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Friends of Ryan Park, Inc.,
Complainant(s)
against

Chairman, Second Taxing District of Norwalk; and
SecondTaxing District of Norwalk,
Respondent(s)

Notice of Meeting

Docket #FIC 2015-847

July 6, 2016

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, August 10, 2016.** At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE July 29, 2016***. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE July 29, 2016***. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed ***ON OR BEFORE July 29, 2016***, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

W. Paradis
Acting Clerk of the Commission

Notice to: Attorney Daniel R. Cooper
Attorney Kara A.T. Murphy

FIC# 2015-847/Trans/wrbp/KKR//TAH2016-07-06

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Friends of Ryan Park, Inc.

Complainant

against

Chairman, Second Taxing District of Norwalk; and Second Taxing District of Norwalk,

Respondents

Report of Hearing Officer

Docket #FIC 2015-847

July 5, 2016

The above-captioned matter was heard as a contested case on May 2, 2016, at which time the complainant and the respondents appeared 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, by letter to the respondents, dated November 8, 2015, the complainant accused the respondents of "going into executive session without legal basis," on several occasions, and requested from the respondents a copy of the minutes of the executive sessions held during the July 21, 2015, September 16, 2014, and February 18, 2014, regular meetings of the respondent Second Taxing District of Norwalk. It is found that the complainant was not seeking the minutes of these regular meetings, but rather was seeking minutes detailing the substantive discussions that occurred during the executive sessions.

3. It is found that, by letter dated November 13, 2015, the respondents informed the complainant that they do not create minutes of their executive sessions, and that therefore such minutes do not exist.

4. By letter, dated December 9, 2015, and filed December 10, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act, by failing to provide him with copies of the minutes, described in paragraph 2, above.[1]

[1] At the hearing in this matter, counsel for the complainant stated that he did not wish to pursue the allegation that the respondents denied the request for the minutes of the February 18, 2014 meeting.

5. 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.

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

> 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 or . . . (3) receive a copy of such records in accordance with section 1-212.

7. 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."

8. It is found that the minutes sought by the complainant, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S., if they exist and are maintained by the respondents.

9. It is found, based upon the credible testimony of the respondents' witnesses, that the respondents, as a rule, do not create minutes detailing the substantive discussions that occur during their executive sessions, and did not create such detailed minutes of the executive sessions held during their November 8, 2015 and September 16, 2014 meetings. It is found, therefore, that such minutes do not exist.[2]

10. At the hearing in this matter, the complainant argued that, because such sessions were held for an improper purpose, this Commission should order the respondents to create minutes detailing the substantive discussions that occurred during those executive sessions.

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[2] The respondents did, however, create minutes of their November 8, 2015 and September 14, 2014 regular meetings, which minutes reflect that the respondents voted to go into and come out of executive session during each of these meetings. The complainant did not allege that the respondents failed to comply with §1-231(a), G.S., with respect to such minutes or executive sessions.

11. However, the complaint in this case does not allege a violation of the open meeting provisions of the FOI Act.[3] Accordingly, the Commission lacks jurisdiction to adjudicate the allegation, made at the hearing, that the executive sessions were improper.[4]

12. Based upon the foregoing, it is concluded that the respondents did not violate the disclosure requirements in §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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.

Kathleen K. Ross
as Hearing Officer

FIC 2015-847/hor/kkr/06012016

[3] The open meeting provisions in the FOI Act include §§1-225 and 1-200(2) and 1-200(6), G.S. The complaint in this case states that it is an "appeal of a denial of a lawful public records request pursuant to the Connecticut Freedom of Information Act…by the Second Taxing District of the City of Norwalk…."

[4] The Commission notes that, even if the complaint contained allegations of improper executive sessions, the Commission would lack jurisdiction to adjudicate such allegations because the complaint was not filed within 30 days of the alleged violations, as required by §1-206(b), G.S.