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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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Wayne Cooke,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-523

Moderator, Representative Town Meeting,
Town of Branford,
Respondent(s)

March 22, 2013

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, April 24, 2013**. 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 April 12, 2013**. 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 April 12, 2013**. 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 April 12, 2013**, 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: Wayne Cooke
Willaim H. Clendenen, Jr., Esq.

2013-03-22/FIC# 2012-523/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Wayne Cooke,

Complainant

against

Docket #FIC 2012-523

Moderator, Representative Town
Meeting, Town of Branford,

Respondent

March 20, 2013

The above-captioned matter was heard as a contested case on February 22, 2013, at which time the complainant and the respondent 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 respondent is a public agency within the meaning of §1-200(1), G.S.
2. By letter dated September 18, 2012 and filed September 24, 2012, the complainant appealed to the Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act in the following way: by failing to give sufficient detail in an agenda so as to sufficiently describe an item of business planned for a meeting.

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

The 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, (1) in such agency's regular office or place of business, and (2) . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state . . . 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.

4. While §1-225(c), G.S., does not address the specificity required of agenda in the manner in which such requirement is discussed in §1-225(d), G.S., the Commission has determined that “all matters on an agency’s agenda must be sufficiently specific so that the public is fairly apprised of the matters to be considered at the meeting in question.” Sherry Disbury and the Terryville/Plymouth Community News v. Police Commission, Town of Plymouth; Docket #FIC 2004-091 (Sept. 8, 2004); see also §1-225(d), G.S. (stating, in part, that “[t]he notice shall specify the time and place of the special meeting and the business to be transacted”).

5. It is found that the Representative Town Meeting (“RTM”) is the legislative body for the town of Branford.

6. It is found that the respondent is the moderator of the RTM and is responsible for, inter alia, drafting and posting agendas for the RTM meetings, and maintaining order at such meetings.

7. It is found that, on or around August 27, 2012, the respondent issued an agenda for the September 12, 2012 regular meeting of the RTM. It is found that the agenda for the meeting contained many items for discussion and action. It is found that item twenty-one of the agenda lists the following item: “To consider, and if appropriate, review and amend Chapter A236, Section K subsection 4, the petition process of the RTM.”

8. It is found that Chapter A236, Section K subsection 4 refers to a town rule (the “Petitioning Rule”), which provides as follows:

Upon receipt of a petition signed by 50 electors asking that an item of Town business be placed on the agenda of the RTM, the moderator shall place such item on the agenda for consideration of the RTM.

9. It is found that, at the regular meeting of the RTM, in considering what action to take with regard to the Petitioning Rule, the agency ultimately voted to repeal the Petitioning Rule, and to send the issue of how and whether the Petition Rule might be amended and implemented in a more efficient manner to the Rules and Ordinance Committee for consideration.

10. The complainant’s contention in this case is that the agenda’s use of the word “amend” limited the action that the RTM could take with regard to the Petitioning Rule. In effect, the complainant contends that by using the words “to consider, and if appropriate, review and amend” the RTM limited its authority to that of discussing and, perhaps, changing the Petitioning Rule, but foreclosed its authority to repeal the rule.

11. In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Docket No. 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279

(2001), the court observed that one purpose of a meeting agenda “is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views,” and that “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.”


12. It is found that the agenda for the September 12, 2012 meeting gave clear notice to the public that the RTM was going to consider the Petitioning Rule. Specifically, it is found that the public should have been on notice that the RTM was going to consider the “petitioning process of the RTM.” It is further found that the public should have been on notice that, after considering the petitioning process, the RTM was likely to take some action with regard to such process, the overall Petitioning Rule, or both. It is therefore found that such agenda item was sufficient to provide the public with notice that, after considering the petitioning process of the RTM, the RTM might very well move that such process be rescinded.

13. It is concluded that, while the purpose of agenda is to provide sufficient notice to the public of business that the public agency plans to discuss and act upon at a public meeting, it is not intended to be, nor in fairness can it be, notice of the exact result of such action once taken.

14. Based on the foregoing, it is further concluded that the respondents did not violate the open meeting provisions of §1-225(c), G.S.

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

1. The complaint is dismissed.


Valicia Dee Harmon
as Hearing Officer