

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Margie Gookins,

Complainant

against

Docket # FIC 2023-0027

Genevieve Cerf, Member, Representative  
Town Meeting, Town of Groton; and  
Representative Town Meeting, Town of  
Groton,

Respondents

January 10, 2024

The above-captioned matter was heard as a contested case on May 5, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 respondent Genevieve Cerf is a member of the respondent Representative Town Meeting (“RTM”).
3. It is found that, between January 5, 2023 and January 18, 2023, in response to a records request that is not at issue in this case, the complainant received copies of certain records from the respondents. It is found that included among such records were emails sent from Ms. Cerf to other members of the RTM on the following dates: April 18, 2022; May 23, 2022; July 13, 2022; August 10, 2022 (two separate emails); September 6, 2022; and January 4, 2023.
4. By email received and filed January 31, 2023, the complainant appealed to the Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by conducting secret meetings by email. Specifically, the complainant claimed that each of the emails described in paragraph 3, above, constituted “meetings” within the meaning of the FOI Act, and that such alleged meetings were required to be open to the public.
5. Section 1-225(a), G.S., provides in relevant part that “[t]he meetings of all public agencies ... shall be open to the public.”
6. Section 1-200(2), G.S., in relevant part, defines “meeting” to mean “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.”

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

Any person ... denied the right to attend any meeting of a public agency or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] 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.

8. With respect to the alleged January 4, 2023 meeting, it is found that the complainant filed her appeal within 30 days of such alleged meeting. It is therefore concluded that the Commission has jurisdiction over the complaint with respect to such alleged meeting.

9. With respect to the remaining alleged meetings, the respondents conceded that they did not provide notice of such alleged meetings, as they maintained that the emails in question did not constitute meetings within the meaning of §1-200(2), G.S. It is found that the complainant first learned about such alleged meetings when she received copies of the emails in question sometime between January 5, 2023 and January 18, 2023. It is further found that the complainant filed her complaint within 30 days of receiving actual or constructive notice of such alleged meetings. It is therefore concluded that the Commission has jurisdiction over the complaint with respect to the alleged meetings on April 18, 2022, May 23, 2022, July 13, 2022, August 10, 2022, and September 6, 2022.

10. The respondents conceded that the emails in question were sent by Ms. Cerf “to a quorum of a multimember public agency,” within the meaning of §1-200(2), G.S., and that the content of such emails concerned “matter[s] over which the [RTM] has supervision, control, jurisdiction or advisory power,” within the meaning of §1-200(2), G.S. Accordingly, the sole issue in this case is whether such emails constituted “communication[s] ... to discuss or act upon” such a matter, within the meaning of §1-200(2), G.S.

11. In previous cases, the Commission has concluded that email and/or telephonic communications among a quorum of a multimember public agency constituted a “meeting” when the members of the agency engaged in a discussion about agency business, took a poll as to how agency members would vote at an upcoming meeting, or voted on a matter that was pending before the agency. See *Christopher Peak, et al. v. Darnell Goldson, President Board of Education, New Haven Public Schools, et al.*, Docket #FIC 2018-0386 (May 22, 2019) (series of phone calls and emails among board members to discuss and vote on action to be taken regarding student’s suspension constituted a meeting); *Jay Hardison v. Michael Harmon, Chairman, Board of Education, Darien Public Schools, et al.*, Docket #FIC 2018-0053 (Nov. 14, 2018) (series of three emails between agency members about issue pending before agency constituted a meeting); *Karen Emerick v. Ethics Commission, Town of Glastonbury*, Docket #FIC 2004-406 (Aug. 10,

2005) (emails among agency members to comment on draft rules and regulations and discuss other agency business constituted a meeting); *Kenneth A. Johnson v. John J. Allen, Jr., et al.*, Docket #FIC 1991-152 (Nov. 13, 1991) (series of phone calls between chairman and other agency members to determine members' position on application pending before agency constituted a meeting). Each of these cases involved an exchange of information between or among multiple members of the agency, rather than a one-way communication from one member of an agency to the other members.<sup>1</sup>

12. With respect to the April 18, 2022 email described in paragraphs 3 and 4, above, it is found that the Finance Director for the Town of Groton ("Town") sent Ms. Cerf a link to a presentation from a prior meeting of the respondent RTM regarding the results of the Town's 2021 revaluation. It is further found that Ms. Cerf replied to the Finance Director's email, copying the other members of the RTM, and included her views regarding the revaluation. It is found that within minutes of Ms. Cerf's email, the moderator of the RTM replied asking the members not to "respond all" to an email as this can constitute an illegal meeting." It is found that no other member of the RTM replied to Ms. Cerf's email.

13. Based on the foregoing, it is found that Ms. Cerf's April 18, 2022 email was not a "meeting," within the meaning of §1-200(2), G.S.

