

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
John D. Kotch, President  
Local 3153 AFL/CIO,

FINAL DECISION

Docket #FIC83-219

Complainant

March 14, 1984

against

Newtown Police Commission of the  
Town of Newtown,

Respondent

The above captioned matter was heard as a contested case on January 18, 1984, at which time the complainant and the 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 within the meaning of §1-18a(a), G.S.

2. The respondent held a regular meeting on October 4, 1983, the agenda for which included the items "other business" and "Executive Session - Personnel."

3. By letter of complaint filed with the Commission on October 20, 1983 the complainant alleged that "personnel" as used in the October 4, 1983 agenda and in the minutes of the October 4, 1983 meeting did not give meaningful notice of the purpose of the executive session, and that the use of the agenda item "other business" was "inconsistent with Freedom of Information policy."

4. The complainant also cited FIC#80-162 Kotch v. Town of Newtown Police Commission, in which the respondent in the above matter was advised that the statement "to discuss personnel" did not accurately reflect the purpose of the executive session in that case and was ordered to thereafter accurately state the purposes for its executive sessions and to record such purposes in the minutes of its meetings.

5. At hearing, the complainant requested that the Commission impose a fine against the respondent.

6. It is found that the October 4, 1983 executive session was held to discuss the qualifications of an individual for the position of police officer. The respondent claims that the executive session was held at the request of the individual, who requested that the discussion be conducted in private.

7. It is found that the agenda item "personnel" did not give meaningful notice to the public of the business to be conducted, in violation of §1-21, G.S.

8. It is also found that the respondent violated §1-21, G.S. when it failed to state the purpose of the executive session at the October 4, 1983 meeting and to record such purpose in the minutes of such meeting.

9. It is found that inclusion of "other business" in the agenda of a regular meeting is not prohibited by the language of the Freedom of Information Act, provided that any business conducted thereunder is preceded by a 2/3 vote of the agency to discuss new business, pursuant to §1-21, G.S.

10. The respondent did not take up any "other business" at the October 4, 1984 meeting.

11. It is found that the respondent acted without reasonable grounds when it failed to accurately state the purpose of its October 4, 1983 executive session and to record such purpose in the minutes of its October 4, 1983 meeting.

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

1. Pursuant to §1-21i(b), G.S. the following members of the respondent are hereby ordered to appear before the designated Hearing Officer in the above matter on April 2, 1984 at 10:00 a.m. in the Freedom of Information hearing room, 30 Trinity Street, Hartford, CT for the purpose of showing cause why a civil penalty ought not be imposed pursuant to such section: Chairman J. Gilbert Collins, Commissioner Clifford Bulmer, Commissioner Gerald J. Frawley, Commissioner James R. Blakely and Commissioner George E. Wilson.

Approved by order of the Freedom of Information Commission at its regular meeting of March 14, 1984.

  
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Mary Jo Jolicœur  
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
John D. Kotch, President  
Local 3153 AFL/CIO

FINAL DECISION-Supplemental  
Report of Hearing Officer

Complainant

Docket #FIC83-219

against

May 23, 1984

Newtown Police Commission of the  
Town of Newtown,

Respondent

By final decision in the above-captioned case, rendered at a regular meeting held on March 14, 1984, the Commission ordered the five members of the respondent to appear before the undersigned hearing officer for the purpose of conducting a hearing pursuant to §1-21i(b), G.S. to determine whether a civil penalty should be assessed against them and if so, in what amount. Accordingly, a hearing was held on April 2, 1984, at which time the complainant and the respondent appeared and offered argument on the issue of a civil penalty.

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

1. Paragraphs 1 through 11 of the findings contained in the final decision adopted by the Commission in the above-captioned case at its March 14, 1984 meeting are hereby incorporated as if fully set forth herein.

2. The respondent claims that a civil penalty is not an appropriate remedy because the violation found by the Commission did not involve a denial of the right to attend a public meeting.

3. The respondent's claim is unpersuasive, however, because §1-21i(b), G.S. provides that the Commission

upon the finding that a denial of any right created by sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, was without reasonable grounds may, in its discretion, impose a civil penalty. (emphasis added).

4. The respondent also claims that FIC#80-162 Kotch v. Town of Newtown Police Commission, cited by the complainant to support his request for a civil penalty, is inapposite because in that case it was found that what the respondent discussed in executive session was different from what was noticed, whereas in the present case the violation found involved a lack of specificity in the notice and description of the executive session.

5. The respondent also claims that only two of its current members, Clifford Bulmer and Gerald Frawley, were also members at the time of the hearing and decision in FIC#80-162. Furthermore, the respondent claims, none of its members received notice of the Commission's decision in that case and they therefore had no reason to know that their actions regarding the October 4, 1983 meeting were improper. At the October 4, 1983 meeting both Commissioners Bulmer and Frawley voted to convene in executive session.

6. Even if, as the respondent claims, its members received no notice of the Commission's decision, Commissioners Bulmer and Frawley had to have been aware of the complaint to the Commission, Commissioner Bulmer being actually present at the hearing before the Commission. Therefore, at least Commissioners Bulmer and Frawley had to have been aware that the statement of the purpose of an executive session was a significant issue.

7. Furthermore, the Commission notes that testimony regarding the issue of the proposed civil penalty indicated that the purpose of the October 4, 1983 executive session, contrary to earlier testimony, was not to discuss the qualifications of an individual for the position of police officer. Rather, the executive session was held to allow a female employee to express her beliefs regarding the need for female personnel on the police force.

8. Finally, the respondent claims that the executive session was convened at the request of an employee who wished to avoid the publicity that might attend a public statement of her views, that any violation was a technical one which did not violate the spirit of the Freedom of Information Act and that the members of the respondent are laypersons who should not be held to a high standard of accountability with respect to compliance with the Act.

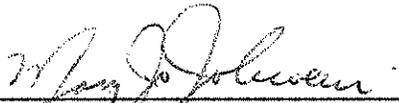
9. An employee's desire to address the respondent without publicity does not obviate the necessity for compliance with the Freedom of Information Act. However, the Commission notes that the practical consequences of the violation in question were minimal and that three of the five members of the respondent were not members of the respondent at the time FIC#80-162 came before this Commission.

10. Commissioners Bulmer and Frawley offered no persuasive explanation for their failure to comply with the requirements of the Freedom of Information Act regarding the notice and statement of purpose of the October 4, 1983 executive session.

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

1. Pursuant to §1-21i(b), G.S., a civil penalty of \$50 each is hereby imposed against Commissioners Clifford Bulmer and Gerald Frawley.

Approved by order of the Freedom of Information Commission at its regular meeting of May 23, 1984.

  
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Mary Jo Jolicœur  
Clerk of the Commission