

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Dick Goduti,

Complainant

against

Docket #FIC 2019-0576

Robert Murphy, Chair, Harbor
Management Commission, Town of
Old Saybrook; and Paul Connolly,
Secretary, Harbor Management
Commission, Town of Old Saybrook,

Respondents

February 26, 2020

The above-captioned matter was heard as a contested case on January 16, 2020, 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 letter received and filed on September 16, 2019, the complainant alleged that the respondents, as members of the Harbor Management Commission (“HMC”), violated the Freedom of Information (“FOI”) Act by conducting an unnoticed meeting that was not open to the public and for which no minutes were filed. The complainant requested the imposition of a civil penalty against the named respondents.
3. Section 1-225(a), G.S., requires, in relevant part, that the meetings of all public agencies be open to the public and that the minutes of such meetings be available for public inspection within seven days. Section 1-225(d), G.S., requires, in relevant part, that notice of a special meeting of a public agency be posted not less than 24 hours prior to such meeting.
4. Section 1-200(2), G.S., provides that:

‘meeting’ means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

5. This matter arises out of a complaint made to the first selectman by town resident Kathy Connelly, that a small area of town-owned property, near the “clothesline marina,” had become overgrown with weeds. According to the complainant Goduti, there was a dispute over whether the town or the volunteer landscapers, who had planted some daffodils on the property, were responsible for the area’s maintenance. The first selectman referred Ms. Connelly’s complaint to Scott Mitchell (“Mitchell”), who is employed by the town as the harbor master and who reports to the HMC. It is found that Mitchell’s duties include the hiring of landscapers and other maintenance workers.

6. It is found that, in response to Ms. Connelly’s complaint, on September 4, 2019, the respondents Robert Murphy (“respondent Murphy”) and Paul Connelly (“respondent Connelly”), who are the chairman and secretary, respectively, of the HMC, along with Mitchell and Ms. Connelly, gathered at the site to view the area. Respondent Murphy testified that he viewed his role during this gathering as that of a mediator or arbitrator between Mitchell and Ms. Connelly, who had been one of the volunteer landscapers and/or an organizer of such volunteers. It is found that, during the gathering, respondent Connelly did not speak, and Mitchell asked Ms. Connelly what “would make her happy.” It is found that Ms. Connelly replied that she would like the area to be “weed-whacked,” and it is also found that there was no further discussion.

7. It is found that the minutes of the HMC’s regular meeting, held on September 9, 2019, reflect that respondent Murphy reported on the receipt of Ms. Connelly’s complaint, as well as the response thereto, described in paragraph 6, above. Additionally, it is found that the minutes of the September 9th meeting state that “it was decided” that the area would be weed-whacked, and that “this seems to have resolved the issue.”

8. The complainant pointed to the portions of the minutes quoted in paragraph 7, above, as the basis for his claim that the HMC conducted an illegal meeting.

9. At the hearing in this matter, the complainant conceded, and it is found, that the gathering was not a convening or assembly of a quorum of a multimember public agency, or a communication by or to a quorum of a multimember public agency. Rather, relying on the Appellate Court’s decision in City of Meriden v. Freedom of Information Commission, 191 Conn App. 648 (2019), *appeal pending*, City of Meriden v. Freedom of Information Commission, SC 20378, the complainant argued that the gathering was a “proceeding” of a public agency and therefore a “meeting” under §1-200(2), G.S.

10. In Meriden, less than a quorum of the city council gathered at city hall to discuss the search for a new city manager, and during such gathering, came to a consensus to submit a resolution to the full city council to create a personnel search committee. The group drafted a resolution, which included the names of the people to be appointed to the search committee, as well as a description of the committee’s duties, which included recommending candidates to the full city council. Two weeks later, during a regular city council meeting, the group introduced the resolution, which was placed on the council’s consent calendar and adopted without amendment. The gathering was not noticed in accordance with the

requirements of the FOI Act, and a local newspaper editor filed a complaint with the FOI Commission alleging an illegal meeting.

11. The Commission found that the group had implicit authorization from the city council as a whole to decide what issues to bring before the council, and concluded that the gathering was “a step in the process of agency-member activity” and therefore a “proceeding” under §1-200(2), G.S.

12. The city appealed to the superior court which upheld the Commission’s decision. See City of Meriden v. Freedom of Information Commission, HHB-CV-17-6035943-S, judicial district of New Britain (January 29, 2018). The city then appealed the superior court’s decision to the Appellate Court, which reversed the decision, concluding that the term “proceeding” means a “process of adjudication,” which would not include the gathering at issue. See Meriden, 191 Conn. App. at 658. In reaching this conclusion, the Appellate Court looked to Ballentine’s Law Dictionary which defines “proceeding” as “any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object.” *Id.* The Court also cited several court decisions in which “proceeding” was defined with reference to “actions...brought and defended,” “intervening in suits,” and “the usual mode of carrying on a suit by due course of common law.” *Id.*¹

13. The complainant argued that the gathering, described in paragraph 6, above, was a “proceeding” under the Appellate Court’s interpretation of that term because the alleged conflict between the town and the volunteer landscapers was adjudicated and resolved during the gathering.

14. However, it is clear that the gathering at issue in this case was not akin to the types of adjudicative matters described by the Appellate Court, and therefore not a “proceeding” under §1-200(2), G.S.

15. Moreover, the Commission finds that even under its previous definition of “proceeding,” as a step in the process of agency-member activity, the gathering at issue herein would not have constituted a proceeding because such matter essentially was a decision by a staff member of the HMC which did not require any agency-member approval.

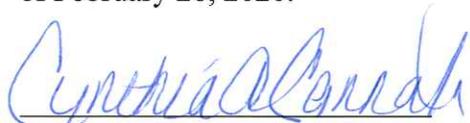
16. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

¹ The Commission petitioned for certification to appeal to the Supreme Court the issue of whether the Appellate Court properly defined the term “proceeding” in §1-200(2), G.S., and the Court granted such petition. See City of Meriden v. Freedom of Information Commission, 333 Conn. 926 (2019). Such appeal presently is pending. See City of Meriden v. Freedom of Information Commission, SC 20378. During the pendency of the appeal, the Commission is bound to follow the Appellate Court’s decision.

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 26, 2020.



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:

DICK GODUTI, 3 Gregory Place, Old Saybrook, CT 06475

ROBERT MURPHY, CHAIR, HARBOR MANAGEMENT COMMISSION, TOWN OF OLD SAYBROOK; AND PAUL CONNOLLY, SECRETARY, HARBOR MANAGEMENT COMMISSION, TOWN OF OLD SAYBROOK, c/o Attorney Michael E. Cronin, 201 Main Street, PO Box 454, Old Saybrook, CT 06475



Cynthia A. Cannata
Acting Clerk of the Commission