

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Linda Czaplinski,

Complainant

against

Docket #FIC 2021-0611

Chair, Board of Education, Oxford Public Schools; Board of Education, Oxford Public Schools; and Oxford Public Schools,

Respondents

August 10, 2022

The above-captioned matter was heard as a contested case on April 1, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).¹

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 received and filed on October 21, 2021, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act with respect to a special meeting held by the respondents on October 5, 2021. Specifically, the complainant alleged that the respondents:
 - (a) failed to consider the complainant's point of order, in violation of Robert's Rules of Order;

¹ At the hearing, the respondents moved to dismiss the complaint on the grounds that the complainant appeared via teleconference, instead of appearing via videoconference in accordance with the Notice of Remote Hearing and Order to Show Cause ("hearing notice") in this matter. The Commission notes the complainant was having technical difficulties. The respondents also moved to preclude any testimony provided and exhibits proposed by the complainant on the grounds that the complainant did not disclose a list of potential witnesses and proposed exhibits in accordance with the hearing notice. The hearing officer denied the respondents motion to preclude any testimony provided by the complainant at the time of the hearing. The complainant did not submit any proposed exhibits. The respondents' motion to dismiss and motion to preclude are hereby denied.

- (b) convened in executive session for an improper purpose;
and
- (c) took improper action while in executive session by
voting on matters of policy.

3. Section 1-225(a), G.S., provides, in relevant part:

[t]he 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....

4. Section 1-200(6), G.S., provides, in relevant part:

‘[e]xecutive sessions’ means a meeting of a public agency at which the public is excluded for one or more of the following purposes: ... (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

5. It is found that the respondents held a special meeting on October 5, 2021 (“October 5th special meeting”).

6. It is found that the following items appeared on the agenda for the October 5th special meeting under “IV. Action Items”:

- A. Receipt and consideration of attorney-client communication regarding COVID-19 masking and quarantining mandates.
- B. Discussion and possible action regarding COVID-19 masking and quarantining mandates.

It is also found that such agenda included a footnote under Action Item IV (A), which stated: “[e]xecutive session anticipated.”

7. It is found that, during the October 5th special meeting, the respondents entered into executive session after voting to do so (“executive session”).

8. With regard to the allegation described in paragraph 2(a), above, that the respondents violated Roberts Rules of Order, it is found that, prior to the executive session, the complainant raised a point of order questioning the purpose of the executive session, and that such point of order was not considered by the respondents. However, the Commission does not have authority to enforce Robert's Rules of Order. See Dept. of Public Safety v. Freedom of Information Commission, 103 Conn. App. 571, 577 (2007) (the Commission is a creature of statute with limited jurisdiction; it can only administer and enforce the provisions set forth in the FOI Act).

9. It is concluded that the Commission lacks jurisdiction over the allegation described in paragraph 2(a), above.

10. With regard to the allegation described in paragraph 2(b), above, at the hearing, the respondents contended that they properly entered into executive session to discuss an attorney-client privileged communication; specifically, a legal opinion prepared by respondents' counsel regarding COVID-19 masking and quarantining mandates.

11. Section 1-210(b)(10), G.S., permits an agency to withhold from disclosure records of "communications privileged by the attorney-client relationship."

12. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

13. Section 52-146r(2), G.S., defines "confidential communications" as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice....

14. The Supreme Court has also stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, *supra* at 149.

15. It is found that, prior to the October 5th special meeting, the Superintendent for the Oxford Public Schools asked counsel for the respondents to prepare a written legal opinion for

the respondents regarding COVID-19 masking and quarantining mandates (“legal opinion”). It is found that, during the executive session, respondents’ counsel provided such written legal opinion to the respondents for their review and consideration.

16. On May 20, 2022, pursuant to an order of the hearing officer, the respondents submitted to the Commission a four page document for an in camera inspection. Such document is identified on the in camera Index as an “attorney-client privileged communication.”

17. Based upon a careful inspection of the in camera record, it is found that the legal opinion, described in paragraph 15, above, is a written communication that was transmitted in confidence between counsel and public officials or other employees acting within the scope of their employment with the respondent agency. It is further found that such communication contains the legal advice sought by the public agency from its attorney and was received by the public officials acting on behalf of the agency from its attorney. It is further found that the respondents did not waive their claim of privilege with respect to such record.

18. It is therefore concluded that the legal opinion is exempt from disclosure pursuant to §1-210(b)(10), G.S. It is further concluded that the respondents convened in executive session for a proper purpose under §§1-200(6)(E) and 1-225(a), G.S.

19. With regard to the allegation described in paragraph 2(c), above, at the hearing, the complainant contended that the respondents improperly voted in executive session to adopt a COVID-19 masking and quarantining policy. The complainant also testified that even if there was no vote “the fact that there was no change to [the] policy [was] by default a policy decision.” The Commission has consistently ruled that action beyond discussion pursuant to §1-200(6), G.S., such as a vote, is not permissible in an executive session.

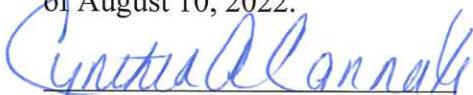
20. However, it is found, based on credible testimony provided by the respondents, that they did not vote on a COVID-19 masking and quarantining policy while in executive session. It is also found that the respondents did not change their then existing COVID-19 masking and quarantining protocols during or immediately following the executive session.

21. Based upon all of the foregoing, it is concluded that the respondents did not violate §1-225(a), G.S., 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 complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 10, 2022.



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:

LINDA CZAPLINSKI, Good Hill Farm, 30 Freeman Road, Oxford, CT 06478

CHAIR, BOARD OF EDUCATION, OXFORD PUBLIC SCHOOLS; BOARD OF EDUCATION, OXFORD PUBLIC SCHOOLS; AND OXFORD PUBLIC SCHOOLS,
c/o Attorney Zachary D. Schurin, Pullman & Comley, LLC, 90 Statehouse Square, Hartford,
CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission