

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kevin DeRoehn,

Complainant

against

Docket # FIC 2019-0180

Chief, Morris Fire Company; and Morris  
Fire Company,

Respondents

February 13, 2020

The above-captioned matter was heard as a contested case on June 5, 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. It is found that by email dated March 20, 2019, the complainant made a request to the respondents for the “voting records (including who voted, and how each member voted) for all membership votes from the 3/12/19 MFC [Morris Fire Company] monthly meeting.”
3. It is found that by email dated March 20, 2019, the respondents replied, in relevant part: “Membership voting of the MFC falls under fraternal activity and therefore is not subject to rigorous FOI requirements . . . Based on this being a fraternal activity, we do not have the records you are requesting and would not give them out if we did have them.”
4. By email received and dated March 26, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by refusing to provide him with records responsive to the March 20, 2019 request described in paragraph 2, above.
5. It is found that the respondents did not create, nor do they maintain, records responsive to the complainant’s request. It is further found that it is not within the general practice of the respondents to record each vote taken at its meetings. However, it is found that the respondents provided the complainant with a copy of their March 12, 2019 MFC meeting minutes in an attempt to provide him with some information.

6. It is the complainant's contention that, pursuant to §1-225, G.S., the respondents were obligated to make and maintain a record of votes because membership voting is a matter of public business and therefore is subject to the FOI Act. Thus, it is necessary to address whether action taken at the March 12, 2019 meeting of the MFC was subject to the FOI Act.

7. Section 7-314(b), G.S., provides:

The records and meetings of a volunteer fire department which is established by municipal charter or constituted as a not-for-profit Connecticut corporation shall not be subject to the provisions of the Freedom of Information Act, as defined in section 1-200, if such records and meetings concern fraternal or social matters. Records and meetings concerning matters of public safety, expenditures of public funds or other public business shall be subject to disclosure under said sections.

8. Section 1-225(a), G.S., provides:

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 website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

9. The Commission takes administrative notice of the Fire Protection Agreement and Service Contract, made July 1, 2018 and available on the Town of Morris website, which provides that the Morris Fire Company ("MFC") is a volunteer organization incorporated as a non-stock, not-for-profit that intends to provide fire protection and rescue services within the Town of Morris. It is therefore found that the respondent MFC is a volunteer fire department constituted as a not-for-profit corporation within the meaning of §7-314(b), G.S.

10. It is found that the March 12, 2019 MFC meeting minutes reflect, in relevant part, the following action taken by the MFC:

Committee Business

...

Membership

Dwayne Pond made a motion to accept Margaret Coe. Seconded by Corey Mathews. Carried.

Dwayne Pond made a motion to not accept Bryan Duffy. Seconded by Audrey Morton. Carried.

Tom Weik made a motion to accept Erica Mathews. Seconded by Dwayne Pond. Carried.

Tom Weik made a motion to move Brad Rowe from probationary to active. Seconded by Glen Threlfall. Carried.

Tom Weik made a motion to move Aaron Hurley from probationary to active. Seconded by Glen Threlfall. Carried.

11. At the hearing, the respondents offered testimony from MFC President Michael Lauretano, who attended the March 12, 2019 MFC Meeting. President Lauretano testified that the membership votes, as reflected in paragraph 10, above, pertain to whether the respondents voted to approve individuals as members of the MFC who, if approved, would serve in either emergency-response or non-emergency response capacities. President Lauretano further testified that each motion identified in paragraph 10, above, was made and carried unanimously.

12. It is found that the March 12, 2019 MFC Meeting is a meeting within the meaning of §7-314(b), G.S.

13. It is found that neither the word “fraternal” nor “social” is defined in §7-314(b), G.S. However, in the construction of statutes, words and phrases must be construed according to their commonly approved usage. See §1-1, G.S. (“Words and phrases. Construction of Statutes.”)

14. The word fraternal is defined as: “Of or pertaining to brothers...[s]howing comradeship; brotherly.... [o]f or constituting a fraternity.” *Fraternal*, The American Heritage Dictionary of the English Language (5th ed. 2019).

15. Fraternalize is defined as: “[T]o associate or mingle as brothers or on fraternal terms . . . to be friendly or amiable.” *Fraternalize*, Webster’s Collegiate Dictionary (11th ed. 2019).

16. Fraternity is defined as: “A body of people associated for a common purpose or interest . . . [T]he quality or condition of being brothers; brotherliness....” *Fraternity*, The American Heritage Dictionary of the English Language (5th ed. 2019).

17. It is found that the respondents failed to prove that the membership discussion and votes taken, as set forth in paragraphs 10 and 11 above, are social or fraternal matters that are not subject to the FOI Act. See *O’Connell v. Freedom of Info. Comm’n*, No. CV 970111859, 1997 WL 730284, at \*3, *aff’d*, 54 Conn. App. 373 (1999) citing *Wilson v. Freedom of Information Commission*, 181 Conn. 324, 341, 435 A.2d 353 (1980) (“It is the agency that bears the burden

of proving the applicability of an exemption, and therefore, the nature of the documents in question”).

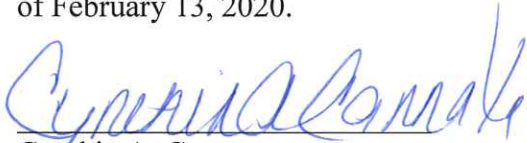
18. It is found further that the membership discussion and votes taken pertained directly to the business of the MFC: to provide fire protection and rescue services that are performed by its members. It is found that the membership discussion and votes taken directly concern “public safety, expenditure of public funds, or other public business” within the meaning of §7-314(b), G.S.<sup>1</sup>

19. Therefore, it is concluded that the respondents violated the FOI Act as alleged by the complainant when they did not maintain and make available a record of the membership votes from the March 12, 2019 MFC Meeting.

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

1. Forthwith, the respondents shall revise the March 12, 2019 MFC meeting minutes to reflect that the membership votes carried unanimously, and shall provide a copy of the revised Minutes to the complainant.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 13, 2020.



Cynthia A. Cannata  
Acting Clerk of the Commission

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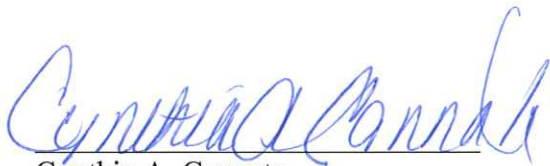
<sup>1</sup> During the hearing the respondents cited to Mayfield v. Goshen Volunteer Fire Co., Inc., 301 Conn. 739 (2011) in support of their contention that they are not subject to the FOI Act. However, the Supreme Court’s decision in Mayfield is not pertinent to the issue before the Commission. The Court in Mayfield held that the Goshen Volunteer Fire Company was not subject to the Connecticut Occupational Safety and Health Act, and therefore sustained the superior court’s decision to dismiss the State Department of Labor’s warrant application to inspect the fire company’s premises.

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:

**KEVIN DEROEHN**, 212 Watertown Road, Morris, CT 06763

**CHIEF, MORRIS FIRE COMPANY; AND MORRIS FIRE COMPANY**, 15 South Street, Morris, CT 06763



Cynthia A. Cannata  
Acting Clerk of the Commission