

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Nancy Rice,

Complainant

against

Docket #FIC 2016-0076

Chairman, Conservation Advisory  
Council; Conservation Advisory  
Council; Commissioner, State of  
Connecticut, Department of Energy  
and Environmental Protection; and  
State of Connecticut, Department of  
Energy and Environmental Protection,

Respondents

September 14, 2016

The above-captioned matter was heard as a contested case on April 19, 2016, 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 Commissioner of the Department of Energy and Environmental Protection (“DEEP”) and DEEP itself are public agencies within the meaning of §1-200(1), G.S.
2. The Chairman of the Conservation Advisory Council (the “CAC”) and CAC itself maintained that they are not public agencies with the meaning of §1-200(1), G.S.
3. Section 1-200(1), G.S., defines a “public agency” or “agency” as follows:
  - (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such

- office, subdivision, agency, department, institution, bureau, board, commission, authority or official. . . . ;
- (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or
- (C) Any “implementing agency”, as defined in section 32-222.  
(Emphasis supplied).

4. Webster’s Third New International Dictionary 458 (1993) defines “committee” as “a body of persons delegated to consider, investigate, or take action upon and [usually] to report concerning some matter or business. . . .”

5. It is found that DEEP’s website identifies the CAC as one of its advisory groups, and defines the purpose of the CAC as follows:

The purpose of the Conservation Advisory Council (CAC) is:

- a. To enhance communication and the exchange of information among, and between Sportsmen and Conservation Organizations and the DEEP involving the management of natural resources;
- b. Identify and address issues that affect the user of outdoor recreation areas and natural resources; and
- c. Advise and assist the DEEP in matters involving the management of natural resources and outdoor activities.

6. While none of the respondents could testify to the facts surrounding the genesis of the CAC, the DEEP respondents submitted a document entitled, “Conservation Advisory Council to the State of Connecticut, Department of Environmental Protection: Bureau of Natural Resources and Outdoor Recreation, By-Laws” (the “CAC Bylaws”). It is found that the CAC Bylaws, which are unsigned and undated, provide that the power to appoint members to the CAC, to approve the length of members’ term limits, and to fill vacancies on the CAC resides with the Commissioner of the DEEP, as follows:

Section 1:

- b. Membership shall consist of:
  1. Not more than twenty-five (25) “regular organizational members” to be appointed by the Commissioner of the Department of Environmental Protection upon recommendation of the sitting Council;
  2. And, not more than five (5) individual, “members at large” selected from active members of a natural resource, conservation, or outdoor recreation organization to be

appointed by the Commissioner of the Department of Environmental Protection upon the recommendation of the sitting Council;

3. And, not more than ten (10) “members emeritus” selected from past regular organizational delegates or past members at large, to be appointed by the Commissioner of the Department of Environmental Protection upon recommendation of the sitting Council.

Section 2:

- a. Council member organizations and members emeritus shall be appointed to serve for a period of three years from the date of their appointment unless otherwise specified by the Commissioner of the Department of Environmental Protection;
- b. Council members at large shall be appointed to serve for a period of time to be determined by recommendation of the sitting Council and approval of the Commissioner of the Department of Environmental Protection;
- c. All existing Council memberships may be renewed on a common date by authorization of the Commissioner of the Department of Environmental Protection upon recommendation of the sitting council.

Section 6:

Vacancies occurring on the Council will be filled by appointment of the Commissioner of the Department of Environmental Protection upon recommendation of the sitting Council.

7. It is further found that the CAC Bylaws provide that the Commissioner of the Department of Environmental Protection has the power to convene a special meeting of the CAC. See CAC Bylaws, Article V, §3 (“Special meetings of the Council can be called by the Chairman, at the request of the Commissioner. . .”).

8. It is found that evidence submitted by the complainant at the contested case hearing substantiates that the CAC meeting minutes were taken, transcribed and published by a DEEP employee, who was loaned to the CAC by DEEP management for the purpose of allowing such individual to act as the CAC’s secretary. It is found that DEEP’s employee acted as CAC’s secretary for approximately one year. It is found that minutes taken by such individual, entitled “Department of Energy and Environmental Protection Conservation Advisory Council,” were transcribed on the Department of Energy and Environmental Protection’s letterhead. See Ex. C1 –C5.

9. Finally, it is found that the CAC holds its monthly meetings at DEEP's headquarters in Hartford. It is found that, at the CAC's February 2016 monthly meeting, when the complainant entered the meeting and took a seat, some of the CAC members informed her that she did not have a right to attend the meeting, as the meeting in progress was a "private" meeting; however, it is found that the DEEP officials, who were present at the meeting, corrected the CAC members, informing them that this was a public meeting<sup>1</sup> and, as such, the complainant had the right to attend.

