

Background Facts

[Cantu v. Yakima School District No. 7](#)

23 Wn. App. 2d 57 (2022)

BACKGROUND

¶7 During 2016, Ms. Cantu's daughter, AM, suffered multiple incidents of harassment, intimidation, and bullying at Davis High School in Yakima. Ms. Cantu sought assistance from the school but ultimately petitioned for protection orders from the court. In an attempt to gather records to support her petition for a protection order, Ms. Cantu requested records from the Yakima School District. The District's response was inadequate, which led Ms. Cantu to request additional documents over the next several years. The lengthy chronology of her communications with the District is set forth below.

A. MS. CANTU'S OCTOBER 2016 RECORDS REQUESTS

¶8 On October 27, 2016, Ms. Cantu submitted her first records request on a form created by the District. Her request read, "Description of records requested: All incidences/incident reports where [AM] was a victim of bullying, threats, harassment, etc. Dates: April 2016-present." Clerk's Papers (CP) at 438. She indicated that the intended use of the records was to support a petition for an antiharassment order.

¶9 On November 7, the District's public records officer, Kirsten Fitterer, responded to Ms. Cantu by e-mail, apologizing for not seeing the request, and indicated that she would "get back to you with a timeline." CP at 639. Ms. Fitterer indicated that Ms. Cantu would be receiving "a formal letter acknowledging your request was received," but did not provide a time estimate for responding to Ms. Cantu's request. CP at 639. A five-day letter was not sent.

¶10 On November 9, Ms. Fitterer contacted the Davis High School vice principal, Bob Stanley, about the records request. He provided "several records" the same day from his "hard copy file," including e-mails, and indicated that others would come from the Skyward system and the "Harassment, Intimidation, Bullying (HIB) system" operated by the Department of Student and Family Services. CP at 571, 643. He indicated that additional statements needed to be obtained from another staff member who was out of the office, and he e-mailed this staff member. Ms. Fitterer also contacted the office manager of the Department of Student and Family Services, who provided three reports that same day, November 9.

¶11 On January 20, 2017, Ms. Cantu sent a follow-up e-mail to Ms. Fitterer, inquiring about the status of her request because she had “not received ANY info regarding this request submitted over 2 months ago.” CP at 649. On January 24, Ms. Fitterer e-mailed Ms. Cantu to apologize for the delay and admitted she “dropped the ball” and requested Ms. Cantu come by the school to review the records. CP at 648. Ms. Fitterer realized that she had not kept Ms. Cantu informed. “Dropped the ball” meant that she had not followed up with the vice principal for additional records. CP at 1158.

¶12 On January 30, a phone call took place between Ms. Fitterer and Ms. Cantu. Ms. Cantu verbally extended her October request through January 30, 2017 and clarified that she wanted e-mails. Ms. Fitterer sent two follow-up e-mails that day. The second e-mail indicated that if the e-mail system search did not yield additional records the request would be closed.

¶13 Ms. Fitterer proceeded to e-mail the vice principal and other staff about the expanded request, and they provided one new HIB report from the three previously sent. Ms. Fitterer also e-mailed the District's technology director, Andy Gonzalez, requesting an e-mail search and attached Ms. Cantu's October 2016 request where Ms. Fitterer wrote “Revised to 1/30/17” and included her initials. CP at 667.

¶14 Ms. Fitterer provided three redacted HIB reports and “other records” to Ms. Cantu by e-mail. The e-mail stated, “Our tech department is performing a formal search of our email system. If that search produces additional records (through today's date), I will forward them to you. If it does not, I will advise you and this request will be closed.” CP at 663. No exemption log was provided for the redactions from the HIB reports.

¶15 On February 2, the District's technology director ran two searches of the District's e-mail archive system for the date range of April 1, 2016 through February 2, 2017, using the following search terms:

- [A] AND bullying OR HIB
- [A] AND harassment OR intimidation OR bullying
- [A] AND [M]

CP at 538-39. The search identified 85 e-mail records as potentially responsive. The District's technology director was not confident that all e-mails related to the incidents were provided, given the search terms used.

¶16 On February 2, the technology director e-mailed his search results to Ms. Fitterer for review in the form of a link to PST files on the District's network along with directions on how to open the PST files. Ms. Fitterer could not open them except to view the “headers,” which merely showed “Sender,” “Recipient,” “Message-Id,” and “Subject,” but did not display content. CP at 3232. She needed technical assistance but did not ask even though she knew

“tech” services could have opened them. School board member e-mails were not searched even though they were aware of the issues with Ms. Cantu's daughter.

