

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Valmore and Leslie Caron,

Complainant

against

Docket #FIC 2021-0707

Acting Warden, Borough of
Litchfield; Board of Warden
& Burgesses, Borough of
Litchfield; and Borough of
Litchfield,

Respondents

May 11, 2022

The above-captioned matter was heard as a contested case on March 21, 2022, at which time the complainants and the respondents appeared, stipulated to certain facts 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). The case caption has been amended to accurately reflect the name of the respondent Board.

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 the respondent board held a regular meeting on December 14, 2021 (hereinafter "the meeting"), during which a somewhat controversial topic, related to the removal of yellow ribbons from trees on the borough green, was on the agenda.
3. By letter dated December 15, 2021, and filed December 16, 2021, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by:
 - a) conducting the meeting in an overcrowded room, requiring that certain members of the public remain outdoors on a cold evening;
 - b) Refusing to move the meeting to a larger space to

accommodate all attendees;

- c) Asking members of the public who wished to address the respondent board under “Public Participation” to provide their name and address;
- d) Limiting the time for the public to comment under “Public Participation” to 3 minutes per person and not allowing two “older” veterans who asked for more time to continue past their three minutes;
- e) Refusing to answer questions from the public during “Public Participation;”
- f) Ending “Public Participation” after 30-40 minutes;
- g) Failing to bring up certain communications received by the respondents under the “Communications” portion of the meeting’s agenda.

The complainants expressed their concern that the issue of a large enough venue would arise in the near future since yellow ribbon removal would be raised in an upcoming meeting.

4. With respect to the allegation described in paragraph 2.a and 2.b, above, §1-225(a), G. S., provides in relevant part that: “[t]he meetings of all public agencies...shall be open to the public.”

5. It is found that the respondents typically meet in the same space, which has an occupancy limit of 34 people that is more than adequate to accommodate the usual number of people who attend their meetings. It is further found that several people attended the meeting in order to present comment on an agenda item related to yellow ribbon removal under the “Public Participation” portion of the meeting. It is also found that such portion occurred near the beginning of the meeting. It is found that some attendees asked that the respondents move the meeting to a larger space but that the respondents rejected such suggestion.

6. It is found that, since there were more than 34 people in the room, the respondents generally asked those who had gathered if some attendees would stand outside the room, in the open air, which such attendees did. It is found that the number of attendees outside the room cannot be certain but is likely to be approximately ten. It is found that the door was left open so that the attendees standing outside could observe and listen to the meeting. It is found that some attendees decided to leave, rather than wait their turn to speak. It is also found that some attendees inside the room periodically volunteered to briefly step outside so that an attendee outside the room could enter and make public comment.

7. It is found that seventeen people, including the complainants, made public comments under the “Public Participation” portion of the meeting. It is further found that the members of

the respondent board had no discussion, either amongst themselves, or with the public commenters, during the “Public Participation” period. It is also found that many attendees left the meeting as soon as they had completed their public comments, so that after the “Public Participation” period ended, there was ample room for all attendees inside the meeting space. It is found that, at such time, the door to the outside was closed and that anyone who wished to attend the remainder of the meeting, which consisted of discussion among the board members on agenda topics, could do so inside the room.

8. Section 1-206(b)(a), G.S., provides: “[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.”

9. Specifically regarding the complainants, it is found that complainant Leslie Caron never left the room during the entirety of the meeting. It is further found that complainant Valmore Caron also attended the entire meeting inside the room, with the exception that, at one point, he volunteered on his own accord to step outside the room in order to allow an attendee waiting outside to enter the room to present their public comment.

10. It is found that neither complainant was wrongfully denied the right to attend the meeting, within the meaning of §1-206(a)(1), G.S.

11. With respect to the respondents’ decision not to move the meeting, as described in paragraph 5, above, the Commission notes that many of the overflow attendees left the meeting after making their comments; that the door was open for those temporarily standing outside who wished to see or hear the meeting; that the portion of the meeting for which anyone was standing outside solely consisted of the public comments of attendees and did not include any Board member discussion; and that the rest of the meeting was accessible for anyone who wished to observe the meeting inside the room.

12. Under the facts and circumstances of this case, it is concluded that the respondents did not violate §1-225(a), G. S., as alleged in paragraphs 2.a and 2.b, above.

13. With respect to the allegations described in paragraph 2.c, 2.d, 2.e, and 2.f, above, the Commission notes that public agencies are not required under the FOI Act to conduct a “Public Participation” or “Public Comment” period during their meetings. Therefore, such allegations do not allege a violation of the FOI Act and shall not be further addressed herein.

14. With respect to the allegation described in paragraph 2.g, above, nothing in the FOI Act mandates the inclusion of agenda items, or the specifics of topics to be discussed under those agenda items, on the meeting notices of public agencies. Therefore, the allegation described in paragraph 2.g, above, does not allege a violation of the FOI Act, and such allegation shall not be further addressed herein.

15. On brief, the complainants expressed concerns regarding the subsequent January 11, 2022 meeting of the respondents, which took place after the filing of the complaint in this matter. However, such concerns were not fairly raised in the complaint, and shall not be further addressed herein. The Commission notes, however, that, according to testimony of the parties at the hearing in this matter, the January 11, 2022, meeting occurred in a larger meeting space.

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 May 11, 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:

VALMORE AND LESLIE CARON, 59 Cathole Road, Bantam, CT 06750

ACTING WARDEN, BOROUGH BOARD OF LITCHFIELD; AND BOROUGH BOARD OF LITCHFIELD, c/o Attorney Steven E. Byrne, Byrne & Byrne LLC, 790 Farmington Avenue, Suite 2B, Farmington, CT 06032



Cynthia A. Cannata
Acting Clerk of the Commission