

LEGAL MAILBAG – MARCH 7, 2024



By Attorney Thomas B. Mooney, Neag School of Education, University of Connecticut

The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

I am a first-year teacher, and I realize that I still have a lot to learn. My question today relates to some ill-advised comments about a student and his parent that I shared with a colleague by text message. The parent provoked me, to be sure, with her demand in a condescending tone that I give her son special treatment because he is a “sensitive, creative soul.” It might have been the Chardonnay talking, but in late-night texts from my private cell phone to a colleague on her cell phone, I described the conversation, and I included unkind comments, such as that the student is a brat who can dish it out but can’t take it, and that the mother is “delusional.”

We just had an in-service training at which some guy in a suit put the fear of God in us about the Freedom of Information Act. He told us that the FOIA applies to any school-related information that is recorded in any way, and that we will have to provide any such records if they are ever the subject of an FOIA request. Now I am petrified that this parent will get ahold of my texts and get me fired.

Can Legal Mailbag tell me just how bad this is?

Signed,
Texting T-R-O-U-B-L-E

Dear Texting:

Legal Mailbag hopes that you learned your lesson. Texting snotty comments about others can be a problem, even when the texts are intended to go only to a friend. However, at this point in your career as an educator, you are in the clear as to the Freedom of Information Act.

The guy in the suit made an important point – the definition of “public records” under the FOIA is very broad:

(5) “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 . . . , whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

But for an important qualifier, your text messages would be public records subject to disclosure under the FOIA. That qualifier is that the recorded information must be “prepared, owned, used, received or retained **by a public agency.**” (Emphasis added). The FOIA also defines a “public agency,” and, lucky for you, as a teacher you do not fall within that definition. Under the FOIA, a “public agency” is defined as:

Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official

As an individual, you are certainly not a board or commission. However, the definition of “public agency” includes an “official . . . of any . . . school district,” and therefore a school “official” is a single-member public agency subject to FOIA. The Freedom of Information Commission has repeatedly held that superintendents are “officials” subject to FOIA requirements, and in one case it extended that definition to an assistant superintendent. However, Legal Mailbag does not believe that teachers are considered public officials. Accordingly, Legal Mailbag concludes the records created or received by teachers, including the texts you exchanged with your colleague that late night, are not public records per se.

The “per se” in that sentence is important. If and when a teacher creates a record that is received by a public agency, that record becomes a “public record” subject to FOIA requirements. For example, if you send your lesson plans to your principal by district email, your lesson plans will be public records. Similarly, if you had shared your unkind comments with your colleague on the district email server, those emails would also be public records because they would have been received (and retained) by a public agency, i.e., the school district. The saving grace in your case is that your text messages with your colleague were communicated privately and were never received by your school district. Whew!