

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joan Foran and Emily Timreck,

Complainants

against

Docket #FIC 2017-0707

First Selectman, Town of Andover;  
Board of Selectmen,  
Town of Andover; and  
Town of Andover,

Respondents

August 8, 2018

The above-captioned matter was heard as a contested case on May 2, 2018, at which time the complainants 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 27, 2017, the complainants appealed to this Commission, alleging that during the November 1, 2017 regular meeting of the respondent board of selectmen (“board”), the board failed to vote to enter into executive session, and failed to disclose in the minutes those in attendance at such executive session, in violation of the Freedom of Information (“FOI”) Act.<sup>1</sup>
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....
  - (c) [t]he agenda of the regular meetings of every public agency...shall be available to the public and shall be filed,

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<sup>1</sup> The complainants also alleged that the respondents violated the FOI Act in that one of the items listed on the agenda for the November 1<sup>st</sup> meeting was vague, and did not inform the public of the matter to be discussed; however, such allegation was withdrawn at the hearing.

not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency....

(f) [a] public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

4. Section 1-213(a), G.S., provides, in relevant part, that:

the minutes of such executive session shall disclose all persons who are in attendance....

5. It is found that, on November 1, 2017, the board held a regular meeting, and that the complainant Foran attended such meeting, but did not stay until the meeting was adjourned.

6. It is found that the meeting agenda indicated that the board intended to discuss certain personnel matters in executive session.

7. It is found that the second to last item on the agenda was "public speak" (public comment) and that the complainant Foran was present and spoke during this portion of the meeting. At the conclusion of "public speak," the respondent first selectman ("first selectman") announced either that a vote would be needed to go into executive session to discuss the personnel matters, or called for such vote. It is found that, before there was a vote, several members of the public stood up and began exiting the room, in anticipation of the executive session, and at the same time, a discussion ensued when the clerk asked for clarification as to whether the board had adopted the minutes of a prior meeting. It is found that, at some point after this discussion about the minutes, the first selectman realized that the individuals whose performance the board intended to discuss in executive session were not present at the meeting, and determined that it would not be appropriate to convene in executive session that evening. It is found that, therefore, that the board did not vote to enter into executive session and no executive session took place during the November 1<sup>st</sup> meeting. It is found that, by this time, the complainant had left the meeting and did not see whether the board had, in fact, held an executive session. The minutes of the meeting indicate that the board voted to adjourn the meeting at approximately 10 pm.

8. At the hearing in this matter, the complainant Foran conceded that she assumed the board had held an executive session after she left the meeting, but did not in fact witness

the board convene in executive session. She questioned why, if there had been no executive session, did the minutes of the meeting appear to reflect that an executive session had taken place during such meeting, and why, if such minutes were inaccurate, were such minutes adopted by the board at its next regular meeting.

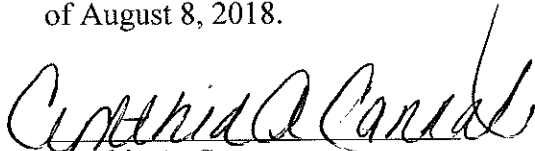
9. The respondents conceded that the minutes of the November 1<sup>st</sup> meeting were not accurate, and the first selectman testified that he did not attend the December regular meeting of the board at which such minutes were adopted, such that he could have corrected the minutes before they were adopted by the board.

10. Because the respondents did not hold an executive session during the November 1<sup>st</sup> meeting, it is concluded that the respondents did not violate the FOI Act as alleged in paragraph 2, above.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 8, 2018.



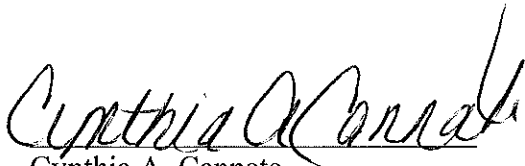
Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**JOAN FORAN**, 143 Hebron Road, Andover, CT 06232; AND **EMILY TIMRECK**, 29 Lakeside Drive, Andover, CT 06232

**FIRST SELECTMAN, TOWN OF ANDOVER; BOARD OF SELECTMEN, TOWN OF ANDOVER; AND TOWN OF ANDOVER**, c/o Attorney Dennis O'Brien, O'Brien & Johnson, 120 Bolivia Street, Willimantic, CT 06226



Cynthia A. Cannata  
Acting Clerk of the Commission