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FREEDOM OF INFORMATION



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Paul Baer,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0323

Gregg Lee, Chairman, Planning and Zoning Commission,
Town of Thompson; Planning and Zoning Commission,
Town of Thompson; and Town of Thompson,
Respondent(s)

November 16, 2016

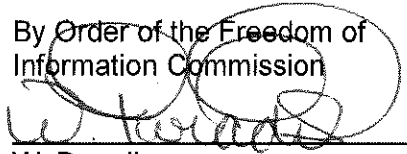
Transmittal of Proposed Final Decision

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, December 7, 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 November 22, 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 November 22, 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 November 22, 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: Paul Baer
Attorney Steven E. Byrne

FIC# 2016-0323/Trans/wrbp/KKR//TAH/2016-11-16

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Paul Bacr,

Complainant

against

Docket #FIC 2016-0323

Gregg Lee, Chairman, Planning and
Zoning Commission, Town of Thompson;
Planning and Zoning Commission, Town of
Thompson; and Town of Thompson,

Respondents

July 26, 2016

The above-captioned matter was heard as a contested case on July 14, 2016, 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. By email dated and filed April 27, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act:
 - (a) by meeting in executive session during the March 28, 2016 regular meeting of the respondent commission ("meeting"), without all members present;
 - (b) by meeting in executive session during the meeting without a quorum present;
 - (c) by failing to vote to enter into executive session during the meeting;
 - (d) by inaccurately describing the subject of the executive session on the agenda for the meeting;
 - (e) by taking a "vote of confidence" during the meeting on the performance of the respondent commission's chairman, which matter was not listed on the agenda for the meeting;

(f) by taking a “vote of confidence” during the meeting on the performance of the director of planning and development, which matter was not listed on the agenda for the meeting;

(g) by preparing inaccurate minutes of the meeting; and,

(h) because the first selectman, who is an ex-officio member of the respondent commission, failed to stop the respondents from going into executive session without all members present.

The complainant requested the imposition of a civil penalty against the chairman of the respondent commission.

3. Section 1-225(a), G.S., provides, in relevant part:

[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public....

4. Section 1-200(6), G.S., provides, in relevant part:

‘[e]xecutive sessions’ means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting....

5. Section 1-225(f), G.S., provides:

a public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

6. Section 1-231(a), G.S., provides:

[a]t an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such

persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

7. It is found that item 15 on the agenda for the meeting stated:

Executive Session – Personnel Matters

(a) Complaint re ZEO

(b) Director of Planning and Development re Buckley Hill Rd. 8-30g Application.

8. It is found that the director of planning and development (“director”) works for, and is evaluated by, the respondent commission. It is found that, during the meeting, the director requested that the discussion, identified on the agenda as item 15(b), take place in executive session. It is found that the discussion in executive session concerned a complaint that was filed against the director with regard to the Buckley Hill Road application. It is found that the Buckley Hill Road application was an application that previously had been considered by the respondent commission.

9. It is found that, although ten members of the respondent commission were present at the meeting, only five of those members, plus the first selectman, who is an ex-officio member, were present during the executive session. It is found that the commission members who were present during the executive session were commission members at the time of the Buckley Hill Road application, and that the five who were not present during the executive session were not commission members at that time.

10. It is found that the complainant is not a member of the respondent commission.

11. According to the complainant, the phrase in §1-231, G.S., that “attendance shall be limited to members of said body,” means that the members of a public agency may meet in executive session only if all such members who are present at the meeting also are present during such executive session. Thus, the complainant argued, the respondents violated the FOI Act when it convened in executive session with only five of the ten members present in such session. In addition, the complainant argued that the respondents were required, under §1-231, G.S., to have a quorum of its members present during its executive session.

12. It is concluded, however, §1-231, G.S., does not require a public agency to have a particular number of its members or a quorum present during an executive session; rather, that language consistently has been interpreted by this Commission as prohibiting non-agency members from being present during an executive session, except to the extent, and for the limited period of time that such non-agency members are in attendance to present testimony or opinion related to the matters at issue before such public agency. See e.g., Ronald Goodmaster v. Lucy McConologue, Chairman, Police Commission, Town of Seymour, et al., Docket #FIC 2012-690

(September 11, 2013); Adam J. Teller v. Zoning Commission, Town of Old Lyme et al., Docket #FIC 2010-659 (October 12, 2011); Charles M. Watts v. Police Commission, Town of Hamden, Docket #FIC 1999-029 (June 9, 1999).

