

TO: Freedom of Information Commission
FROM: Thomas A. Hennick
RE: Minutes of the Commission's regular meeting of February 27, 2019

A regular meeting of the Freedom of Information Commission was held on February 27, 2019, in the Freedom of Information Hearing Room, 18-20 Trinity Street, Hartford, Connecticut. The meeting convened at 2:10 p.m. with the following Commissioners present:

Commissioner Owen P. Eagan, presiding
Commissioner Jay Shaw (participated via speakerphone)
Commissioner Jonathan J. Einhorn
Commissioner Matthew Streeter
Commissioner Christopher P. Hankins
Commissioner Lenny T. Winkler
Commissioner Sean K. McElligott

Also present were staff members, Colleen M. Murphy, Mary E. Schwind, Victor R. Perpetua, Kathleen K. Ross, Valicia D. Harmon, Paula S. Pearlman, Matthew D. Reed, Danielle L. McGee, Cindy Cannata, and Thomas A. Hennick.

The Commissioners voted, 5-0, to approve the Commission's regular meeting minutes of February 13, 2019. Commissioners Hankins and Winkler abstained.

Those in attendance were informed that the Commission does not ordinarily record the remarks made at its meetings, but will do so on request.

[Docket #FIC 2018-0124](#)

David Cummings v. Elizabeth Graham, Executive Director, State of Connecticut, Administrative Service Division, Judicial Branch; and State of Connecticut, Administrative Service Division, Judicial Branch

David Cummings appeared on his own behalf. Attorney Martin Libbin appeared on behalf of the respondents. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were recorded digitally.

[Docket #FIC 2018-0125](#)

David Cummings v. Elizabeth Graham, Executive Director, State of Connecticut, Administrative Services Division, Judicial Branch; and State of Connecticut, Administrative Services Division, Judicial Branch

David Cummings appeared on his own behalf. Attorney Martin Libbin appeared on behalf of the respondents. The Commissioners unanimously voted to amend the Hearing Officer's Report. The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.* The proceedings were recorded digitally.

[Docket #FIC 2018-0133](#)

Dan Barrett And American Civil Liberties Union
Foundation of Connecticut v. Commissioner, State of
Connecticut, Department of Emergency Services and Public
Protection; and State of Connecticut, Department of
Emergency Services and Public Protection

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0134](#)

Shawn Dowdell v. Commissioner, State of Connecticut,
Department of Emergency Services and Public Protection;
and State of Connecticut, Department of Emergency
Services and Public Protection

The Commissioners unanimously voted to amend the Hearing Officer's Report. The
Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.*

[Docket #FIC 2018-0136](#)

Shawn Dowdell v. Chief, Police Department, City of New
Britain; Police Department, City of New Britain; and City
of New Britain

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0168](#)

Sherene Fagon v. Chief, Police Department, City of New
Britain; Police Department, City of New Britain; and City of
New Britain

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0199](#)

Kevin Ollie v. President, State of Connecticut, Office of
the President, University of Connecticut; and State of
Connecticut, Office of the President, University of
Connecticut

Attorney Nathan Lavallee appeared on behalf of the respondents. The Commissioners
unanimously voted to reopen the evidentiary portion of the hearing in order to admit after filed
exhibits #2 and #3. The Commissioners unanimously voted to close the evidentiary portion of the
hearing. The Commissioners voted, 6-0, to amend the Hearing Officer's Report. The
Commissioners voted, 6-0, to adopt the Hearing Officer's Report as amended.* Commissioner
Shaw did not participate in the final two votes in this matter.

[Docket #FIC 2018-0298](#)

Marcy Taliceo v. Chief Personnel Officer, Enfield Public Schools; and Enfield Public Schools

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0305](#)

Denise Cohn v. Pamela Vogel, Superintendent of Schools, Regional School District #1; Chairman, Board of Education, Regional School District #1; Board of Education, Regional School District #1; and Regional School District #1

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0518](#)

Michele Kulis v. Human Resources Department, Stamford Public Schools; and Stamford Public Schools

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0553](#)

Amy Calandro v. Director of Pupil Services, Trumbull Public Schools; and Trumbull Public Schools

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0579](#)

Michael Masci v. First Selectman, Town of East Haddam; and Town of East Haddam

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0592](#)

Jason Catala v. Superintendent of Schools, New London Public Schools; and New London Public Schools

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

Victor R. Perpetua reported on pending appeals.

