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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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Michael Bracken, Jr.
Complainant(s)
against

Notice of Meeting

Docket #FIC 2017-0082

Christopher Kervick, First Selectman, Town of Windsor
Locks; Board of Selectmen, Town of Windsor Locks; and
Town of Windsor Locks
Respondent(s)

October 25, 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 **2:00 p.m. on Wednesday, November 15, 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 November 3, 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 November 3, 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 November 3, 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Michael Bracken, Jr.
Attorney Carl T. Landolina

FIC# 2017-0082/ITRA/VRP/TAH/WRBP/2017-10-25

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Bracken,

Complainant

against

Docket #FIC 2017-0082

Christopher Kervick, First Selectman,
Town of Windsor Locks; Board of
Selectmen, Town of Windsor Locks; and
Town of Windsor Locks,

Respondents

October 24, 2017

The above-captioned matter was heard as a contested case on May 2, 2017, at which times the complainant and the respondents appeared, stipulated to certain facts 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 letter of complaint filed February 7, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act at the January 17, 2017 meeting of the respondent Board of Selectman.
3. Specifically, the complainant alleged that the respondents violated his FOI Act and constitutional rights in the following regards:
 - a. Improperly entering an executive session without just cause;
 - b. Utilizing the police to intimidate one from speaking at a town meeting;
 - c. Falsely reporting an incident;
 - d. Failure to properly re-enter a public session after having exited executive session;
 - e. Failure to wait for the public to return to the meeting room before adjourning the meeting;
 - f. Tampering with a public record as the recording of the meeting was edited; and

g. Violating [his] constitutional rights of freedom of assembly and freedom of speech.

4. It is found that the respondents held a regular meeting on January 17, 2017.

5. It is found that the respondents added to the agenda for that meeting: "Item 13) 'Executive Session Re: A Casino Proposal in Windsor Locks.'"

6. It is found that the respondents voted unanimously to convene in executive session at the January 17, 2017 meeting for the stated purpose "regarding negotiation of a casino proposal in Windsor Locks.

7. It is found that the public was asked to leave the room during the executive session.

8. It is found that, in the executive session, the town attorney presented terms for a casino proposal in Windsor Locks.

9. It is found that the respondents did not vote in executive session.

10. It is found that, after the respondents concluded the executive session, they reconvened in public session and adjourned without first permitting the public back in the room. (The complainant was the only person who had remained outside the meeting room.)

11. Section 1-225(a), G.S., provides in relevant part: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."

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

"Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: ... (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210. [Emphasis added]

16. Section 1-225(c), G.S., provides in relevant part:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

17. Section 1-210(b)(1), G.S., provides that disclosure is not required of:

Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure

18. It is concluded that the claims in paragraph 3.b, 3.c., 3.f and 3.g do not allege violations of the FOI Act, and are therefore not within the jurisdiction of this Commission.

19. With respect to the complainants' allegation described in paragraph 3.a., above, the respondents contend that the executive session was permissible pursuant to §§1-200(6)(E) and 1-210(b)(1), G.S., on the grounds that the executive session was confined to discuss a preliminary draft.


20. It is found, however, that the respondents offered no evidence to prove that a preliminary draft was discussed in the executive session, or that the respondents determined that the public interest in withholding such a document clearly outweighed the public interest in disclosure.

21. It is therefore concluded that the respondents violated the FOI Act by entering into executive session for an improper person.

22. With respect to the allegations described in paragraph 3.d and 3.e, above, it is found that the respondents prematurely closed the meeting before permitting the public back into the meeting room, and therefore technically violated §1-225(a), G.S., by excluding the public from that portion of the meeting.

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 open meetings requirements contained in §§1-225(a) and 1-200(6)(E), G.S.



Victor R. Perpetua
as Hearing Officer