



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Jarrad McGlamery,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-443

Director, Office of Labor and Legal Services, Hartford
Public Schools; Office of Labor and Legal Services,
Hartford Public Schools; and Hartford Public Schools,
Respondent(s)

January 13, 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 10, 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 January 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 January 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 January 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: James M. Talbert-Slagle, Esq.
Melinda B. Kaufmann, Esq. & Cynthia Lauture, Esq.

2016-01-13/FIC# 2015-443/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jarrad McGlamery,

Complainant

against

Docket #FIC 2015-443

Director, Office of Labor and Legal
Services, Hartford Public Schools;
Office of Labor and Legal Services,
Hartford Public Schools; and
Hartford Public Schools,

Respondents

December 3, 2015

The above-captioned matter was heard as a contested case on October 21, 2015, at which time 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 June 19, 2015, the complainant requested from the respondents copies of text messages sent by and to several named individuals, on cell phones issued and/or paid for by the Hartford Public Schools, during the period from March 1, 2015 to the date of the request.
3. It is found that, by email dated June 23, 2015, the respondents acknowledged the request, described in paragraph 2, above, and by email dated June 24, 2015, informed the complainant that the respondent Hartford Public Schools ("HPS") "does not have access to retrieve text messages from BOE issued cell phones."
4. It is found that, by emails dated June 24, 2015, and June 29, 2015, the complainant asked the respondents to explain the phrase "does not have access."
5. It is found that, by email dated June 29, 2015, the respondents informed the complainant that "FOIA does not require the BOE to answer written questions or interpret responses."

6. By email dated July 7, 2015 and filed July 8, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with the text messages described in paragraph 2, above.

7. 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.

8. 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 or . . . (3) receive a copy of such records in accordance with section 1-212.

9. 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.”

10. It is found that, to the extent that the respondents maintain the records, described in paragraph 2, above, such records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that the respondent HPS issues cell phones to some of its employees, and that Verizon Wireless (“Verizon”) is the wireless service provider for such cell phones.

12. It is found that, on September 3, 2015, the labor relations/information specialist (“specialist”), who was assigned to respond to the request, described in paragraph 2, above, emailed each of the employees identified in such request, and inquired whether or not he or she maintained any text messages sent or received on their cell phones between March 1, 2015 and “the present.”

13. It is found that each employee responded that he or she does not maintain any such text messages. No evidence was provided, however, as to whether such messages were deleted, or whether they were never created.

14. It is found that the specialist also contacted Metro Hartford Information Services (“MHIS”), which provides information technology services to the respondents, and inquired whether it could retrieve text messages. It is found that an employee of MHIS responded that MHIS could not retrieve text messages.

15. Although no evidence was presented by the respondents regarding the extent of MHIS’ efforts to retrieve the text messages, if any existed, from Verizon, the Commission takes administrative notice of the evidence in John Smith v. Town Administrator, Town of Putnam, et al., Docket #FIC 2012-564 (August 14, 2013), specifically, that Verizon maintains text messages on its servers for only ten days after they are created, and that thereafter, such messages are deleted from its servers.

16. Based upon all of the foregoing findings, it is further found that the respondents do not maintain the requested records.

17. Counsel for the complainant argued, in his post-hearing brief, that “this case comes down to a fundamental question: does a public agency have the duty to maintain text messages as public records?” Put another way, the complainant claims that the failure of the respondents to maintain the requested records violates the FOI Act. However, the Commission does not have jurisdiction to enforce records retention schedules.

18. Based upon the foregoing, it is concluded that the respondents did not violate the disclosure requirements in §§1-210(a) and 1-212(a), G.S.

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

1. The complainant is dismissed.
2. The Commission reminds the respondents that text messages pertaining to the conduct of the public’s business are public records that must be preserved in accordance with the applicable records retention schedules.
3. The Commission also notes that had the respondents provided a clearer, more detailed response to the complainant’s request, the time and expense associated with the contested case hearing in this matter may have been avoided.



Kathleen K. Ross
as Hearing Officer