Colleen M. Murphy reported that she had testified on several pieces of proposed legislation and that she was going to testify before the Appropriations Committee concerning the Commission budget.

The meeting was adjourned at 4:30 p.m.

Thomas A. Hennick
MINREGmeeting 02272019/tah/02282019

* See attached for amendments

AMENDMENTS

[Docket #FIC 2018-0125](#)

David Cummings v. Elizabeth Graham, Executive Director, State of Connecticut, Administrative Services Division, Judicial Branch; and State of Connecticut, Administrative Services Division, Judicial Branch

The Hearing Officer's Report is amended as follows:

3. It is found that on March 1, 2018, the complainant received fifteen pages of documents from the respondent. It is found that the fifteen pages of records provided to the complainant consist of incident reports detailing the complainant's **ALLEGED** conduct at the courthouse, however none of the records mentions an improper touching.

[Docket #FIC 2018-0134](#)

Shawn Dowdell v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection

The Hearing Officer's Report is amended as follows:

The entire report is stricken and the following is substituted:

THE ABOVE-CAPTIONED MATTER WAS HEARD AS A CONTESTED CASE ON OCTOBER 3, 2018, AT WHICH TIME THE COMPLAINANT AND THE RESPONDENTS APPEARED AND PRESENTED TESTIMONY, EXHIBITS AND ARGUMENT ON THE COMPLAINT. THE COMMISSION TAKES ADMINISTRATIVE NOTICE OF THE TESTIMONY AND EXHIBITS IN SHAWN DOWDELL VS. CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN ET AL., DOCKET #FIC 2018-0136 AND SHERENE FAGON V. CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN, ET AL., DOCKET #FIC 2018-0168.

A REPORT OF HEARING OFFICER, DATED NOVEMBER 28, 2018, WAS MAILED TO THE PARTIES ON NOVEMBER 29, 2018, AND WAS CONSIDERED BY THE COMMISSION AT ITS SPECIAL MEETING OF DECEMBER 19, 2018. AT SUCH MEETING, THE COMMISSION VOTED TO REMAND THE MATTER TO THE HEARING OFFICER FOR RECONSIDERATION.

BY EMAIL, DATED FEBRUARY 26, 2019, THE COMPLAINANT INFORMED THE COMMISSION THAT HE WISHED TO WITHDRAW HIS COMPLAINT IN THIS MATTER. THE COMMISSION TAKES ADMINISTRATIVE NOTICE OF SUCH WITHDRAWAL.

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.**

[Docket #FIC 2018-0199](#)

Kevin Ollie v. President, State of Connecticut, Office of the President, University of Connecticut; and State of Connecticut, Office of the President, University of Connecticut

The Hearing Officer's Report is amended as follows:

A footnote, Number 4, is attached to Paragraph 39 as follows:

At the February 27, 2019 full Commission meeting, the respondents requested that a letter sent from the United States Department of Education to the respondents, dated January 7, 2019, be admitted into evidence as post-hearing exhibit. The Commission ordered the respondents to submit the letter dated December 7, 2018, which the respondents sent to the Department. The Commission accepted both letters into evidence as Respondents' Post Hearing Ex. 2 (with regard to the December 7th letter) and Respondents' Post Hearing Ex. 3 (with regard to the January 7th letter). The Commission notes that the letter from the Department contains serious misstatements of law and fact. Specifically, the respondents reported to the Department that there was "no dispute between the University and the Commission that the records in question are 'education records' as defined by FERPA." In fact, determining whether or not the records at issue are subject to FERPA is the sole reason why the Commission ordered the records be submitted for an in camera inspection. In addition, the respondents reported to the Department that "the complainant did not question the University's assertion that the records were education records subject to FERPA" In fact, the complainant directly challenged the respondents' claim that the records at issue are education records subject to FERPA. Because the premise upon which the Department's opinion is based is severely flawed, the Department's letter does not advance the respondents' legal argument with regard to FERPA.

