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FREEDOM OF INFORMATION



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Mark Dumas,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0809

Beth Daponte, Chairman, Town Council, Town of Stratford;
Town Council, Town of Stratford; and Town of Stratford,
Respondent(s)

April 13, 2017

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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 10, 2017**. 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 April 28, 2017**. 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 April 28, 2017**. **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 April 28, 2017**, 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
Acting Clerk of the Commission

Notice to: Mark Dumas
Attorney Bryan L. LeClerc

FIC# 2016-0809/Trans/wrbp/KKR//LFS/2017-04-13

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Mark Dumas,

Complainant

against

Docket #FIC 2016-0809

Beth DaPonte, Chairman, Town
Council, Town of Stratford; Town
Council, Town of Stratford; and
Town of Stratford,

Respondents

April 10, 2017

The above-captioned matter was heard as a contested case on February 16, 2017, 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. By email, dated and filed November 14, 2016, the complainant appealed to this Commission, alleging that items 5.3.1 and 5.3.2 on the agenda for the November 14, 2016 meeting of the respondent town council failed to fairly and sufficiently apprise the public of the “action proposed,” in violation of the Freedom of Information (“FOI”) Act. Although the complainant also requested the imposition of a civil penalty against Ms. DaPonte, he withdrew such request at the hearing in this matter.
3. With regard to the allegation described in paragraph 2, above, §1-225(c), G.S., provides in relevant part that:

[t]he agenda of the regular meetings of every public agency...shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer....
4. It is well established that a meeting agenda must “fairly apprise the public of the action proposed,” and of the “matters to be taken up at the meeting in order to [permit the public] to properly prepare and be present to express their views.” See Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, Docket No. CV 99-047917-S, 2000

WL 765186 (superior court, judicial district of New Britain, May 3, 2000), reversed on other grounds, Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, 66 Conn. App. 279 (2001).

5. This Commission repeatedly has held that in order for the public to be fairly apprised of the reason for an executive session, the public agency must give some indication of the specific topic to be addressed. Descriptions such as “personnel,” “personnel matters,” “legal,” or even “the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee,” are inadequate. See, e.g., Bradshaw Smith v. Craig Cook, Superintendent of Schools, Windsor Public Schools, et al., Docket #FIC 2014-833 (September 24, 2015) (agenda item “Potential Executive Session to Review Attorney/Client Privileged Communication Regarding Personnel Matter,” did not fairly apprise the public of matter to be discussed); Richard L. Stone v. Board of Selectmen, Town of Cromwell, Docket #FIC 2010-738 (August 24, 2011) (agenda item “[e]xecutive session: [p]ersonnel,” did not fairly apprise the public of proposed matter to be discussed); Preston D. Schultz and the Citizens for Prudent Spending v. Board of Education, Woodstock Public Schools, Docket #FIC 2008-236 (February 25, 2009) (agenda item “discussion of attorney/client privilege [sic] documents and pending litigation,” did not fairly apprise the public); Bradshaw Smith v. Milo W. Peck, Jr., Member, Board of Education, Windsor Public Schools, Docket #FIC 2007-003 (August 8, 2007) (agenda item “employee personnel matters,” did not fairly apprise the public of the matter to be discussed in executive session); John Voket and the Newtown Bee v. Board of Education, Newtown Public Schools, Docket #FIC 2006-013 (October 11, 2006) (agenda item “executive session – personnel,” did not fairly apprise the public); Trenton Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048 (agenda item “executive session – personnel matters,” did not sufficiently state the reason for the executive session); and Robert Cox v. Ridgefield Board of Education, Docket #FIC 88-165 (January 25, 1989) (the agenda item listing executive session to “receive advice from legal counsel on a legal matter,” was insufficient).

6. The extent of detail necessary to fairly apprise the public of the matters to be discussed at a meeting depends on the particular facts and circumstances of each case. Durham Middlefield Interlocal Agreement Advisory Board v. Freedom of Information Commission, CV960080435, (superior court, judicial district of New Britain, August 12, 1997).

