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FREEDOM OF INFORMATION



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Matthew Hennessy
Complainant(s)
against

Notice of Meeting

Docket #FIC 2021-0263

Tom Kirk, President, Materials Innovation and Recycling Authority; Donald Stein, Chair, Materials Innovation and Recycling Authority; Laurie Hunt, Director of Legal Services, Materials Innovation and Recycling Authority; and Materials Innovation and Recycling Authority
Respondent(s)

March 14, 2024

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.

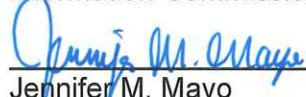
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, March 27, 2024.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 March 20, 2024.*** 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 March 20, 2024.*** ***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 March 20, 2024*** 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



Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Attorney Michael C. Harrington
Attorney Michael C. Collins

FIC# 2021-0263/ITRA/VDH//PSP/JMM/2024-03-14

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Matthew Hennessy,

Complainant

against

Docket #FIC 2021-0263

Tom Kirk, President, Materials,
Innovation and Recycling Authority;
Don Stein, Chair, Materials Innovation
and Recycling Authority, Laurie Hunt,
Director of Legal Services, Materials
Innovation and Recycling Authority;
And Materials Innovation and
Recycling Authority,

Respondents

March 11, 2024

The above-captioned matter was heard as a contested case on December 21, 2022, 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 email received and filed May 13, 2021,¹ the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act in the following ways:
 - a. Issuing an agenda that failed to describe adequately the matters planned for discussion in executive session; and
 - b. Inappropriately discussing, in an executive session, the payment of severance packages to the employees of one

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal with one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

of Material Innovation and Recycling Authority's
("MIRA") vendors.

3. In his complaint, the complainant requested that the Commission consider the imposition of civil penalties against respondents Kirk, Stein, and respondent Attorney Hunt.

4. Section 1-200(2), G.S., provides in relevant part, as follows:

"Meeting" means any hearing or other proceeding of a public agency [and] any convening or assembly of a quorum of a multimember public agency... to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power....

5. Section 1-225(a), G.S., provides, in relevant part, that "[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...."

6. Section 1-200(6) 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: (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; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; 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 supplied).

7. Section 1-225(c), G.S., provides, in relevant part:

The agenda of the regular meeting of every public agency... shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer....

8. It is found that the board of directors for MIRA held a regular meeting on May 12, 2021. It is further found that the agenda for such meeting included the follow items of business:

Executive Session to Discuss:

Pending RFPs pursuant to Conn. Gen. Stat. Section 1-210(b)(24) and Feasibility Estimates and Evaluations relative to prospective public supply contracts pursuant to Conn. Gen. Stat. Section 1-210(b)(7), including MIRA RFPs and prospective contracts for Connecticut Solid Waste System transfer facilities, transportation and disposal of acceptable solid waste at alternative disposal facilities, and the potential impact of same upon CSWS operating and capital budgets, and to discuss personal employment matters pursuant to Conn. Gen. Stat. Section 1-206, including the issues regarding the retention of critical skilled employees at the W-T-E facility.
(Emphasis supplied).

9. First, the complainant contended that the description in the respondents' May 12, 2021 agenda did not adequately describe the RFPs that were planned for discussion in executive session.

10. In Zoning Bd. of Appeals of the Town of Plainfield, the court observed that one purpose of a meeting agenda "is that that the public and interested parties be apprised of the matters to be taken up at the meeting in order to properly prepare and be present to express their views" and that "[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing." See Zoning Bd. of Appeals Town of Plainfield v. Freedom of Info. Comm'n, No. CV-00-0497917-S, 2022 WL 765186, at *3-4 (Conn. Super. Ct. May 2, 2000), rev'd on other grounds, 66 Conn. App. 279 (2001).

11. Based on the testimony of respondent Attorney Laurie Hunt, it is found that, during the May 12, 2021 meeting, the respondents believed they were going into an executive session to discuss two RFPs. It is found that that the first RFP concerned the hiring of new people to perform the "operation and maintenance of disposal and transportation at the [respondents'] transfer station." It found that the second RFP concerned the hiring of someone "to operate a transfer facility of some kind out of the south meadows property."

12. It is found that, at the time of the May 12, 2021 meeting, MIRA had not officially issued either of the RFPs described in paragraph 11, above.

13. As noted in paragraph 6, above, §1-200(6)(E), G.S., permits discussion in executive session of records that are exempt from public disclosure under the provisions of §1-210(b), G.S.

14. Section 1-210(b)(24), G.S., provides, in relevant part, that nothing in the FOI Act shall be construed to require the disclosure of:

[r]esponses to any request for proposals or bid solicitation issued by a public agency...or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended....

15. It is found that the respondents did not discuss “responses to any request for proposals or bid solicitation” issued by MIRA; or “any record or file made by [MIRA] in connection with the contract award process.” In this regard, it is further found that the respondents would not have been able to discuss such records on May 12, 2021, as MIRA had not officially issued the RFPs.

16. It is further found that, upon review of the executive session description set forth in paragraph 8, above, the public would not have been able to discern the nature or the number of matters the respondents planned to discuss concerning RFPs.

17. Accordingly, it is found that the descriptions contained in the May 12, 2021 agenda did not sufficiently apprise the public of the matters the respondents planned to discuss in executive session.²

18. It is therefore concluded that, with regard to the agenda items concerning the RFPs, the respondents violated the provisions of §1-225(c), G.S.

19. Next, the complainant contended that the respondents inappropriately discussed severance packages and retention bonuses for the employees of one of MIRA’s contractors in executive session.

20. As noted in paragraph 6, above, §1-200(6)(A), G.S., permits discussion in executive session of certain limited matters concerning public officers or public employees.

21. As stated by the Connecticut Supreme Court, the term executive session is defined as “a meeting of a public agency at which the public is excluded for one or more of [five specified] purposes....” Plan. & Zoning Comm'n of Town of Monroe v. Freedom of Info. Comm'n, 316 Conn. 1, 10 (2015). The Court further stated that: “[w]e recognize that the basic policy of the [act] supports limiting the exceptions to open meetings. This court has said that it will construe

² Because the appeal in this matter only raised an issue with the sufficiency of the descriptions of the RFP matters contained in the May 12, 2021 agenda, the Commission will not adjudicate whether convening an executive session to discuss RFPs that had not yet been issued is permissible under the FOI Act. The Commission suggests, however, that the respondents carefully review the provisions contained in §1-200(6)(E), G.S., and §1-210(b)(24), G.S.

the act to favor disclosure and that exceptions to disclosure must be narrowly construed.... The burden of establishing the applicability of an exception rests upon the party claiming it....” Id.

22. The respondents contended that, because certain non-MIRA employees were so important to the functioning of MIRA’s business, such individuals were akin to MIRA’s employees. As such, the respondents further contended that they believed it was appropriate to discuss severance packages and retention bonuses for such individuals in executive session.

23. It is found that the respondents’ reasoning inappropriately undermines the basic policy of limiting the exceptions to the FOI Act’s open meeting requirement. It is further found that such reasoning contradicts the Supreme Court’s express instruction that the five instances when the public may be excluded from a public agency’s meeting must be narrowly construed.³

24. It is therefore concluded that the respondents violated the open meeting provisions of §1-225(a), G.S., by convening an executive session to discuss various compensation issues with regard to individuals who were not employees of MIRA.

25. Based on the specific facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties.

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

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



Valicia Dee Harmon
as Hearing Officer

³ The Commission notes that the attorney who acted as MIRA’s legal counsel at the time the May 12, 2021 executive session occurred is no longer MIRA’s legal counsel.