

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Rosemary Scott,

Complainant

against

Docket # FIC 2019-0081

President, Board of Directors,  
Knollcrest Tax District; and  
Board of Directors, Knollcrest  
Tax District,

Respondents

December 11, 2019

The above-captioned matter was heard as a contested hearing on April 23, 2019, at which time the complainant and 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 filed February 7, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act:
  - a. by failing to provide her with records responsive to her January 20, 2019 records request described in paragraph 15, below;
  - b. by failing to timely post minutes of the respondents' January 10, 2019 meeting either on the respondents' website or public board; and
  - c. by conducting business not on the agenda for the respondent's January 10, 2019 regular meeting.

The complainant requested that the Commission order the respondents to attend FOI training.

3. With respect to the allegation described in paragraph 2.a, above, §1-200(5), G.S., defines "public records or files" as follows:

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received

or retained by a public agency, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

4. Section 1-210(a), G.S., provides, in relevant part:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

5. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

6. It is found that the requested records described in paragraph 15, below, are public records within the meaning of §§1-200(5), 1-210(a), and 1-210(a), G.S.

7. It is found that, by email dated December 27, 2018, the complainant made a request to the respondents for the "cost of the new shed," "all other costs associated with the shed," and "the year to date figures" for the beach, administrative, property maintenance, and roads. It is found that the complainant was not seeking records at this time, but rather, was seeking answers to a series of questions.

8. It is found that, by email dated December 29, 2018, the respondents answered the complainant's questions, with the exception of the year to date figures. It is also found that the respondents informed the complainant that the year to date figures would be available for the complainant's review on January 10, 2019 at 7 pm, a half hour before the Board's scheduled meeting, should that date and time be convenient to the complainant. It is found that, at such time, the respondents presumed that the complainant wished to see copies of records containing the year to date figures.

9. It is found that, by email dated January 1, 2019, the complainant replied to the respondents, thanking them for their answers and stating in relevant part: "At this time, I am only interested [i]n how much has been spent so far in those categories, (beach, prop maintenance, roads, and admin) not the individual bills or line item expenditures; just the totals for each. Kathy would just email me the figures. If I wanted to explore something further, then I would meet her at the windmill and review the total P&L statements." It is found that, at such time, the complainant was not seeking copies of records; rather, she was seeking answers to questions.

10. The Commission has long concluded that a public agency is not required to answer questions, only to provide access to, and copies of, public records under the FOI Act. Nevertheless, it is found that the respondents did answer the complainant's questions, as described in paragraphs 7 and 8, above.

11. It is found that, by email dated January 5, 2019, the respondents replied to the complainant, stating the following: "...Financial numbers are presented at each monthly board meeting. Any resident that requests financial numbers other than the provided year-end financial statements can make an appointment with the treasurer 30 minutes prior to the monthly scheduled board meeting at the windmill. This will ensure less chance of error and allow for understanding of the numbers real-time. Please let me know if you will be coming to view the numbers on Thursday January 10 at 7pm at the windmill so that I can be certain to add to the treasurer's calendar." It is found that, at such time, the respondents were acting on the presumption that the complainant was seeking to inspect financial records.

12. It is found that, by email dated January 8, 2019, the complainant notified the respondents that she was not available on Thursday, January 10, and stated "please send me the YTD expenditures for the beach, prop maintenance, admin and roads."

13. It is found that, by email dated January 15, 2019, the complainant emailed the respondents and again asked for the "YTD expenditures through December 2018." It is further found that complainant requested that the information be provided to her by mail and that the respondents bill a per page fee and cost of mailing.

14. It is found that, by email dated January 18, 2019, the respondents replied to the complainant as follows: "If you would like to receive the information you have requested...you can meet me at the windmill thirty mins before the next scheduled board meeting or you can also obtain the information during the scheduled meeting. At the last Board meeting, it was voted that any financial information request other than at the Annual budget meeting or yearly Financial Statement can only be requested in person at a scheduled monthly Board meeting or a special request to meet at an agreeable date and time."

15. It is found that, by email dated January 20, 2019 the complainant replied, in relevant part, that she could not attend monthly meetings, could not be available a half hour prior to said meetings, nor could she meet in person to obtain the requested information, and requested a copy of the "year-to-date expenditures for the Tax District through December 2018" by mail and requested the respondents bill her the per page fee and cost of mailing.

16. The Commission has previously concluded that a public agency is not required to mail records to a requester and then bill the requester for records sent, as the complainant requested in paragraph 15, above. See Docket #FIC 2017-0039, James Torlai v. Chief, Police Department, Town of Darien; and Police Department, Town of Darien. While certainly many public agencies do provide copies of public records via mail, as a courtesy, and the Commission would encourage such courtesy, such action is not required by the FOI Act. Accordingly, it is concluded that the respondents did not violate the FOI Act by declining to mail the records described in paragraph 15, above, to the requester.

17. It is found that, on or about March 22, 2019, the respondents provided the complainant with the records requested as described in paragraph 15, above. At the hearing, the complainant requested that the Commission find a promptness violation in this matter. However, under the facts and circumstances of this case, such a finding would be unwarranted.

