

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Nancy Rossi,

Complainant

against

Docket #FIC 2019-0375

Chairman, Ethics Commission,  
City of West Haven; Ethics  
Commission, City of West Haven; and  
City of West Haven,

Respondents

December 11, 2019

The above-captioned matter was heard as a contested case on August 21, 2019, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For hearing purposes, this matter was consolidated with Docket #FIC 2019-0274, Nancy Rossi v. Chairman, Ethics Commission, City of West Haven; Ethics Commission, City of West Haven; and City of West Haven. The Commission takes administrative notice herein of the record and decision in that case.

A Report of Hearing Officer, dated September 11, 2019, was considered, but not adopted by the Commission at its regular meeting of October 10, 2019. At such meeting, the Commission voted to remand the matter to the hearing officer for further consideration.

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 dated June 20, 2019, and filed June 24, 2019, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act, with respect to their April 11, 2019 meeting ("meeting"), by:
  - (a) failing to file a schedule of their meetings with the city clerk in January 2019, so the April 11, 2019 meeting should have been a special meeting;
  - (b) holding the special meeting in the vault in the city clerk's office which is not accessible to the public;
  - (c) taking action on investigating complaints which was not on the agenda;
  - (d) adopting rules for the meeting which was not on the agenda;

- (e) reviewing the charter and resolution which was not on the agenda;
- (f) failing to list the time of adjournment;
- (g) discussing the [ethics] complaints with the press;
- (h) failing to list an executive session on the agenda.

At the hearing in this matter, the complainant requested that this Commission declare all votes taken at the meeting null and void.

3. Section 1-206(b)(1), G.S., provides, in relevant part:

[a]ny person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. (Emphasis added).

4. It is found that the complaint in this case was filed more than 30 days after the alleged violation(s). Therefore, preliminarily, the Commission's jurisdiction over the complaint must be established.

5. Although the complainant did not allege in her complaint that the meeting was unnoticed or secret, she testified at the hearing in this matter that the agenda for the meeting was not posted 24 hours in advance of such meeting (a) on the respondents' website or (b) in the office of the city clerk.<sup>1</sup> It is found that the complainant's testimony was not rebutted by the respondents; therefore, based on the complainant's testimony, it is found that the meeting was unnoticed.

6. It is further found that the complainant received actual and constructive notice that the meeting was held approximately seven weeks later, on June 6, 2019, when the minutes of the meeting were made available to the public. Because the complainant filed the complaint

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<sup>1</sup>Section 1-225(d), G.S., requires that a notice of *special* meeting be posted on the agency's website, if available, and filed in the office of the clerk. Section 1-225(d) also requires the clerk to post the notice in his or her office. (See paragraph 10, below, for the text of §1-225(d), G.S.) The record in this case reflects that the Ethics Commission respondents filed the notice of special meeting with the city clerk in accordance with §1-225(d), G.S. The Commission notes that the complainant did not allege that the *city clerk* failed to post the agenda in his or her office as required by 1-225(d), G.S.; therefore, the Commission lacks jurisdiction to determine whether the city clerk violated such provision.

in this matter within 30 days of June 6, 2019, it is concluded that this Commission has jurisdiction over the complaint.

7. At the hearing in this matter, the complainant stated that she did not intend the statement set forth in paragraph 2(a), above, as an allegation that the respondents violated the FOI Act; but rather, included such statement to clarify her position that the meeting was a special meeting and not a regular meeting. The respondents conceded that the meeting was a special meeting.

8. With regard to the allegation set forth in paragraph 2(b), above, §1-225(a), G.S., requires that “the meetings of all public agencies, except executive sessions, shall be open to the public.” It is found that the meeting was held in city hall in a room known as the “vault”, which room the complainant described as located “behind the bar.” The complainant alleged that the *location* of the meeting rendered the meeting “inaccessible to the public.” However, it is found that the location of the meeting is not the relevant consideration in determining whether a meeting was open to the public; rather, the relevant consideration is whether any person was prohibited from attending, or unable to gain access to, the meeting. The complainant did not allege she or any other person was prohibited from attending or unable to gain access to the meeting. Accordingly, it is concluded that the allegation set forth in paragraph 2(b), above, does not state a violation of §1-225(a), G.S.