¶17 On February 3, Ms. Fitterer e-mailed Ms. Cantu that “[o]ur tech services department has completed their search of our email system and there are over 80 email records.” CP at 673. She indicated a need for additional time for review but estimated that she could “have them to you by Wednesday February 15, 2017 or will contact you will [sic] an updated fulfillment date.” CP at 673.

¶18 At an unknown date, Ms. Fitterer provided hard copies of the e-mail headers to Ms. Cantu. Ms. Fitterer apparently assumed, based on a phone conversation, that Ms. Cantu would review the headers and specifically identify which e-mails she wanted from the headers. Ms. Fitterer did not confirm this assumption in writing. Ms. Cantu denied agreeing to this limitation and indicated that Ms. Fitterer told her during the call only that she was redacting the headers, but Ms. Cantu did not understand what she meant. Ms. Cantu did not agree to accept or review only headers in lieu of requested e-mails.

¶19 No communication between the District and Ms. Cantu occurred for the next 10 months. Ms. Fitterer “assumed that Ms. Cantu had all the email records she wanted because I had not heard back from her.” CP at 575.

B. MS. CANTU'S APRIL 2018 RECORDS REQUESTS

¶20 On April 5, 2018, Ms. Cantu submitted two records requests to the District. In the first request, she asked for “ALL HIB forms from December 2017 Re: [AM].” CP at 679. In her second request, she requested “ALL emails including the text of the messages Re: [AM] from April 2016 to present.” CP at 680. Ms. Fitterer responded to Ms. Cantu by e-mail the same day, stating, “Thank you for your email. I will be out of the office March 30 through April 6th. I will get back to you asap.” CP at 1590.

¶21 On April 9, Ms. Fitterer responded to the new records request and indicated, “I do not have my files with me but it seems we have provided this information previously. Can you remind me?” CP at 441. Ms. Cantu responded, “I did request copies of my emails in the past, however they did not contain any messages I would like ALL emails with the messages”; “Also, a lot more incidences have occurred since my last request, therefore I am in need of past emails to the present”; “Please contact me if you need further clarification on my request.” CP at 556. Ms. Fitterer did not forward the April 5 requests to anyone else for assistance. No formal five-day letter with a response time estimate was sent.

¶22 On April 23, Ms. Fitterer e-mailed Ms. Cantu, asking, “On the emails, I need further clarification. My memory of your last request was that you had a lot of the emails already and wanted to look through a list of email headers so you could determine if any were missing.

Once you told me which ones you needed I would do the redaction and send them to you. Are you now saying you want all redacted emails from the date you specified? Depending on the quantity of emails that could take 30-120 days. Please clarify your preference.” CP at 556.

¶23 That same day, Ms. Fitterer produced 9 HIB reports to Ms. Cantu “in response to one of the April 5, 2018, public records requests.” Ms. Fitterer's e-mail to Ms. Cantu indicated, “The following records are responsive to your recent HIB public record request. They have been redacted for student and staff names. This will close your public record request.” CP at 762.

¶24 On April 25, Ms. Cantu thanked Ms. Fitterer for the HIB reports and reiterated her request for “all emails in their entirety, of course I understand some things need to be redacted.” CP at 757.

¶25 On April 26, Ms. Fitterer e-mailed a search request to the technology director, who estimated that he could not get to it until after May 18 or May 24. Sometime thereafter, the technology director and Ms. Fitterer discussed refining the search terms.

¶26 On May 3, Ms. Fitterer e-mailed a letter to Ms. Cantu estimating that a response to her second April 5 request may be available by July 16, 2018 and it may be necessary to produce records in installments.

¶27 On June 8, Ms. Fitterer e-mailed Ms. Cantu's attorney, who had now taken over Ms. Cantu's records requests, along with several unrelated requests. Ms. Fitterer indicated that due to the large scope of the responsive records, “we are suspending all outstanding response deadlines and postponing our production of responsive records to you for a three-week evaluation period.” CP at 535. The District indicated it would “reassess the amount of time reasonably necessary to respond without causing excessive interference with District operations.” CP at 535. “We invite you to please let us know by June 22 which of your requests you would like the District to prioritize. We will also continue providing you periodic progress updates regarding your requests and look forward to sending you the updated response timeline.” CP at 535.

