members of the respondent board and district staff;

- c. there was no FOI request for the email;
- d. the entire email was posted on the Facebook pages of at least two Weston residents and that the post included comments of a member of the respondent board;
- e. the email was posted at the direction of a member of the board; and
- g. the complainant met with the respondent chair regarding the posting and contended that the respondent chair did not “view the breach in the appropriate seriousness and gravity from an ethical standpoint.”

3. The notice of appeal dated, and filed, on March 2, 2018 with the Freedom of Information Commission (“Commission”) alleges that the respondents violated the Freedom of Information (“FOI”) Act with regard to the disclosure of an email the complainant sent to the school superintendent. Specifically, the complainant alleges that because the respondent board did not receive a request for the email, the posting of it circumvented the FOI Act; that the posting, in combination with the comments, is tantamount to having an improperly noticed meeting of the respondent board; and that the response by the respondent chair upon learning of the posting constituted an unethical action by a public official.

4. The complainant attached a copy of his letter and the Facebook posting with the related comments to his March 2, 2018 appeal.

5. The respondents argued in their May 23, 2018 motion to dismiss that the complainant failed to state a claim upon which relief can be granted. The respondents requested that the FOI Commission dismiss the appeal pursuant to §1-206(b)(4), G.S., contending that the alleged facts do not constitute a violation of the FOI Act and that, therefore, the Commission lacks jurisdiction over the appeal.

6. 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.

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

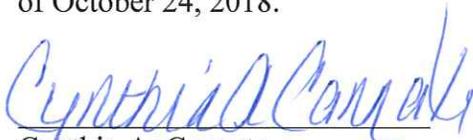
Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

8. The email submitted to the respondents by the complainant is a public record.
9. It is concluded that there is nothing in the FOI Act that requires a public agency or a public official to first receive a request for a public record prior to disclosing that record.
10. It is concluded that there is nothing in the FOI Act that precludes a single member of a public agency from engaging in discussions on social media with private citizens.
11. It is further concluded that the FOI Act does not contain ethical standards for public officials and the FOI Commission has no jurisdiction to enforce the State of Connecticut's Code of Ethics for Public Officials.
12. Accordingly, after consideration of the notice of appeal and construing all allegations most favorably to the complainant, it is concluded that the respondents did not violate the provisions of the FOI Act.

Pursuant to §1-206(b)(4), G.S., the following order by the Commission is hereby recommended:

1. The actions of the respondents are hereby confirmed and the complaint is dismissed without a hearing.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 24, 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:

ROBERT FERGUSON, 10 Hickory Lane, Weston, CT 06883

CHAIRMAN, BOARD OF EDUCATION, WESTON PUBLIC SCHOOLS; AND BOARD OF EDUCATION, WESTON PUBLIC SCHOOLS, c/o Attorney Thomas B. Mooney, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919



Cynthia A. Cannata
Acting Clerk of the Commission