9. It is found that paragraphs 2(c), (d) and (e), above, allege, essentially, that the agenda for the meeting failed to fairly apprise the public of the business to be conducted at the meeting.

10. Section 1-225(d), G.S., provides, in relevant part:

[n]otice of each special meeting of every public agency...shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state and in the office of the clerk of each municipal member for any multitown district or agency. The secretary or clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting...The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency.

11. In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, 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.”

12. It is found that the agenda for the meeting stated: (1) Organizational meeting: Elect chairman, vice chairman, secretary; (2) Set meeting dates for 2019; (3) New business; (4) Adjourn.

13. It is found that the minutes of the meeting reflect that, during the meeting, the respondents voted to adopt Roberts Rules of Order for governing the conduct of the meeting; set meeting dates for 2019; discussed a request by a city councilman-at-large to open an investigation into vacation buy-backs by public officials, and in this context reviewed the city charter and a resolution from the city council pertaining to fringe benefits; and voted to commence an investigation into three city officials pertaining to vacation buy-backs.

14. With regard to the allegation that the respondents violated the FOI Act by failing to include as agenda items the adoption of rules of conduct for the meeting (see paragraph 2(d), above), the respondents conceded at the hearing that such action should have been noticed on the agenda. Accordingly, it is found that the respondents violated §1-225(d), G.S., as alleged.

15. With regard to the allegation that the agenda should have listed reviewing the charter and resolution (see paragraph 2(e), above), it is found that such review occurred in the context of the discussion of a substantive item of business and was not, under the facts and circumstances of this case, in itself, a substantive item of business. Therefore such review was not required to be included on the agenda.

16. In response to the allegation that the agenda did not fairly apprise the public that the respondents would discuss the possible initiation of an ethics investigation (see paragraph 2(c), above), the chairman testified that he created the agenda for the meeting. He testified that he believed “new business” accurately described the business to be transacted because the only business that the ethics commission conducts is investigation of ethics complaints, which are confidential until a finding of probable cause.

17. Based on the facts and circumstances of this case, it is found that the agenda item “new business” is overly broad, and did not fairly apprise the public that the commission would discuss at the meeting the initiation of an ethics investigation. It is found that the respondents could and should have more specifically and accurately described the agenda item as “discussion of initiation of ethics investigation(s),” or a similar description, without revealing confidential information.

18. Accordingly, it is concluded that the respondents violated §1-225(d), G.S., as alleged in paragraph 2(c), above.

19. It is found that the conduct described in paragraphs 2(f), (g), and (h), above, even if true, do not state violations of the FOI Act.

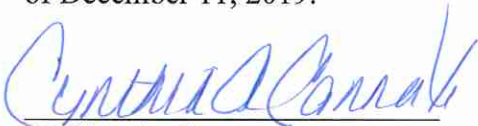
20. With regard to the complainant's request that this Commission declare null and void the actions taken at the meeting, the Commission, in its discretion, declines to consider such remedy.

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

1. Within seven (7) days of the date of the final decision in this matter, the respondent chairman shall contact the Commission's public education officer to schedule a FOI Act training session for all members of the respondent ethics commission. Said training should occur on a date not later than three (3) months from the date of the final decision.

2. Henceforth, the respondents shall strictly comply with §1-225(d), G.S.

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:

**NANCY ROSSI**, c/o Attorney Donn A. Swift, PO Box 1612, New Haven, CT 06570

**CHAIRMAN, ETHICS COMMISSION, CITY OF WEST HAVEN; ETHICS COMMISSION, CITY OF WEST HAVEN**, c/o Attorney Bryan L. LeClerc, Berchem Moses P.C., 75 Broad Street, Milford, CT 06460; AND **CITY OF WEST HAVEN**, c/o Attorney Lee Kennedy Tiernan, 355 Main Street, 3rd Floor, West Haven, CT 06516



Cynthia A. Cannata  
Acting Clerk of the Commission