10. The respondents contended that, because none of the current members of the CAC are members of DEEP, the CAC should not be considered a committee of or created by DEEP.

11. This issue was addressed in Elections Review Committee of the Eighth Utilities District v. FOIC, 219 Conn. 685 (1991) ("ERC"). In ERC, a district board created a committee to study, amongst other things, the procedures of the annual meeting. The committee was composed of one district director and three volunteer electors who held no office in the district. Subsequently, an elector of the district who was not part of the committee requested a copy of the committee's meeting minutes. The committee denied the request, claiming that it was not a committee of the district board. When the Supreme Court decided the ERC case, the definition of a public agency did not include the "or created by" language. See ¶ 3(A), above.<sup>2</sup> The Supreme Court explained the legal issue before it as follows:

Thus, although the ERC is a 'committee' within the ordinary dictionary definition, it is unclear from an examination of the text of the statute whether the legislature intended the phrase 'including any committee of any such office, subdivision, [etc.] . . .' (emphasis in original) to encompass a committee that is composed of some or all persons who are not agency members.

12. In holding that the committee at issue in ERC was not a "committee of" the district board, the Supreme Court reasoned that "a 'committee of' an agency would include a body composed solely of nonmembers of the agency to whom the agency has assigned a particular task only if the use of the possessive preposition were equivalent to 'created by.'"

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<sup>1</sup> In fact, as the complainant correctly pointed out in her post-hearing brief, it is found that the nature of the issues discussed at the CAC's meetings range from general issues effecting DEEP's budget, to how to keep money flowing into DEEP for hunting and trapping programs, to how to best support DEEP's legislative initiatives.

<sup>2</sup> At the time of the ERC decision, §1-18a, which is now §1-200(1), defined a "public agency" or "agency" as "any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of any such office, subdivision, agency, department, institution, bureau, board, commission or official, and also includes any judicial office, official or body or committee thereof but only in respect to its or their administrative functions." (Emphasis supplied).

According to the Court, such a construction would be broader than what the legislature had intended.

13. Following the ERC decision and in response to such decision, the legislature passed Public Act 93-195, entitled “An Act Clarifying the Meaning of ‘Committee’ under the Freedom of Information Act,” and amended the definition of a public agency to include the “created by” language. See §1-200(1)(A), G.S.

14. It is concluded that the fact that the members of the CAC are not members of DEEP is not dispositive of whether the CAC is a public agency.

15. Based on the totality of the evidence set forth above, it is concluded that the CAC is a committee created by DEEP, and therefore a public agency, within the meaning of §1-200(1)(A), G.S. Accordingly, it is further concluded that CAC must comply with the provisions of the FOI Act.

16. It is found that, on or around January 19, 2016, the complainant attempted to contact the CAC using the contact information on DEEP’s website in order to request copies of CAC’s meeting minutes. It is found that, when the contact information proved to be outdated, the complainant informed the DEEP respondents of the same. Thereafter, it is found that, by email dated January 20, 2016, the complainant requested that the DEEP provide her with copies of the CAC’s meeting minutes.

17. It is found that, by email dated January 20, 2016, DEEP responded, in relevant part, as follows: “. . . we’re in the midst of a three day strategic planning session so it might take a little while to get back with specifics. That said, Bill [Hyatt, DEEP’s Bureau Chief of Natural Resources] is really in a better position to respond. I’ll be happy to help him in any way I can.”<sup>3</sup>

18. It is found that, by email dated January 21, 2016, the complainant responded, as follows: “I am still waiting to hear from Mr. Hyatt. Perhaps someone else can respond for him? The minutes really should be on the website per FOIA law, as well as the meeting dates, times and agendas so that they are easily accessible to the public.”

19. It is found that, by email dated January 21, 2016, Bureau Chief Hyatt informed the complainant, in relevant part, that “. . . I attend most of the [CAC] . . . meetings as a representative of our Agency, but I’m not technically a member of the group. As such I don’t have final drafts of the meeting minutes. However, I would be happy to get these for you if you would let me know the specific meetings or date range you’re interested in . . . .”

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<sup>3</sup> It is found that DEEP’s Director of the Wildlife Division within the Bureau of Natural Resources composed this email.

