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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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William Jenkins,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-200

William H. Rose, IV, First Selectman, Town of
Chaplin; Board of Selectmen, Town of Chaplin;
and Town of Chaplin,
Respondent(s)

October 25, 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, November 13, 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 November 1, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE November 1, 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 November 1, 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: William Jenkins
William H. Rose, IV
Dennis O'Brien, Esq.

10/25/13FIC# 2013-200/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

William Jenkins,

Complainant

against

Docket #FIC 2013-200

William H. Rose IV,
First Selectman,
Town of Chaplin;
Board of Selectmen,
Town of Chaplin; and
Town of Chaplin,

Respondents

September 19, 2013

The above-captioned matter was heard as a contested case on August 23, 2013, at which time the complainant appeared, but the respondents failed to appear. Following the hearing, the hearing officer added William H. Rose IV, First Selectman, Town of Chaplin as a respondent, and ordered him to appear and show cause why a civil penalty should not be imposed against him. The case caption has been amended to reflect the addition of Mr. Rose as a respondent. Also following the hearing, counsel for the respondents contacted the hearing officer to say that they had not timely received notice of the August 23, 2013 hearing. The respondents were provided with an audio recording of the August 23, 2013 hearing, and copies of the exhibits introduced at that hearing, and the matter was again heard as a contested case on September 16, 2013, at which time the complainant and the respondents, including the First Selectman, 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 April 5, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by not posting the agenda of their March 12, 2013 special meeting until the day after the meeting.

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

Notice of each special meeting of every public agency, except for the General Assembly, either house thereof or any committee thereof, shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available

4. It is found that the respondent Board of Selectmen held a special meeting on Tuesday March 12, 2013.

5. It is found that the respondents did not electronically post notice of the March 12, 2013 meeting on the Town of Chaplin's website until March 13, 2013.

6. It is therefore concluded that the respondents violated §1-225(d), G.S., as alleged.

7. At the hearing, the complainant requested the imposition of civil penalties against the First Selectman, William H. Rose, IV, alleging that Rose had deliberately failed to provide electronic notice of the March 12, 2013 meeting in order to prevent the complainant from attending.

8. It is found that the genesis of the complaint in this matter arises from the attempt of the complainant, the Republican Registrar of Voters in Chaplin, to present an emergency contingency plan concerning elections to the respondent Board of Selectman. The complainant, in cooperation with the Democratic Registrar of Voters, sought to present an emergency contingency plan tailored to the Town of Chaplin, as an alternative to adoption of the plan that would otherwise be imposed by the Secretary of State.

9. It is found that the deadline for the adoption of a tailored plan was March 28, 2013, a fact that the complainant brought to the attention of the Chaplin Board of Selectmen in January, 2013, asking that the matter be put on the agenda for the Board's February 2013 meeting.

10. It is found that the complainant monitored the notices of the Board's meetings, and that when he learned that the matter had not been put on the agenda of the February 2013 meeting, he asked why, communicating with the office of the First Selectman.

11. It is found that the complainant asked that the matter be put on the agenda of the Board's March 7, 2013 meeting, but that it was not.

12. It is found that the complainant further communicated with the office of the First Selectman, was told that the Board would be holding a special meeting around March 12, and that the complainant asked the First Selectman's assistant, Karen O'Gorman, to put the matter on the agenda for that meeting.

13. It is found that the complainant checked the Town of Chaplin's website on March 9, 10 and 11, 2013, and that no notice of the special meeting had been posted there.

14. It is found that the complainant, who worked nights at the time, wanted to attend the meeting to advocate for the emergency plan he and his fellow Registrar of Voters had drafted, and would have altered his work schedule to do so.

15. It is found that the complainant again called the First Selectman's office at approximately 3:00 p.m. on Tuesday March 12, as he was about to report to work, and was told that the meeting was that day at 5:30 p.m. He was then unable to alter his work schedule in order to attend.

16. It is found that the First Selectman's assistant, Ms. O'Gorman, had emailed the members of the Chaplin Board of Selectman Monday March 11 at about 1:00 p.m., attaching a copy of the special meeting notice, and asking the town Library Director to post the notice on the town's website. However, Ms. O'Gorman inadvertently omitted the email address of the Library Director from her email, and did not notice her error until the following day. Consequently, the notice of the meeting was not timely posted on the town's website.

17. It is found that the First Selectman subsequently changed the procedure for posting notices of special meetings on the town's website by arranging for the Town Clerk to post the notices to the web site when the Town Clerk also posts the paper copy of the notice.

18. Section 1-206(b)(2), G.S., provides in relevant part:

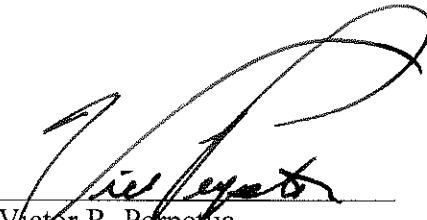
... upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

19. It is found that the First Selectman is the official responsible for the posting of notices of the Board of Selectman on the Town's web site.

20. It is found that the failure to post notice of the March 12, 2013 meeting on the town's website was inadvertent, and that there were reasonable grounds for the violation of the FOI Act. Therefore, no civil penalty is warranted.

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(d), G.S.



Victor R. Perpetua
As Hearing Officer

FIC2013-200/HOR/VRP/09192013