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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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Cherlyn Poindexter and the New Haven  
Management and Professional Union,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-595

Toni Harp, Mayor, City of New Haven; Matthew  
Nemerson, New Haven Commission on Equal  
Opportunities, City of New Haven; and City of New  
Haven,

Respondent(s)

April 7, 2016

### 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, April 27, 2016**. 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 April 15, 2016**. 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 April 15, 2016**. **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 April 15, 2016**, 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: Cherlyn Poindexter  
Attorney Kathleen Foster

2016-04-07/FIC# 2015-595/Trans/wrbp/VRP//TCB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Cherlyn Poindexter and  
The New Haven Management and  
Professional Union,

Complainants

against

Docket #FIC 2015-595

Toni Harp, Mayor, City of New Haven;  
Mathew Nemerson, New Haven Commission  
On Equal Opportunities, City of New Haven;  
Kathleen Foster, Corporation Counsel,  
City of New Haven; Marcus Paca, Labor  
Relations, City of New Haven; and  
City of New Haven,

Respondents

April 7, 2016

The above-captioned matter was heard as a contested case on December 9, 2015 and January 19, 2016, at which times the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2015-514, Cherlyn Poindexter et al. v. Toni Harp et al.

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 September 11, 2015, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act at the September 9, 2015 meeting of the Commission on Equal Opportunity. The complainants sought the imposition of civil penalties against the individually named respondents.
3. Specifically, the complainants alleged:
  - a. That a quorum wasn't present at the September 9, 2015 meeting;

- b. That the Commission on Equal Opportunity did not notify Nichole Jefferson of the meeting, notify her that that information regarding her employment would be distributed at the meeting, notify her of her right to be heard, or allow her to speak;
- c. That the minutes of the meeting were not posted on the City of New Haven's website.

4. It is found that the respondent Commission on Equal Opportunity convened a meeting on September 9, 2015.

5. It is found that materials were distributed during the meeting, but that those materials did not involve Jefferson or her employment.

6. It is found that Jefferson was not discussed at the meeting.

7. It is found that the complainants brought this appeal on behalf of Jefferson, a member of the complainant union.

8. It is found that the respondent Commission on Equal Opportunity did not convene in executive session.

9. It is found that Jefferson was in attendance at the meeting, stood up and asked whether her termination was being discussed, and was told that it was not.

10. Section 1-225(a), G.S., provides in relevant part: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."

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

"Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, *provided that such individual may require that discussion be held at an open meeting ...*; and (E) 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. [Emphasis added]

12. Section 1-225(a), G.S., provides in relevant part:

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer,

such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, *except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site.* Each public agency shall make, keep and maintain a record of the proceedings of its meetings. [Emphasis added.]

13. With respect to the complainants' allegation described in paragraph 3.a, above, that a quorum was not present at the meeting, it is concluded that the complainants have not alleged a violation of the FOI Act.

14. With respect to the complainants' allegations described in paragraph 3.b., above, concerning the lack of notification to Jefferson that her employment would be discussed, it is found that the respondents did not discuss Jefferson's performance or distribute materials about her.

15. It is concluded that none of the notifications or rights asserted by Jefferson in paragraph 3.b are rights granted by the FOI Act.


16. With respect to the complainants' allegation described in paragraph 3.c, above, that the minutes of the meeting were not posted on the City of New Haven's website, it is concluded that such a claim does not allege a violation of the FOI Act.

17. It is therefore concluded that the respondents did not violate the FOI Act.

18. Having found no violations of the FOI Act by the respondents in this matter, it is unnecessary to consider the imposition of the civil penalties requested.

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.



Victor R. Perpetua  
as Hearing Officer