18. With respect to the allegation described in paragraph 2.b, above, §1-225, G.S., provides, in relevant part:

(a) 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.

19. It is found that the respondents held their monthly regular meeting on January 10, 2019. At the hearing in this matter, the respondents did not dispute that the record of votes contained within the meeting minutes, and the meeting minutes themselves, were not posted within seven days of the meeting.

20. Section 1-225(a), G.S., requires that state agencies post minutes on their websites. The Commission takes administrative notice of the respondents' official website, which states that the respondent district was formed in 1991 and is a "town within a town" contained within the boundaries of New Fairfield. It is found that the bylaws of the respondent district provide that its purpose to maintain roads, water, fire hydrants, community property, recreational facilities, and other purposes as set forth in §7-326, G.S. The organization of districts within the meaning of §7-326, G.S., is set forth in §7-325, G.S., which provides that such districts constitute "a body corporate and politic" having the powers to accomplish its purposes "including the power to lay and collect taxes." It is found that the respondent tax district is a political subdivision of the state, within the meaning of §1-225(a), G.S. See Candlewood Hills Tax District v. Medina, 143 Conn. App. 230, 237 (2013) (tax district similarly created pursuant to §§7-324 through 7-329, G.S., is a quasi-municipal corporation); Campanelli v. Candlewood Hill Tax District, 126 Conn. App. 135, 139-40 (2011) (quasi-municipal corporations governed by laws applicable to municipal corporations); see also State ex rel. Maisano v. Mitchell, 155 Conn. 256, 263 (1967) (analysis of term "political subdivision of the state"). Accordingly, the respondent district is not required to post its minutes on its website pursuant to §1-225(a), G.S.

21. Based upon the particular facts and circumstances of this case, it is concluded that the respondents did not violate §1-225(a), G.S., as specifically alleged in the complaint. It is unclear if the minutes of the January 10, 2019 meeting were available for public inspection within seven days, pursuant to §1-225(a), G.S., and such allegation was not made in this matter. The respondents contended that they always make a good faith effort to comply with the FOI act. The respondents are encouraged to timely make available minutes of their meetings in the future. While internet posting is not required, it would add to transparency of the respondents' public business.

22. With respect to the allegation described in paragraph 2.c, above, §1-225, G.S., provides, in relevant part:

(c) The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, 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. For any such public agency of the state, such agenda shall be posted on the public agency's and the Secretary of the State's web sites. Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings. (Emphasis added).

23. The Commission has determined that "all matters on an agency's agenda must be sufficiently specific so that the public is fairly apprised of the matters to be considered at the meeting in question." Docket #FIC 2004-091; Sherry Disbury and the Terryville/Plymouth Community News v. Police Commission, Town of Plymouth (Sept. 8, 2004). In Zoning Board of Appeals of the Town of Plainfield, et al. v. Freedom of Information Commission, et al., Superior Court, Docket No. 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of 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."

24. It is found that, the January 10, 2019 Board of Directors Meeting Agenda sets forth the following for the Board's consideration:

Public Comment;  
Review/Approval of Minutes  
KTD Board Meeting – Prior Month;

Reports  
Treasurer's Report  
Financial Overview;  
Secretary's Report  
Resident Submissions for Past Month  
General Questions and Updates  
Record Votes Taken Via Email  
To Do Review  
Outstanding Item Status/New Items  
Other Items.

25. It is found that the minutes of the January 10, 2019 Monthly Board of Directors Meeting Minutes provide, in relevant part:

Treasurer M Cronk made a motion stating that any request for detailed financial information other than year end financial statements from a current taxpayer will only be honored verbally during office hours which are 30 minutes prior to the regularly scheduled board meeting. The taxpayer must be present to obtain the information. M Gasperino seconded. All in favor – motion carried.

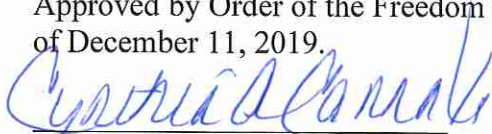
26. The complainant contended that such discussion and vote was not on the agenda, and therefore, the respondents violated the FOI Act. At the hearing, the respondents contended that they utilize a template for their meeting agendas, that the agendas never change, and when new topics are raised at a meeting they are addressed at that time.

27. It is concluded that the agenda described in paragraph 24, above, did not sufficiently apprise the public of the business transacted as described in paragraph 25, above. Accordingly, it is concluded that the respondents violated the FOI Act, as so alleged in paragraph 2.c, above.

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

1. Henceforth the respondent shall strictly comply with the requirements of §1-225, G.S.
2. Forthwith, the respondents shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall contact the FOI Commission to schedule such training session.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 11, 2019.



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:

**ROSEMARY SCOTT**, 9 Eastview Road, New Fairfield, CT 06812

**PRESIDENT, BOARD OF DIRECTORS, KNOLLCREST TAX DISTRICT; AND  
BOARD OF DIRECTORS, KNOLLCREST TAX DISTRICT**, P.O. Box 8053, New  
Fairfield, CT 06812



Cynthia A. Cannata  
Acting Clerk of the Commission