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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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Marissa Lowthert,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-147

Bruce Likly, Chairman, Board of Education, Wilton Public Schools; Christine Finkelstein, Chris Stroup, Laura Schwemm, Glen Hemmerle, and Lory Rothstein, as members, Board of Education, Wilton Public Schools; and Wilton Public Schools,

Respondent(s)

October 26, 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, November 18, 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 November 6, 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 November 6, 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 November 6, 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: Joseph S. Hubicki, Esq.
Jessica Richman Smith, Esq. and Anne Littlefield, Esq.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Marissa Lowthert,

Complainant

against

Docket #FIC 2015-147

Bruce Likly, Chairman, Board of Education, Wilton Public Schools; Christine Finkelstein as Member, Board of Education, Wilton Public Schools; Chris Stroup, as Member, Board of Education, Wilton Public Schools; Laura Schwemm, as member, Board of Education, Wilton Public Schools; Glen Hemmerle, as member, Board of Education, Wilton Public Schools; Lory Rothstein, as member, Board of Education, Wilton Public Schools; and Wilton Public Schools,

Respondents

October 22, 2015

The above-captioned matter was heard as a contested case on September 29, 2015, at which time the complainant and the respondents appeared.

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 e-mail dated February 23, 2015 and filed on February 24, 2015, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by "failing to conduct BOE business in public with prior public notice, recording of votes and publication of minutes."

3. By motion dated, and filed on June 23, 2015, the respondents moved to dismiss the complaint for lack of subject matter jurisdiction, claiming that the complaint was not timely filed.

4. In this regard, §1-206(b)(1), G.S., provides, in relevant part:

Any person...wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held. [Emphasis added].

5. It is found that on December 3, 2014, the complainant became aware of a Common Interest Agreement dated January 10, 2014 (hereinafter the "Agreement") between the respondent board, the superintendent of schools for the town of Wilton and the town of Wilton.

6. At the hearing on this matter, the complainant contended that the agreement needed to be approved by the respondent board and that the superintendent of schools needed authorization from the respondent board in order to enter into the agreement on behalf of the respondents. The complainant contended that such approval would have been given in the form of a vote that should have, pursuant to §1-225, G.S., of the FOI Act, occurred during a properly noticed public meeting.

7. However, the respondents contended that because the complainant was aware of the Agreement since December 3, 2014, she had thirty days from that date to file a complaint alleging that the board met in secret to authorize the superintendent to enter into the Agreement.¹

8. Despite learning of the agreement on December 3, 2014, it is found that the complainant did not inquire about a meeting to discuss or approve the Agreement until February 18, 2015, when she was informed that there was no record of an agenda, minutes, or votes taken at any meeting during which the board discussed and approved the Agreement.

9. It is found that the complainant filed her February 23, 2015 appeal to this Commission within thirty days after she determined that the meeting during which the agreement was discussed and approved must have occurred in secret.

¹The respondents contended that, in the alternative, the complaint should be dismissed because the respondents never discussed the Agreement as a board but rather the superintendent acted in his capacity as CFO of the school district by which he has the authority to enter into such agreements without board approval.

10. This Commission has concluded that the standard for subject matter jurisdiction in the case of an alleged secret or unnoticed meeting is thirty days after the person filing the appeal receives notice in fact that such meeting may have been held, and not thirty days after such person receives actual notice. See Daniel Savage, Jr., v. Board of Selectmen, Town of Hebron, Docket #FIC 2003-388 (May 12, 2004) (fact that complainant had actual notice of alleged violation after newspaper account published October 25, 2003 did not save complaint filed October 29, 2003 from jurisdictional defect because complainant had notice in fact of alleged secret meeting on September 12, 2003, the date the legal notice which was alleged discussed at the “secret” meeting first appeared in the newspaper); Tarzia v. Pavia, Mayor, City of Stamford, et al., Docket #FIC 2012-481 (August 14, 2013) (the complainant had notice in fact of the alleged illegal meeting as of the date by which he could have known and made reasonable inquiry of such meeting).

11. It is found that the complainant could have known and made reasonable inquiry of the alleged secret or unnoticed meeting as early as December 3, 2014.

12. Therefore, it is found that the complainant had notice in fact of the alleged secret or unnoticed meeting on December 3, 2014 and was required to file her complaint with this Commission within thirty days of that date.

13. It is found that the complainant failed to file her complaint within thirty days after she received notice in fact of the alleged secret meeting.

14. Accordingly, it is concluded that the Commission lacks jurisdiction to adjudicate this case.

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.



Attorney Tracie C. Brown
as Hearing Officer