¶28 During this same period of time, Ms. Fitterer requested help from supervisors 10 times due to increasing numbers of PRA requests in 2017 and 2018, but the District declined to provide assistance, claiming lack of available resources.

¶29 On June 11, Ms. Cantu's attorney responded to Ms. Fitterer by citing the delays since April 2018 and missing attachments, and demanding authority for the suspension of efforts. The attorney then submitted a significant number of additional PRA requests unrelated to Ms. Cantu's requests. Ms. Fitterer responded to Ms. Cantu's attorney saying, “Suspension is not the correct term. I apologize”; “To clarify, the District is not suspending its efforts to respond to your Public Records Act requests. As indicated in my email from Friday, the District is evaluating how best to process your multiple records requests so as to provide complete and accurate responses in compliance with the PRA while at the same time not unduly disrupting District

operations”; “We will follow up by June 29th with a revised schedule and revised installment deadlines.” CP at 2613. No follow-up occurred.

¶130 On July 2, the District's technology department searched the e-mail archive system using terms “[A] AND [M]” for the period between “4/1/2016 and 4/1/2018.” CP at 490. The search yielded 3,200 potential results, which were provided to Ms. Fitterer on the same day in the “RFI” folder and e-mail notification. Ms. Fitterer did not produce these e-mails to Ms. Cantu at this time, as she did not finish reviewing them until October 6.

¶131 The District failed to meet its estimated response date of July 16, 2018 and failed to provide any communication to Ms. Cantu about her April 5 request for e-mails. In her declaration, Ms. Fitterer indicated that she was primarily occupied by other projects during the summer and occasionally working on other public records requests.

¶132 On August 3, Ms. Cantu e-mailed Ms. Fitterer asking the status of her record request. Ms. Fitterer did not respond.

¶133 On August 28, Ms. Cantu asked again for a status update from Ms. Fitterer. Ms. Fitterer e-mailed back that the public records office “was closed for the summer so opened yesterday.” CP at 579, 766. During discovery, the District clarified that while Ms. Fitterer and her secretary were out of the office for a time, the office was not closed. Ms. Fitterer later admitted that she owed Ms. Cantu an explanation “but didn’t have time to give [it] to her.” CP at 1178. No updated response time estimate was provided.

¶134 On September 13, as a record response, Ms. Fitterer e-mailed Ms. Cantu's attorney a web link to an empty “Google Drive” electronic file directory.

¶135 On September 24, Ms. Cantu filed a complaint in the Yakima County Superior Court against the District.

¶136 On October 1, Ms. Fitterer e-mailed Ms. Cantu that she was reviewing and redacting the e-mail records with an anticipated production date of October 6. She promised to “have an installment to you even sooner.” CP at 768. Ms. Fitterer “started working immediately” on the e-mails sometime during the week of October 1, although she also vaguely indicated reviewing them sometime after August 28.

¶137 On October 4, Ms. Fitterer produced 68 pages of e-mails to Ms. Cantu as an “installment.” CP at 580. “In reviewing your public record requests form (attached) and some emails we exchanged for clarification (also attached) I am interpreting that you want the text in the emails versus just the email headers.” CP at 770.

¶138 On October 6, Ms. Fitterer informed the District's technology services director that she had reviewed the 3,200 e-mails from the July 2 search and requested an additional search be done for e-mails with new search terms since “many are missing.” CP at 562. Ms. Fitterer

characterized Ms. Cantu's request as her "top priority" because of the lawsuit. "The lawsuit definitely made me go back and review." CP at 1182.

¶139 The same day, Ms. Fitterer e-mailed Ms. Cantu that the review of the 3,200 e-mails was "completed" but that "the search efforts undertaken in July 2018 may have missed some potentially responsive records." CP at 580. Ms. Fitterer extended her production estimate date to October 13 and attached 63 pages of responsive e-mails.

¶140 On October 9, Ms. Fitterer provided "another installment" of 48 pages to Ms. Cantu and indicated that further searches of the network were being performed.

¶141 On October 10, the technology services director performed another e-mail search using the date range of "09/01/2016-09/28/2018" and terms of "1999@yahoo.com" and "[A] AND [Stanley]." CP at 508. This search produced 401 e-mails, which were delivered to Ms. Fitterer that same day.

¶142 On October 11, the technology services director performed a search, which produced another 11,000 results. These were reduced to 3,365 potentially responsive e-mail records that were provided to Ms. Fitterer the same day. Ms. Fitterer stated that she received 400 additional e-mail records on October 10 and 3,350 on October 11. She reviewed the records over the next several days, including the weekend.