13. Accordingly, it is concluded that the respondents did not violate the FOI Act, in the manner described in paragraphs 2(a) and 2(b), above.

14. With regard to the allegation, described in paragraph 2(c), above, the respondents conceded, and it is found, that the respondent board failed to vote to go into executive session during the meeting, as required by §1-225(f), G.S.

15. It is therefore concluded that the respondents violated §1-225(f), G.S., in the manner described in paragraph 2(c), above.

16. With regard to the allegations, described in paragraphs 2(d), (e), and (f), above, §1-225(c), G.S., provides, in relevant part, that:

[t]he agenda of the regular meetings of every public agency...shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer....

17. It is well established that a meeting agenda must “fairly apprise the public of the action proposed,” and of the “matters to be taken up at the meeting in order to [permit the public] to properly prepare and be present to express their views.” See Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, Docket No. CV 99-047917-S, 2000 WL 765186 (superior court, judicial district of New Britain, May 3, 2000), reversed on other grounds, Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, 66 Conn. App. 279 (2001).

18. It is found that the agenda for the meeting specifically stated that the discussion in executive session concerned a “personnel matter,” identified the employee to be discussed; and further identified the particular topic to be discussed with respect to that employee. The complainant argued, at the hearing in this matter, that such description was confusing because it contained reference to an application and did not contain the word “complaint.” It is concluded, however that the agenda item 15(b) fairly apprised the public of the matter to be discussed during the executive session. Accordingly, it is concluded that the respondents did not violate the FOI Act in the manner described in paragraph 2(d), above.

19. With regard to the allegation, described in paragraph 2(e), above, it is found that, after the executive session, the respondent commission reconvened in public session, and the members of the respondent commission present at the meeting voted unanimously in favor of a “vote of confidence” for the chairman of the respondent commission. It is found that such action was not listed on the agenda for the meeting, and that the respondent commission did not vote to add such item to the agenda. At the hearing in this matter, the respondents conceded, and it is found, that such action was not properly noticed on the agenda for the meeting.

20. Accordingly, it is concluded that the respondents violated §1-225(c), G.S., in the manner described in paragraph 2(e), above.

21. It is also found that, after reconvening in public session after the executive session, the members of the respondent commission present at the meeting also voted unanimously in favor of a "vote of confidence" for the director. It is found that such action was not listed on the agenda for the meeting, and that the respondent commission did not vote to add such item to the agenda. The complainant argued that the agenda, therefore, did not fairly apprise the public of this vote, and that the respondents violated §1-225(c), G.S., with respect to such vote.

22. However, it is concluded that because the discussion of a personnel matter with respect to the director was listed on the agenda (see paragraph 7, above), the public also was fairly apprised that some action might also be taken by the respondent commission with respect to the director's performance.

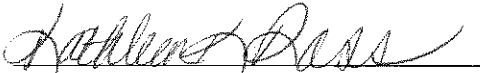
23. Accordingly, it is concluded that the respondents did not violate §1-225(c), G.S., in the manner described in paragraph 2(f), above.

24. With regard to the remaining allegations, described in paragraphs 2(g) and 2(h), above, it is found that such allegations, even if true, do not constitute violations of the FOI Act, and therefore shall not be considered herein.

25. At the hearing in this matter, the complainant reiterated his request for a civil penalty against the chairman of the respondent commission, claiming that because the chairman has attended FOI Act training, he should know the Act's requirements. In addition, the complainant contended that the respondents have engaged in a pattern of violating the FOI Act. However, when asked by the hearing officer if he could cite to any specific decision of the Commission in which the Commission found a violation against these respondents, the complainant stated that he was referring to the town of Thompson generally, not to these respondents specifically. The Commission is unaware of any prior decision in which it concluded that these respondents violated the meetings provisions of the FOI Act. The Commission declines to consider the imposition of a civil penalty in this matter.

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

1. Henceforth, the respondents shall strictly comply with the requirements in §§1-225(c) and 1-225 (f), G.S.


Kathleen K. Ross
as Hearing Officer