20. It is found that, by email dated January 21, 2016, the complainant informed DEEP that she wanted copies of the last 6 months of CAC's meeting minutes<sup>4</sup> as soon as possible and that she wanted to have access to all other past meeting minutes in the very near future. It is further found that the complainant questioned why she could not locate these meeting minutes and other CAC's records of interest on DEEP's website: "I am wondering though why these are not on the website as they should be, as well as meeting agendas and dates and times according to FOIA laws, as DEEP is a public agency and the CAC is listed on your website as an advisory group. . . ."

21. It is found that, by email dated January 31, 2016, the complainant informed the DEEP that she continued to wait for the requested records. She also stated that she understood that the CAC met the 2<sup>nd</sup> Tuesday of each month, but questioned where and at what time such meetings took place.

22. It is found that, by email dated January 31, 2016, the DEEP informed the complainant that someone from their office was asked to compile the last six months of CAC's meeting minutes and that these minutes would be scanned and emailed to the complainant within two business days. Because DEEP did not maintain the CAC's records, it is found that that, in order to facilitate the provision of CAC's records to the complainant, DEEP had to reach out to CAC. Finally, it is found that DEEP informed the complainant that the CAC meetings take place the 2<sup>nd</sup> Tuesday of each month at 7:00 PM at the DEEP building at 79 Elm Street in Hartford.

23. By email dated and filed February 1, 2016, the complainant filed a complaint with the Commission, alleging that both the DEEP respondents and the CAC respondents violated the Freedom of Information ("FOI") Act because they failed to provide her with the requested records. To be clear, the complainant alleged that she had not received all of the last six months of CAC's meeting minutes. She also alleged that, because the CAC is DEEP's advisory group, she should have been given access to the remainder of CAC's meeting minutes.

24. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

25. Section 1-210(a), G.S., provides in relevant part that:

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<sup>4</sup> It was clarified at the contested case hearing that the complainant's request for the last six months of CAC's meeting minutes refers to the meeting minutes for the months of July 2015 through December 2015.

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

26. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

27. It is found that, in this case, the complainant’s request was a request for copies of and access to the CAC’s meeting minutes.

28. It is found that, because the complainant could not directly contact the CAC, DEEP stepped in and agreed to act as an intermediary between the complainant and the CAC. It is found that DEEP provided the complainant with copies of the CAC’s meeting minutes for September 2015, October 2015, and November 2015. It is further found that there was no meeting of the CAC in August 2015.

29. Therefore, it is found that the complainant’s request for a copy of the CAC’s meeting minutes for December 2015 as well as her request for access to all of CAC’s other meeting minutes remains unfulfilled.

30. It is found that, despite the fact that DEEP, as a courtesy, offered to and did facilitate the provision of some the CAC’s meeting minutes to the complainant, such was not DEEP’s obligation. See Lash v. FOIC, et al., 300 Conn. 511, 521 n.7 (2011) (sustaining the Appellate Court’s determination that first selectman did not have duty to inquire with a separate public agency as to whether it had possession of any of the documents that requester had requested).

31. It is found that, when DEEP informed the CAC that the complainant wanted copies of the last six months of meeting minutes and desired access to all of CAC’s other meeting minutes, the CAC was on notice that the complainant had made a request for copies of, and access to, its records.

32. It is found that the CAC respondents have not supplied the complainant with access to their December 2015 meeting minutes, nor have they provided the complainant with access to their earlier meeting minutes.

33. Accordingly, it is concluded that the CAC respondents violated the disclosure provisions of the FOI Act when they failed to provide the complainant with copies of, and access to, their meeting minutes.

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

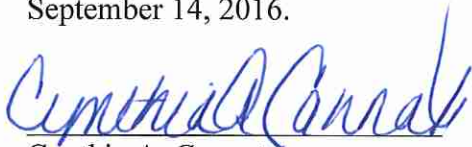
1. The complaint is hereby dismissed against the Commissioner of the Department of Energy and Environmental Protection and the Department of Energy and Environmental Protection.

2. The CAC respondents shall promptly provide the complainant with a copy of their December 2015 meeting minutes free of charge, and with access to all their other meeting minutes to the extent that such minutes exist.

3. Henceforth, the CAC respondents shall strictly comply with the disclosure requirements of the FOI Act.

4. In order to assist the CAC respondents with understanding the requirements of the FOI Act, the CAC or its designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The CAC, or its designee, shall forthwith contact the FOI Commission to schedule such training session.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 14, 2016.



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:

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Chairman, Conservation Advisory Council; Conservation Advisory Council;  
c/o Keith Cagle  
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Commissioner, State of Connecticut, Department of Energy and Environmental Protection; and State of Connecticut, Department of Energy and Environmental Protection,  
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Hartford, CT 06106

  
Cynthia A. Cannata  
Acting Clerk of the Commission