



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Michael Selvaggi,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-660

Chairman, State of Connecticut, Connecticut
Council on Developmental Disabilities; and
State of Connecticut, Connecticut Council on
Developmental Disabilities,
Respondent(s)

July 19, 2012

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, August 8, 2012**. 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 July 27, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE July 27, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE July 27, 2012**, 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: Michael Selvaggi
Emily V. Melendez, Esq.

2012/0719/FIC# 2011-660/Trans/wrbp/SDL/PSP/GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Selvaggi,

Complainant

Docket # FIC 2011-660

against

Chairman, State of Connecticut,
Connecticut Council on
Developmental Disabilities;
and State of Connecticut,
Connecticut Council on
Developmental Disabilities,

Respondents

July 18, 2012

The above-captioned matter was heard as a contested case on June 6, 2012, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

Subsequent to the hearing, on June 28, 2012, the hearing officer ordered the respondents to submit additional documents. Pursuant to such order of the hearing officer, the respondents filed after-filed exhibits, which have been marked as follows:

Respondents' Exhibit 6: Certification of Mailing and Compliance with Order, dated July 5, 2012;
Respondents' Exhibit 7: Affidavit of Molly Cole, dated July 3, 2012; and
Respondents' Exhibit 8: Minutes for the June 2011, July 2011, September 2011 and November 2011 Council meetings.

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 received and filed on December 8, 2011, the complainant appealed to the Commission, alleging, in relevant part, that the respondents violated the Freedom of Information

(FOI) Act by denying him access to a public meeting and public records.¹ The complainant alleged that the respondents failed to:

[a] properly notice and post an agenda for the Connecticut Council on Developmental Disabilities ("Council") regular meeting of June 14, 2011, showing an intent by the Council to vote to select a new executive director;

[b] properly amend the meeting agenda for the Council's June 14, 2011 meeting, to vote to select a new executive director; and

[c] provide him with records responsive to his November 28, 2011 records request.

In addition to other relief, the complainant requested the assessment of civil penalties against the respondents.² The complainant also requested that any actions taken at the June 14th meeting of the respondent Council regarding the appointment of the new executive director be declared null and void.

3. Section 1-206(b)(1), G.S., provides, in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully¹ 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.

4. In addition, Section 1-225, G.S., provides, in relevant part:

(a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon

¹ At the hearing, the complainant acknowledged that the other issues raised by him in his complaint were not under the Commission's jurisdiction. Accordingly, such issues shall not be further addressed herein.

² In his December 8th complaint, the complainant requested civil penalties against the named respondents, current and former members of the Council, current and former executive directors of the Council, and other state public agencies and public officials. In a subsequent letter, dated June 1, 2012, to the Commission, the complainant listed a total of 37 individuals and public agencies against whom he sought civil penalties.

any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. 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 website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

5. With respect to the allegations described in paragraphs 2[a] and 2[b], above, it is found that the respondents held a regular meeting on June 14, 2011. It is further found that the minutes for the June 14th meeting were prepared and filed with the Office of the Secretary of the State on June 16, 2011. The minutes for the June 14th meeting were subsequently approved by the Council at its September 13, 2011 meeting. The minutes for the September 13th meeting were then prepared and filed with the Secretary of the State on September 15, 2011.

6. It is found that the statutory standard for subject matter jurisdiction in the case of an allegedly secret or unnoticed meeting is 30 days after the person filing the appeal received notice in fact that such meeting was held.

7. It is found that the respondents, made available for public inspection the minutes of the June 14th meeting on June 16, 2011.

8. It is found that on June 16, 2011, the complainant received notice in fact that the respondents held the June 14th meeting.

9. It is found that the complainant failed to file his complaint within 30 days of receiving notice in fact of the June 14th meeting. It is therefore concluded that the Commission lacks subject matter jurisdiction over the allegations described in paragraphs 2[a] and 2[b], above.

10. With respect to the complainant's allegation described in paragraph 2[c], above, it is found that, by letter dated November 28, 2011, the complainant made a request to the respondents for copies of the following:

[a] all meeting agenda wherein the council acting through its leadership provided the public with required notice of the council's intent to discuss or act upon hiring its new director;

[b] all public meeting agendas whereby the council gave the public required fair prior notice of the council's intent to discuss all director position candidates and then vote to approve Ms. Cole for Director with compensation;

[c] each of the resulting meeting minutes identified by each above corresponding agenda;

[d] Ms. Cole's ethical disclosure statement(s) and compliance required under council bylaws, DD Council Conflict of Interest Policy and Connecticut General Statutes sections 1-79 *ET. Seq.*

The complainant also requested that his November 28th records request be provided to all members of the Council with discussion by the full Council.

11. Section 1-200(5), G.S., defines "public records or files" as:

any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

12. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours . . . (3) receive a copy of such records in accordance with section 1-212.

13. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

14. It is found that the records requested by the complainant, to the extent that they exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

15. It is found that, on or about February 27, 2012, the Council's Executive Director provided the complainant with copies of the agenda and meeting minutes for the Council's June 14, 2011 meeting, which dealt with the hiring of a new executive director, and were responsive to the records request described in paragraphs 10[a], 10[b] and 10[c], above.

16. With respect to the records request described in paragraph 10[d], above, the Executive Director testified that the Council's by-laws and conflict of interest policy apply only to members of the Council, and therefore, there were no responsive documents applicable to the executive director's position. In addition, the Executive Director testified that, at the time of the complainant's November 28th request, she had not filed with the Office of State Ethics under the

State Ethics laws, and therefore, there were no responsive documents to that portion of the complainant's request.

17. It is found that, at the time of the complainant's November 28th request, there were no documents responsive to the request described in paragraph 10[d], above.

18. It is further found that nothing in the FOI Act requires a public agency to provide all members of such agency with a records request for discussion by the entire agency.

19. It is found that the respondents provided the complainant with all documents responsive to his November 28th request that existed at the time of such request.

20. At the hearing, the complainant also alleged that the respondent's response to his November 28th records request was untimely. The Council's Executive Director acknowledged that the response was untimely, but contended that the delay was due to a combination of oversight on her part, the undertaking of an extensive archiving project of records and files, and staffing shortages.

21. It is found that the respondents' provision of the requested records, described in paragraph 15, above, over three months after they were requested, was not prompt within the meaning of §§1-210(a) and 1-212(a), G.S.

22. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide to the complainant a copy of the requested records.

23. Notwithstanding the conclusion in paragraph 22, above, the Commission, in its discretion, 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. The complaint is hereby dismissed with respect to those portions described in findings 2[a] and 2[b], above.

2. Henceforth, the respondents shall strictly comply with the promptness provisions of §§1-210(a) and 1-212(a), G.S.



Commissioner Sherman D. London
as Hearing Officer