14. With respect to the May 23, 2022 email described in paragraphs 3 and 4, above, it is found that Ms. Cerf sent an email to the other members of the RTM stating that she would be making a motion to rescind a prior vote of the RTM. It is further found that Ms. Cerf's email included a spreadsheet and links to websites containing information relevant to her motion. It is found that Ms. Cerf's email was not sent in response to any other communication, and that no one replied to Ms. Cerf's email.

15. Based on the foregoing, it is found that Ms. Cerf's May 23, 2022 email was not a "meeting," within the meaning of §1-200(2), G.S.

16. With respect to the July 13, 2022 and September 6, 2022 emails described in paragraphs 3 and 4, above, it is found that, in each instance, a resident of the Town sent an email to the Town Clerk suggesting that the Town undertake certain infrastructure projects. It is found that the Town Clerk forwarded such emails, without substantive comment, to the members of the RTM, among other Town officials. It is further found that, in each instance, Ms. Cerf replied to all recipients with brief comments on the suggestions made by the Town resident. It is found that no one replied to Ms. Cerf's emails.

17. Based on the foregoing, it is found that Ms. Cerf's July 13, 2022 and September 6, 2022 emails were not "meetings," within the meaning of §1-200(2), G.S.

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<sup>1</sup> The Commission notes that its decision in *John Mauer, et al. v. Gale Toensing, Member, Board of Education, Regional District 1, et al.*, Docket #FIC 2013-367 (April 23, 2014) arguably may be construed as concluding that a single email from one member of a public agency to a quorum of other members constituted a meeting within the meaning of §1-200(2), G.S. To the extent the decision in *Mauer* may be construed to stand for the proposition that a single email from one member of a multimember public agency to a quorum of other members, without more, constitutes a meeting, the Commission does not endorse such a construction of §1-200(2), G.S.

18. With respect to the August 10, 2022 emails described in paragraphs 3 and 4, above, it is found that Ms. Cerf initially sent an email to several Town employees, including the Town Clerk, and asked that the email be forwarded to the RTM, Planning and Zoning Commission, Town Council, and Town staff. It is found that the email contained links to articles about short-term rentals, as well as comments from Ms. Cerf about short-term rentals in the Town. It is found that approximately 3 minutes after such email, Ms. Cerf sent another email to the same recipients, without further comment, attaching another article about short-term rentals.

19. It is found that the Town Clerk forwarded the emails described in paragraph 18, above, to the members of the RTM, among other Town officials, and stated that such emails were being sent at Ms. Cerf's request. It is found that no one replied to the Town Clerk's emails.

20. Based on the foregoing, it is found that Ms. Cerf's August 10, 2022 emails were not "meetings," within the meaning of §1-200(2), G.S.

21. With respect to the January 4, 2023 email described in paragraphs 3 and 4, above, it is found that Ms. Cerf sent an email to the members of the RTM, attaching a memorandum from Ms. Cerf regarding a resolution that was scheduled to be voted on at a meeting of the RTM Rules and Procedure Committee that evening. It is found that the memorandum was addressed to the Rules and Procedure Committee, with a copy to the RTM. It is further found that Ms. Cerf's email did not comment on the substance of the memorandum, other than to request that the Rules and Procedure Committee take the memorandum into consideration. It is found that no one replied to Ms. Cerf's email.

22. Based on the foregoing, it is found that Ms. Cerf's January 4, 2023 email was not a "meeting," within the meaning of §1-200(2), G.S.

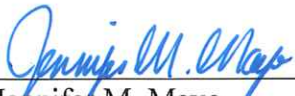
23. Based on all of the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

24. Notwithstanding the conclusion in paragraph 23, above, the Commission cautions the respondents that communicating by email about agency business may inadvertently initiate a non-public meeting in violation of the FOI Act, especially if such email contains substantive comments about issues pending before the agency. Although a single, isolated email from one member of the agency to the other members may not be a "meeting" within the meaning of §1-200(2), G.S., such an email may elicit a response from one or more other members, even if the sender did not intend to do so.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 10, 2024.

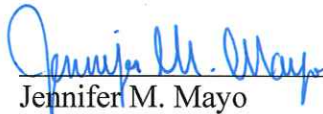
  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**MARGIE GOOKINS**, 26 Daniel Brown Drive, Mystic, CT 06355

**GENEVIEVE CERF, MEMBER, REPRESENTATIVE TOWN MEETING, TOWN OF GROTON; AND REPRESENTATIVE TOWN MEETING, TOWN OF GROTON**, c/o Attorney Nicholas F. Kepple, Suisman Shapiro Wool Brennan Gray & Greenberg, P.C, P.O. Box 1591, New London, CT 06320



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Jennifer M. Mayo  
Acting Clerk of the Commission