C. 75 E-MAIL ATTACHMENTS

¶143 On October 13, 2018, Ms. Fitterer e-mailed Ms. Cantu that she could pick up the thumb drive with 398 e-mail records responsive to the April 2018 request for e-mails because the records were too large to provide by e-mail. Some of the records included duplicate copies of the "records provided on October 4, 6 and 9, 2018." CP at 581. While the thumb drive contained copies of e-mails, it did not contain thousands of pages of attachments associated with the 398 e-mail records. A redaction and exemption log was not included. The attached letter read, "The District considers this request complete. No further action will be taken by the Yakima School District related to this request." CP at 782. Ms. Fitterer chose to exclude attachments and did not confirm the exclusion with Ms. Cantu. She was also aware that the technology services director had searched the wrong time frame.

¶144 On October 19, the District provided Ms. Cantu with an exemption log for the redacted HIB reports turned over January 30, 2017, citing FERPA personal information. Prior to this date, exemption logs had not been provided.

¶145 On October 26, the District provided additional e-mails previously withheld related to Ms. Cantu's request for e-mails on January 30, 2017. The exemption log that was attached identified personal information redactions per FERPA.

¶46 In November, Ms. Fitterer received a three-hour PRA group training from an attorney. According to Ms. Fitterer, the District's technology services director received PRA training at the November 2018 group session. Mr. Gonzalez's subordinate in the technology services department never received any PRA training despite being tasked with developing the new District public records response application.

¶47 In late December, the District ran another search that yielded no new records.

¶48 On January 10, 2019, the District claimed it provided Ms. Cantu a spreadsheet documenting the e-mails provided on October 13, 2018 and the missing attachments to 56 of the e-mails along with an exemption log for another 75 e-mails. The log cites FERPA for personally identifiable information as the same explanation for redacting all 75 attachments.

¶49 On the same day, the District ran another search with expanded parameters using “[A]” and wildcards for the words “threat,” “harass,” “bull,” “intimidat,” a witness's name, and AM's nickname and “HIB” for the date range of “4/1/2016-5/1/2018.” CP at 542.

¶50 On January 17, Ms. Cantu reasserted her demand for attachments for the previously produced e-mails. During Ms. Cantu's deposition, she clarified that her April 2018 request was for any e-mail that had “anything that had to do with my daughter” regardless of whether the e-mail pertained to bullying or anything else. CP at 3691. Ms. Cantu would not agree to the District withholding any documents or attachments.

¶51 On January 18, the District's attorney sent Ms. Cantu's attorney a letter clarifying its request to withhold the 75 e-mail attachments instead of redaction due to size, volume, and a lack of responsiveness to harassment. The District admitted that attachments were not disclosed on October 13, 2018 and claimed discovery remained incomplete. Ms. Cantu refused to agree to withholding, reasserting “ALL means all” to the District. CP at 391.

¶52 On January 28, the District sent a letter to Ms. Cantu with an attached exemption log supposedly highlighting the 75 e-mails in dispute asserting FERPA personally identifiable information. The District provided an estimated timeline for production of the remaining attachments.

D. CONTINUING SEARCHES AND RECORDS PRODUCTION

¶53 On January 30, 2019, the District sent a letter to Ms. Cantu outlining the search terms used on January 10, 2019, and providing additional redacted records along with an exemption log. Each record was responsive to Ms. Cantu's January 2017 request for e-mails pertaining to the harassment, intimidation, and bullying of Ms. Cantu's daughter.

¶54 On January 31, Ms. Cantu e-mailed the District, reasserting her request for all e-mails.

¶55 On February 12, the District performed another search for e-mails responsive to Ms. Cantu's April 5 request to include shortened versions of names along with wildcards: "[AM]* AND Nancy OR Mchenry" and "[AM]* AND Amanda OR jewel*" for "4/1/2016-5/1/2018." CP at 543.

¶56 On February 19, the District produced the 13 new records relating to the April 5, 2018 request, with an exemption log. Most of the records, both e-mails and HIB reports dating from 2016, discussed harassment incidents involving AM and are highly responsive.

¶57 On March 1, 2019, the District modified 778 records with previous redactions from the October 13, 2018 production. It also provided 7 new e-mails not previously released in October 2018.

¶58 In September 2019, the District hired new in-house counsel to handle PRA requests. The in-house counsel was able to clear the backlog and process an additional 110 requests by September 2020.