



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Bradshaw Smith,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-833

Craig Cook, Superintendent of Schools, Windsor Public Schools;
Ronald Eleveld, Michaela Fissel, Darleen Klase, Leonard Lockhart,
Richard O'Reilly, Paul Panos, Melissa Rizzo Holmes, Cristina
Santos, Kenneth Williams, as members, Board of Education,
Windsor Public Schools; and Board of Education, Windsor Public
Schools,

Respondent(s)

September 9, 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 Thursday, September 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 September 15, 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 September 15, 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 September 15, 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: Bradshaw Smith
Gary R. Brochu, Esq.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Bradshaw Smith,

Complainant

against

Docket #FIC 2014-833

Craig Cook, Superintendent of Schools,
Windsor Public Schools; Ronald Eleveld,
Michaela Fissel, Darlene Klase, Leonard
Lockhart, Richard O'Reilly, Paul Panos,
Melissa Rizzo Homes, and Kenneth
Williams, Members, Board of Education,
Windsor Public Schools,

Respondents

September 9, 2015

The above-captioned matter was heard as a contested case on August 18, 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 letter of complaint, dated and filed November 14, 2014, the complainant appealed to this Commission, alleging that an item on the agenda for the respondent board's October 21, 2014 regular meeting was not specific enough to apprise the public of the business to be conducted, in violation of the Freedom of Information ("FOI") Act. The complainant also requested the imposition of a civil penalty.
3. Section 1-225(c), G.S., provides in relevant part that:

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....

4. It is found that the agenda for the October 21, 2014 meeting stated, in relevant part, “Potential Executive Session to Review Attorney/Client Privileged Communication Regarding Personnel Matter” (capitalization in original). At the hearing in this matter, the complainant alleged that such agenda item was insufficient.

5. The Commission takes administrative notice of the minutes of the October 21, 2014 meeting of the respondent board, posted on the board’s webpage. Based upon such minutes, it is found that, on October 21, 2014, the respondent board held a regular meeting and convened in executive session to discuss a “personnel matter.”

6. It is well established that a meeting agenda must “fairly apprise the public of the action proposed,” and of the “matters to be taken up at the meeting in order to [permit the public] to properly prepare and be present to express their views.” See Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, Docket No. CV 99-047917-S, 2000 WL 765186 (superior court, judicial district of New Britain, May 3, 2000), reversed on other grounds, Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, 66 Conn. App. 279 (2001).

7. This Commission has repeatedly held that in order for the public to be fairly apprised of the reason for an executive session, the public agency must give some indication of the specific topic to be addressed. Descriptions such as “personnel,” “personnel matters,” “legal,” or even “the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee,” are inadequate. See, e.g., Richard L. Stone v. Board of Selectmen, Town of Cromwell, Docket #FIC 2010-738 (August 24, 2011) (agenda item “[e]xecutive session: [p]ersonnel,” did not fairly apprise the public of proposed matter to be discussed); Preston D. Schultz and the Citizens for Prudent Spending v. Board of Education, Woodstock Public Schools, Docket #FIC 2008-236 (February 25, 2009) (agenda item “discussion of attorney/client privilege [sic] documents and pending litigation,” did not fairly apprise the public); Bradshaw Smith v. Milo W. Peck, Jr., Member, Board of Education, Windsor Public Schools, Docket #FIC 2007-003 (August 8, 2007) (agenda item “employee personnel matters,” did not fairly apprise the public of the matter to be discussed in executive session); John Voket and the Newtown Bee v. Board of Education, Newtown Public Schools, Docket #FIC 2006-013 (October 11, 2006) (agenda item “executive session – personnel,” did not fairly apprise the public); Trenton Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048 (agenda item “executive session – personnel matters,” did not sufficiently state the reason for the executive session); and Robert Cox v. Ridgefield Board of Education, Docket #FIC 88-165 (January 25, 1989) (the agenda item listing executive session to “receive advice from legal counsel on a legal matter,” was insufficient).

8. Based upon the foregoing, it is found that the agenda item in this case did not fairly apprise the public of the nature of the executive session. It is found that, under the facts and circumstances of this case, the respondents should have more specifically identified on the agenda, and during the meeting, the nature of the “personnel matter” to be discussed.

9. At the hearing in this matter, counsel for the respondents, while acknowledging that a personnel matter was discussed in executive session, and further acknowledging the well-established law, noted in paragraphs 5 and 6, above, argued that because such personnel matter also was the subject of an attorney-client privileged memorandum, which was discussed in the executive session, the respondents were not required to identify, on the agenda, the subject matter of the memorandum. According to counsel, identifying the subject matter of the memorandum on the agenda would have destroyed the confidentiality to which that communication may be entitled, citing to the Commission's decision in Marissa Lowthert v. Chairman, Board of Education, Wilton Public Schools, Docket #FIC 2014-246 (March 11, 2015).

10. In Lowthert, the agenda item at issue stated: "Discussion of Confidential Attorney-Client privileged memorandum -- proposed to be in executive session." The complainant in that case alleged that the agenda was insufficient because it failed to disclose the subject matter of the attorney-client privileged memorandum that was discussed in executive session. The respondents in Lowthert offered evidence to support their claim that (a) the memorandum was exempt from disclosure by the attorney-client privilege; and (b) disclosure of the subject matter of the memorandum on the agenda would have revealed the substance of the confidential communication. Based upon such evidence, the Commission concluded that the agenda item did not violate §1-225(c), G.S.

11. The present case is readily distinguishable from Lowthert, however, because, in the present case, the complainant did not allege that the board's failure to identify on the agenda the *subject matter of a privileged memorandum* violated §1-225(c), G.S. Moreover, unlike the Lowthert respondents, the respondents in this case offered no witnesses or evidence at the hearing to establish (a) the existence of a written memorandum from attorney to client, (b) that the memorandum was privileged, or (c) that disclosure of the subject matter of the memorandum on the agenda would have revealed the substance of the communication.

12. As found in paragraph 4, above, the purpose of the executive session was to discuss a personnel matter. The fact that the respondents may have obtained written legal advice with regard to such personnel matter, which communication also could have been the basis for the executive session, does not eliminate the requirement that the agenda identify, with more specificity, the "personnel matter," that was the subject of the discussion in executive session.

13. Based upon the foregoing, it is concluded that the respondents violated §§1-225(c), G.S.

14. Regarding the complainant's request for the imposition of a civil penalty, §1-206(b)(2), G.S., provides, in relevant part that:

...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.

15. It is found that all members of the respondent board named in the complaint (i.e., Eleveld, Fissel, Klause, Lockhart, O'Reilly, Panos, Rizzo Holmes, and Williams), are directly responsible for the denial of the public's right to be fairly apprised of the matter that was taken up at the October 21, 2014 meeting. Based upon the Commission's previous decisions, cited in paragraphs 5 and 6, above, from which the requirements of the FOI Act with regard to the specificity of agendas are clear, it is concluded that the denial was without reasonable grounds. The individual members of the respondent board were afforded the opportunity to be present and heard at the hearing in this matter, however, no member appeared at such hearing.

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

1. Within 14 days of the Notice of Final Decision in this case, the respondent board members Eleveld, Fissel, Klause, Lockhart, O'Reilly, Panos, Rizzo Holmes, and Williams, shall remit a civil penalty in the total amount of \$100.00 (one hundred dollars) to the Commission.

2. Henceforth, the respondents shall strictly comply with the requirements of §1-225(c), G.S.


Kathleen K. Ross
As Hearing Officer