7. In the present case, it is found that the respondent town council held a regular meeting on November 14, 2016 (“meeting”). It is found that item 5.3.1 on the agenda for the meeting, stated: “16 Goodwin Place – Executive session requested.” It is further found that item 5.3.2 on the agenda for the meeting stated: “California Condominiums – 40 California Street.”

8. In support of his allegation that these descriptions of the business to be conducted at the meeting were insufficient to fairly apprise the public of the nature of the discussions, the complainant cited the Commission’s decision in Mark Dumas v. Chairman, Town Council, Town of Stratford; and Town Council, Town of Stratford; and Town of Stratford, Docket #FIC 2015-099 (September 24, 2015) (“Docket #FIC 2015-099”).

9. In support of their claim that such descriptions were legally sufficient, the respondents cited the Commission's decision in David Fuller v. Town Council, Town of Stratford, and Town of Stratford, Docket #FIC 2016-0545 (January 25, 2017) ("Docket #FIC 2016-0545").

10. In Docket #FIC 2015-099, the complainant alleged that the following agenda items failed to apprise the public of the business to be discussed: "Longbrook Park Cell Town Reconsideration," and "231 King Street." The discussion of each of these items took place in open session during the meeting at issue, not in executive session. The Commission concluded that the agenda item "Longbrook Park Cell Town Reconsideration" sufficiently apprised the public of the business to be discussed because it identified "a particular cell town, where the tower is located and that some aspect of the cell tower was to be reconsidered." The Commission also concluded in that case, however, that the agenda item "231 King Street," did not sufficiently apprise the public of the business to be discussed, because it "did not provide the kind of meaningful information that would allow a citizen to determine whether he or she had an interest in the subject matter and, thereafter, to properly prepare for the meeting in order to express his or her views."

11. In Docket #FIC 2016-0545, the complainant therein alleged that the following agenda item failed to sufficiently apprise the public of the business to be discussed: "Executive session requested re: purchase of property." The Commission found that the respondents discussed, in executive session, "the purchase of real estate when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price." The Commission also found that the respondents offered sufficient evidence, at the hearing, to prove that including additional detail on the agenda, such as the location of the property, would have constituted "publicity" that "would have caused a likelihood of increased price." Accordingly, the Commission concluded that the respondents' failure to provide additional detail on the agenda did not violate the FOI Act.

12. In the present case, it is found that discussion of the agenda item "16 Goodwin Place," took place in open session and concerned a decision to sell that property to Habitat for Humanity. When asked by the hearing officer if there was a reason why additional information, such as the fact that the town council would be considering or discussing the sale of the property, was not included on the agenda, the respondents' witness offered no credible explanation. It is therefore concluded, based on these specific facts, and in accordance with the conclusion reached in Docket #FIC 2015-099, with respect to "231 King Street," that the respondents failed to sufficiently apprise the public of the nature of the discussion with regard to agenda item 5.3.1., in violation of §1-225(c), G.S.

13. With regard to the allegation that agenda item 5.3.2 failed to fairly apprise the public of the business to be discussed, it is found that the respondents discussed, in executive session, options relating to the completion of a town-wide drainage project, including the purchase of an easement located on 40 California Street, which easement was necessary to complete the project. It is found that the respondents offered evidence to prove that the discussion took place in executive session because the members of the town council believed that discussion in public would cause a likelihood of increase in price to the town for the easement. Accordingly, it is concluded, based on these specific facts, and in accordance with the conclusion reached in

Docket #FIC 2016-0545, that the respondents' failure to include additional detail on the agenda with regard to item 5.3.2 did not violate the FOI Act.

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

1. Henceforth, the respondents shall strictly comply with the requirements of §§1-225(c), G.S.



Kathleen K. Ross
as Hearing Officer