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Bernard Kokinchak,
Complainant(s)
against

Chairman, Animal Control Task Force, Town of Southbury; Animal Control Task Force, Town of Southbury; and Town of Southbury,
Respondent(s)

Notice of Meeting

Docket #FIC 2014-667

June 5, 2015

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, June 24, 2015.** 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 June 12, 2015.*** 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 June 12, 2015.*** **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 June 12, 2015,*** 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: Benard Kokinchak
Jeffrey J. Tinley, Esq.

2015-06-05/FIC# 2014-667/Trans/wrbp/KKR//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Bernard Kokinchak,

Complainant

against

Chairman, Animal Control
Task Force, Town of Southbury;
Animal Control Task Force,
Town of Southbury; and
Town of Southbury,

Respondents

Report of Hearing Officer

Docket #FIC 2014-667

May 7, 2015

The above-captioned matter was heard as a contested case on May 5, 2015, 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 and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. By email, dated October 9, 2014 and filed October 14, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act when members of the respondent task force ("task force") "ordered" him to leave prior to the start of their October 8, 2014 meeting, and by thereafter meeting in private to discuss the substantive business of the task force.

3. Section 1-225, G.S., provides in relevant part that:

> (a)[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public....

4. Section 1-200(2), G.S., provides in relevant part that:

> "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in

> person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" does not include...communication limited to notice of meetings of any public agency or the agendas thereof.

5. It is found that notice of a special meeting of the task force, to be held at 7:00 p.m. on October 8, 2014 in room 208 of the town hall, was posted on the town's website.

6. It is found that on October 7, 2014, the secretary/vice chairperson of the task force, Jennifer O'Neill, sent notice to the task force members that the meeting was canceled, and informing them that she and another member of the task force would nevertheless be meeting on October 8th at 7 p.m. in room 208 to "discuss with the other members that can make it the schedule for next meetings and the agenda for those meetings (which is OK under the CT Freedom of Information Act)." It is found that the respondents did not post notice of the cancellation of the October 8th meeting.

7. It is found that the complainant saw the notice, described in paragraph 5, above, and, on October 8, 2014, arrived at the town hall at approximately 6:30 p.m., intending to attend and video record the meeting. It is found that the complainant was unaware that the meeting had been cancelled.

8. It is found that four members of the task force arrived at the town hall prior to 7:00 p.m., and that, at that time, the complainant was in room 208 with his video equipment. It is found that Ms. O'Neill informed the complainant that the public meeting scheduled for that evening had been cancelled, and that a meeting that is not open to the public under the FOI Act would be starting at 7:00 p.m., and that therefore he should leave. Ms. O'Neill testified that both she and another member of the task force felt that the complainant was acting "aggressively" toward them.[1] It is found that, in response to Ms. O'Neill's request that he leave the room, the complainant stated "if you want me to leave, you'll have to call the police." It is further found that, after further dialogue between Ms. O'Neill and the complainant regarding her request that he leave, Ms. O'Neill told the complainant that if she had to, she would call the police to get him to leave.

9. It is found that at approximately 7:00 p.m. the respondent left the room and the building.

10. It is found that, thereafter, the four members of the task force discussed the schedule of meetings and the agenda items for such meetings, as well as some personal matters, such as Ms. O'Neill's dog. It is found that the members did not discuss matters over which the public agency has supervision, control, jurisdiction or advisory power.

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[1] The Commission does not credit this testimony.

11. Accordingly, it is found that the gathering of the task force members on October 8th was not a "meeting," as that term is defined in the FOI Act.

12. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

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.

2. The Commission suggests that, in the future, the respondents consider posting notice of cancellation of a scheduled meeting on the town's website and on the public entrance to the building where the meeting was to be held. In addition, the Commission reminds the respondents that nothing in the FOI Act prohibits a public agency from permitting members of the public to attend gatherings of its members at which only scheduling and agenda items are to be discussed. Excluding the public from such gatherings invites suspicion that improper discussions are taking place.

Kathleen K. Ross
as Hearing Officer

FIC2014-667/hor//kkr/05062015