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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2016-0660

Chairman, Durham Middlefield Interlocal Agreement
Advisory Board; and Durham Middlefield Interlocal
Agreement Advisory Board,
Respondent(s)

January 10, 2017

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 8, 2017**. 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 27, 2017**. 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 27, 2017**. **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 27, 2017**, 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: Christy Gilbert
Attorney Brian M. Stone

FIC# 2016-0660/Trans/wrbp/VRP/TAH/2017-01-10

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Christy Gilbert,

Complainant

against

Docket #FIC 2016-0660

Chairman, Durham Middlefield
Interlocal Agreement Advisory
Board; and Durham Middlefield
Interlocal Agreement Advisory
Board,

Respondents

November 23, 2016

The above-captioned matter was heard as a contested case on November 21, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony 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 letter of complaint filed September 14, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to post its minutes, on numerous occasions spanning the years 2009-2016, within the required seven days following the meeting to which the minutes referred.
3. Specifically, the complainant alleged:

As of today's date September 11, 2016, the minutes from the August 25th meeting have still not been posted. On the majority of these occasions [from 2009-2016], the minutes are not posted until 2-3 weeks after the meeting. In some cases, they were not posted until one or two months afterwards.

My concern is that the public is not being able to view the minutes and is unaware of what is transpiring at these meetings. By the time the minutes are posted, the agendas for the next meetings are typically posted shortly thereafter, in

some instances, both minutes and agenda within 24 hours of the next scheduled meeting. This is not allowing the public to view the minutes nor make accommodations to attend the next meeting.

I have reached out to the town clerk through e-mail on this issue. She has relayed to me that all town boards are given a reminder at the beginning of each year to post [their] minutes within the required seven calendar days.

4. It is found that the respondents do not have an office or regular place of business at which their minutes may be viewed.

5. It is found that respondents make their minutes available for public inspection by filing them with the Durham and Middlefield Town Clerks.

6. It is found that, on the day that she receives them, the Durham Town Clerk posts the respondents' minutes on the Town of Durham's web site.

7. It is found that, although the complainant uses the specific term "posted," which may refer to the posting on an internet web site or the posting on a bulletin board, the complaint is that the respondents' minutes were not timely available for public inspection within seven days of the meeting to which they referred. At the hearing, neither party addressed the issue of whether the respondent Board is required to post minutes on a web site depending on whether it is or is not a "public agency of a political subdivision of the state," or a multitown district or agency. Therefore, the specific issue of web site posting is not addressed in this decision. Rather, the decision addresses only whether the respondents provided timely access to inspect their minutes within seven days of the meeting to which the minutes refer by filing them with the town clerk (who then posted them).

8. It is found that in early September 2016, the complainant noticed that minutes of the last two meetings of the respondents had not been posted within seven days of the meetings to which those minutes pertained.

9. It is found that many of the respondents' minutes in the period 2009 through August of 2016 were filed with the Durham Town Clerk more than seven days after the meeting to which those minutes pertained.

10. Specifically, it is found that the minutes of the respondents' August 25, 2015 meeting were not filed until September 15, 2016.

11. At the hearing, the respondents moved to dismiss the complainant with respect to all but the timeliness of the minutes of the respondents' August 25, 2015 meeting, on the grounds that the complaint as to the earlier meetings was time barred.

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

Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site.

13. Section 1-206(b)(1), G.S., provides:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held. [Emphasis added.]

14. It is concluded that the denial of the public's right to inspect the respondents' minutes within seven occurred on the eighth day following the session to which they referred.

15. It is therefore concluded that any complaint about the timeliness of access to the minutes of the respondents' meetings was required by §1-206(b)(1) to be filed within 30 days after the eighth day following the meeting to which the minutes refer.

16. The Commission notes that it has held that "the responsibility to create minutes and make them available for public inspection is a continuing one and that the failure to meet such responsibility is a continuing violation...." See William J. Beach v. Chairman, Winsted Zoning Board of Appeals and Winchester Building Inspector, Docket #FIC 1988-362 (December 14, 1988).

17. However, while the responsibility to create minutes and make them available for public inspection is a continuing one, the responsibility to make the minutes available for public inspection *within seven days of the meeting to which they refer* is not itself a responsibility that continues beyond the seven-day period.

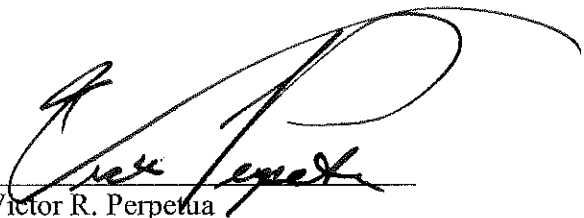
18. It is concluded that this Commission does not have jurisdiction to adjudicate the timeliness of the availability of the minutes of meetings that were held more than 38 days before the filing of this complaint.

19. It is also concluded, however, that the respondents violated §§1-225(a) by failing to make the minutes of their August 25, 2016 meeting available by September 2, 2016.

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 of §1-225(a) G.S., by filing the minutes of their meetings with the appropriate town clerk or clerks seven days after the date of the session to which such minutes refer.

2. Although not the focus of the complaint, and not requested by the complainant, the Commission urges the respondents to file the minutes of all meetings that occurred between 2009 and 2016, if such meetings occurred and minutes were not filed at the time.



Victor R. Perpetua
as Hearing Officer