

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
The Hartford Courant,)
 Complainant)
) Report of Hearing Officer
) Docket #FIC76-152
) November 29, 1976
))
State of Connecticut; and the)
Commission on Human Rights and)
Opportunities of the State of)
Connecticut, Respondents)
)

The above captioned matter was heard as a contested case on September 23, 1976, 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:

1. The respondents are public agencies as defined in §1(a) of P.A. 75-342.
2. At a meeting held on August 19, 1976, the respondent commission voted in the public portion of its meeting to convene in executive session for the purpose of discussing pending claims and litigation and to discuss a staff proposal concerning the agency's 1977-78 budget as it relates to personnel matters.
3. In the aforesaid executive session, the respondent commission discussed the recommended disposition of 54 complaints filed with it and further discussed a proposed commission-initiated complaint against the City of Meriden.
4. Discussion in executive session relating to personnel matters was limited to classifying the priority of certain job titles, name changes in job titles and approximating future staffing needs. Much of the aforesaid was printed on a one page document, which also contained a part of the proposed budget of the respondent commission for fiscal year 1977-78.
5. The gravamen of the appeal brought by the complainant herein and filed with this Commission on September 3, 1976, alleged that the respondent commission convened in executive session on August 19, 1976 for purposes not permitted under P.A. 75-342.

6. §31-127 of the General Statutes states that no "commissioner or investigator /of the respondent commission/ shall disclose what has occurred in the course of such endeavors..." The term "such endeavors" refers earlier in the statute to action by a commissioner or investigator of the respondent commission "to eliminate the unfair employment practice complained of by conference, conciliation and persuasion."

7. The respondent commission contends that the discussions concerning the complaints referred to in paragraph 3 above were properly held in executive session on August 19, 1976 for the following reasons: (a) because the recommended disposition and discussion thereon necessarily involved the investigator's file exempted under §31-127 of the General Statutes as provided for in §2(b)(9) of P.A. 75-342; (b) as pending claims and litigation under §1(e)2 of P.A. 75-342; (c) because the recommended dispositions involved case summaries privileged by the attorney-client relationship. These claims of exemption will be treated seriatim below.

8. Insofar as the aforesaid discussions involved the record of uncertified complaints, that is, complaints in which the record consists solely of the preliminary investigative file of the respondent commission acting under its statutory duty to mediate disputes, it is found that those discussions were clearly exempted by §31-127 of the General Statutes and were proper purposes for meeting in executive session under §2(b)(a) of P.A. 75-342. Discussion concerning the proposed complaint to be initiated against the City of Meriden certainly falls within the purview of this exemption.

9. It is further found that discussions relative to case summaries and recommendations prepared by staff are not privileged by the attorney-client relationship. The mere fact that a staff member, who also happens to be an attorney, prepares a recommendation based upon a summary of the record of a complaint not otherwise exempt by statutes, does not render it a privileged communication between attorney and client within the meaning of the rule protecting the latter from disclosure. The attorney-client privilege was not meant to be a blind behind which a public agency can shield its deliberative sessions from public view.

10. With respect to the one page budget document and the discussion thereon in executive session mentioned in paragraph 4 hereinabove, the respondent commission contends that this is a proper purpose for excluding the public under §2(b)(1) as preliminary drafts or notes.

11. It is found that the one page budget sheet was not a preliminary draft or note within the meaning of §2(b)(1) of P.A. 75-342 and therefore not a proper purpose for excluding the public from discussion under §1(e)(5) of P.A. 75-342. The document was complete and was based upon the latest

thinking of certain staff and/or members of the respondent commission prior to its August 19, 1976 meeting. The fact that the discussion on August 19, 1976 produced a different consensus subjecting the document to revision thereby, has no bearing on the question of whether the document stood on its own as a separate, distinct and completed document. To find otherwise would mean that any document is exempt from public disclosure upon a showing that it may be revised later, and the public could be effectively excluded from an agency's deliberative process at any time in which the same is subjected to agency review.

12. There was a second part to the complaint referred to in paragraph 5 above. By same letter, the complainant further alleged that the record of votes taken in executive session on the matter of the complaints referred to in paragraph 3 above, was incomplete.

13. There was no record of either how many complaints were acted on or how they were disposed of by the respondent commission in its August 19, 1976 executive session.

14. It is hereby found that the respondent commission violated §6 of P.A. 75-342 by not making available, within forty-eight hours, the votes of each of its members upon the issues before it including the names of the cases disposed of in executive session and the recommended disposition of the same.

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

1. Henceforth, the respondent commission shall meet in executive session only for those purposes stated in §1(e) of P.A. 75-342 and as delineated hereinabove.

2. Henceforth, the respondent commission shall strictly adhere to the requirements of §6 of P.A. 75-342 concerning maintaining a proper record of those issues before it in executive session and the vote of each of its members on the disposition of the same.

3. It is noted that the record of this case reveals that the respondent commission discussed several items at its August 19, 1976 executive session that were not stated and voted upon as a reason for convening in executive session. These items were not included in the present complaint and consisted of a discussion on whether the public interest in withholding such documents clearly outweighed the public interest in disclosure; approval of prior minutes and scheduling a special meeting. Accordingly, this Commission further cautions the respondent commission to refrain from discussing, or otherwise inquiring into or making reference to, any business not publicly stated and voted upon as a reason for convening such executive session pursuant to §1(e) and §6 of P.A. 75-342.

By order of the Freedom of
Information Commission

Mitchell W. Pearlman

Mitchell W. Pearlman as
Acting Clerk of the Commission