

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Diana Newman,

FINAL DECISION

Complainant

Docket #FIC83-59

against

November 29, 1983

University of Connecticut
Board of Trustees,

Respondent

The above captioned complaint was heard as a contested case on July 7, 1983, at which time the complainant and respondent appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency as defined by §1-18a(a), G.S.
2. On March 11, 1983, the respondent held a meeting during which it convened in executive session.
3. By letter of complaint filed with the Commission on April 7, 1983 the complainant alleged that her employment with the University of Connecticut had been discussed by the respondent in executive session, that she had not been properly notified that she would be so discussed, that the respondent had improperly voted in executive session, and that the agenda for the March 11, 1983 meeting did not provide reasonable notice of the business to be transacted at such meeting.
4. The complainant also alleged that the respondent lacked authority to take action on her employment, and that such matter was therefore not properly before the respondent on March 11, 1983. This Commission, however, lacks and declines to exercise jurisdiction over the issue of whether the respondent had authority to take action regarding the complainant's employment.
5. It is found that the agenda for the March 11, 1983 meeting of the respondent indicated that an executive session would be held for "consideration of personnel matters and pending litigation," and that there would be a chairman's report on "personnel matters."
6. A list of the proposed personnel actions was distributed to the members of the respondent along with the agenda, but such supplemental list was not otherwise made available.

7. Nothing in the agenda identified the personnel matters in a way which would have provided meaningful notice to the public of the matters to be discussed in executive session.

8. It is therefore concluded that the respondent violated §1-21, G.S. when it failed to provide meaningful notice to the public of the personnel matters to be discussed in executive session at its March 11, 1983 meeting.

9. The only document purporting to notify the complainant of the action to be taken with respect to her employment was a copy of a letter sent by the vice-president for health affairs to the dean of the school of nursing which stated as follows:

Based on [the Faculty Review Board's] unanimous vote...and your recommendation not to reappoint Dr. Diana Newman for another year, I have decided to forward to the Board of Trustees a recommendation for a terminal appointment.

10. Such letter was dated March 9, 1983 and was received by the complainant prior to the March 11, 1983 meeting. The letter, however, contained no reference to the date, time or place of the meeting at which the respondent would consider such recommendation.

11. The respondent claims that because it routinely makes its tenure decisions at its March meetings, and because the procedure for such promotion and tenure decisions is outlined in a document sent to all faculty members in November or December, the complainant should have been aware that the recommendation would be considered on March 11, 1983.

12. It is found, however, that it should not have been incumbent upon the complainant to conduct an investigation into the practices of the respondent in order to exercise her rights under §1-18a(e)(1), G.S.

13. It is concluded that the respondent violated §§1-21 and 1-18a(e)(1), G.S. when it failed to give the complainant meaningful notice that she might be discussed in executive session on March 11, 1983.

14. On March 11, 1983, the respondent voted in executive session to approve a terminal appointment for the complainant.

15. It is found that §1-18a(e)(1), G.S. provides for executive sessions held for "discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee." (emphasis added).

16. It is therefore concluded that the respondent violated §1-18a(e)(1), G.S. when, on March 11, 1983, it voted in executive session regarding the termination of the complainant's employment.

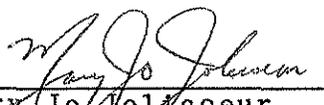
17. Later in the meeting, in public session, the respondent voted "to approve a formal list of the actions already taken by the administration on personnel matters," such list to be attached to the file copy of the respondent's minutes.

18. Although not specifically raised by the complainant, the Commission notes that making the list of actions available following the taking of the vote does not satisfy the requirements of §1-21, G.S. regarding access to public meeting. When voting upon documents not read aloud at a public meeting, an agency must make the documents to be voted upon available prior to the taking of the vote.

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

1. Based upon the respondent's failure to give meaningful notice to the complainant that she would be discussed in executive session on March 11, 1983, the respondent's action on that date with respect to the complainant's employment is hereby declared null and void.

Approved by order of the Freedom of Information Commission at its regular meeting of November 23, 1983.



Mary Jo Jolycoeur
Clerk of the Commission