

CV 17 6041629 S

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SUPERIOR COURT

MARISSA LOWTHERT

2021 MAR 5 PM 4 22
JUDICIAL DISTRICT

V.
FREEDOM OF INFORMATION
COMMISSION, ET AL.

JUDICIAL DISTRICT OF NEW BRITAIN
NEW BRITAIN
MARCH 5, 2021

MEMORANDUM OF DECISION

This is a ruling after remand of an administrative appeal by the plaintiff Marissa Lowthert. The plaintiff, in oral argument to this court after the freedom of information commission (FOIC) issued a final decision of July 8, 2020 addressing the remand, makes two claims: (1) that the Wilton Board of Education (the board) approved a “common interest agreement” in violation of the open-meeting provisions of the Freedom of Information Act (FOIA) and (2) that the chairman of the board constituted a “single-member agency” and his approval of the agreement in itself violated FOIA.

The first issue, also the subject of the remand order of this court on May 21, 2019, depends on whether a “meeting” of the board occurred on January 10, 2014.¹ The court reviewed

¹As explained in the May 21, 2019 order, the definition of meeting as set forth in the General Statutes in the case of a multi-member public agency is a “quorum” gathered “to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.” § 1-200 (2). As the May 21st order also stated, there are judicial decisions that have held that less than a quorum of members would constitute a “meeting,” but these cases are presently subject to review in our Supreme Court. See *City of Meriden v. Freedom of Information Commission*, Superior Court, judicial district of New Britain, Docket No. 17 6035942 (January 29, 2018), reversed, 191 Conn. App. 648 (2019), certification granted, 333 Conn. 926 (2019).

mailed to Marissa Lowthert.
Electronic notice sent to counsel of record.
A. Jordanopoulos, 3/5/21

the record before issuing its May 21st remand order and did not find any evidence of such a meeting as defined in the FOIA. The court's remand was to hear the testimony of Attorney Andreana Bellach as it was represented by the plaintiff that she had information on this point.

The FOIC heard from Attorney Bellach and concluded the following in its July 8, 2020 final decision, Finding #36 after remand. “[I]t is found that there is absolutely no evidence in the record of this case to support a finding that the respondents, or a committee thereof, held a meeting within the meeting of § 1-202 (2), G.S., on January 10, 2014.”²

The plaintiff also relies on a December 17, 2019 deposition of former board superintendent Richards to establish that board members met on January 10th.³ The deposition transcript does not mention board members as meeting with the superintendent or with the board chairman or board operating officer. The court thus continues to find that a “meeting” of a multi-member public agency, as so defined in the FOIA, did not occur.

The plaintiff makes a further argument, however. At oral argument and in Docket # 175

²The finding was based on substantial evidence in the record. *Department of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716 (2010); *Tompkins v. Freedom of Information Commission*, 136 Conn. App. 496, 509 (2012). The hearing officer did not abuse her discretion in the taking of the evidence of Attorney Bellach. *Huang Do v. Commissioner of Motor Vehicles*, 330 Conn. 651, 653 (2019).

³The plaintiff made a motion to add a portion of Richards' deposition to the court's record. Docket # 160. This motion was opposed and the objection was sustained by the court (Klau, J.) at Docket # 161,10. In Docket # 176, the plaintiff asked that Judge Klau reconsider and recuse himself regarding this motion. This recusal was granted in Docket # 176.10 and the court officer placed the motion before the undersigned. The court hereby grants this motion.

she contended that the board chairman⁴ conducted a single-member meeting of his own on January 10, 2014, citing § 1-202 (1) and cases such as *Hughes v. Superintendent of Schools*, FIC #2001-557 (May 22, 2002). The FOIC and the board argue that this issue was not raised by the plaintiff in her complaint to the FOIC. (See Docket ## 172, 173). The FOIC further stated in Docket # 172, that if this issue was properly raised, there must be a further hearing on this matter. The FOIC in its analysis of cases did not reject, as a matter of law, that such a conclusion was possible, but rather left the plaintiff's claim to further factual evidence of record.

The court therefore remands this appeal to the FOIC first to determine if the plaintiff made such a claim to the FOIC in her complaint, and if so, whether the FOIA was violated regarding its meeting provisions.⁵

It would be inappropriate for the court to rule on the issue of a single-member meeting without the findings of the FOIC. *Susan L. v. Department of Children and Families*, Superior Court, judicial district of New Britain, Docket No. CV 17 5018658 (June 4, 2018) (issues raised

⁴It is unclear whether the plaintiff contends that the superintendent instead of a board member conducted this meeting.

⁵Two further issues should be resolved at the new hearing. First, it appears that the common interest agreement has been partially released from an in camera submission in a prior court proceeding. The FOIC should undertake to decide if the entire agreement should be released. The FOIC should at this point decide whether any other in camera records should be released. Finally there is pending a motion by the plaintiff claiming that the record is not complete. See Docket # 178 and 179. Depending on whether further court appeal is necessary, the parties should agree on the contents of the administrative record.

are beyond the scope of this appeal; court will address what is only properly before the court).

So Ordered.

(Cohn, JTR)
Henry S. Cohn, JTR

A Jordanus
Court Officer
3/5/21