



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 Lovetere,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-856

Board of Education, Waterford Public Schools; and
Waterford Public Schools,
Respondent(s)

June 30, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 22, 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 July 10, 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 July 10, 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 July 10, 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: Michael Lovetere
Anne H. Littlefield, Esq.

2015-06-30/FIC# 2014-856/Trans/wrbp/VDH//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Michael Lovetere,

Complainant

against

Docket #FIC 2014-856

Board of Education, Waterford
Public Schools; and Waterford
Public Schools,

Respondents

June 23, 2015

The above-captioned matter was heard as a contested case on May 28, 2015, at which time the complainant and the respondents 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 dated November 18, 2014 and filed November 21, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") in the following ways:
 - a. By convening in executive session for the purpose of discussing an attorney-client privileged memorandum, without presenting any evidence that such a memorandum actually exists, and
 - b. By convening in executive session for the purpose of discussing an attorney-client privileged memorandum at a time when there was no claim for legal action pending against the respondents.

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

(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

4. Section 1-200(6), G.S., provides, in relevant part, as follows:

“Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: . . . discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

5. It is found that the respondents convened a regular meeting on October 23, 2014. It is found that one of the items of business on the agenda for this meeting indicated that the respondents planned to convene in executive session for the purpose of discussing an attorney-client privileged memorandum.

6. It is found that, sometime after the October 23, 2014 meeting had begun, the respondents voted to move the meeting into an executive session. It is further found that, prior to the October 23, 2014 meeting, an actual memorandum had been prepared for the respondents by their counsel.

7. The respondents claim that the memorandum is exempt from disclosure pursuant to §1-210(b)(10), G.S.

8. In relevant part, §1-210(b)(10), G.S., permits the nondisclosure of “communications privileged by the attorney-client relationship. . . .”

9. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

10. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such

public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

11. The Supreme Court has stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra. at 149.

12. The complainant contends that the respondents should be found in violation of the open meetings law because, at the time of the executive session, there was no actual litigation pending either against the respondents or by the respondents against a third party. The complainant further contends that there were other individuals, including the complainant, who had an interest in the subject matter of the legal memorandum and, thus, had an interest in attending and participating in the October 23, 2014 executive session.

13. However, first, no provision in the FOI Act requires that the respondents be engaged in current litigation in order to receive legal advice from their attorney. Second, even though there may be individuals who desire to attend an executive session and/or to whom the subject matter of an executive session may be relevant, neither desire nor interest can trump a public agency’s right to discuss a legal memorandum with its attorney in executive session, provided that the public agency has complied with the legal requirements to convene such a session.

14. In this case, it is found that the respondents made a request for legal advice to their attorney. It is further found that the attorney put her advice in writing in the form of a written memorandum. It is found that the written memorandum was transmitted in confidence between counsel and public officials or other employees acting within the scope of their employment with the respondents. It is further found that the record relates to legal advice sought by the public agencies from their attorney, received by the public officials acting on behalf of the agencies from their attorney. It is further found that the respondents did not waive the privilege.

15. After having received their counsel’s written legal advice, it is found that the respondents properly convened in executive session to discuss such advice with their attorney. It is found that the respondents did not take any votes in executive session.

16. It is found that §1-210(b)(10), G.S., exempts the memorandum described in paragraph 14, above, from mandatory disclosure, and it is concluded that §1-200(6), G.S., permitted the respondents to discuss the memorandum in executive session.

17. It is therefore further concluded that the respondents did not violate §1-225(a), G.S., 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 hereby dismissed.



Valicia Dee Harmon
as Hearing Officer