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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106  
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Richard Kosinski

Complainant(s)

Notice of Meeting

against

Docket #FIC 2023-0021

Chairman, Connecticut State Board of Mediation and Arbitration; and Connecticut State Board of Mediation and Arbitration

Respondent(s)

November 2, 2023

## 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.

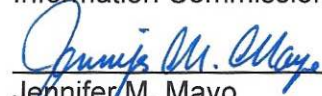
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, November 15, 2023.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 November 8, 2023.** 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 November 8, 2023.** 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 November 8, 2023** 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

  
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Jennifer M. Mayo  
Acting Clerk of the Commission

Notice to: Richard Kosinski  
Assistant Attorney General Richard T. Sponzo

FIC# 2023-0021/ITRA/CZH/DLM/JMM/2023-11-2

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Richard Kosinski,

Complainant

against

Docket #FIC 2023-0021

Chairman, Connecticut State Board of  
Mediation and Arbitration; and Connecticut  
State Board of Mediation and Arbitration,

Respondents

October 31, 2023

The above-captioned matter was heard as a contested case on August 30, 2023, 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 January 25, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act in connection with a regular meeting of the respondent Connecticut State Board of Mediation and Arbitration ("SBMA") held on January 17, 2023. Specifically, the complainant alleged that:
  - (a) discussion of the complainant's potential referral for appointment as an alternate public member of the SBMA was improperly held in executive session, after the complainant requested that it be discussed publicly at the January 17<sup>th</sup> meeting;
  - (b) the complainant was improperly denied the right to attend the remainder of the January 17<sup>th</sup> meeting after the SBMA exited its executive session; and
  - (c) the SBMA failed to timely post on their internet website the minutes for the January 17<sup>th</sup> meeting.<sup>1</sup>

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<sup>1</sup> At the hearing in this matter, the complainant alleged additional violations of the FOI Act that were not fairly raised in his complaint, and therefore, will not be further addressed herein.

In his post-hearing brief, for the first time, the complainant also requested the imposition of a civil penalty against the respondents.

3. It is found that the respondents held a regular meeting of the SBMA on January 17, 2023 and that such meeting was conducted solely by means of electronic equipment. It is also found that, prior to the January 17<sup>th</sup> regular meeting, the respondents notified the complainant that his application for appointment as an alternate public member of the SBMA would be considered at such meeting. It is further found that the complainant requested that his application be considered in open session and that the respondents provided the complainant with a remote link to attend the January 17<sup>th</sup> meeting, which was conducted solely through the use of Microsoft Teams.

4. It is found that, while the Governor of Connecticut has full power over the appointment of alternate public members of the SBMA, the SBMA reviews applications and makes recommendations for appointment to the Governor.

5. Section 1-225(a), G.S., provides, in relevant part:

[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available ... Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

6. With regard to the allegation described in paragraph 2(a), above, §1-200(6)(A), G.S., provides, in relevant part:

'[e]xecutive sessions' means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) [d]iscussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting ....

7. At the hearing in this matter, the complainant testified that he joined the January 17<sup>th</sup> meeting via the Microsoft Teams link provided by the respondents but alleged that he was

ordered to leave the meeting prior to a substantive discussion of his application. The complainant further testified that he “did not hear anything, one way or the other”, regarding his application and whether it was discussed during the executive session.

8. The respondents’ witness, the Director of the SBMA (“Director”), credibly testified, and it is found, that after the Chairman of the SBMA made an opening statement regarding his concerns about the FOI Act in relation to discussing the complainant’s application publicly or in executive session, the respondents briefly discussed the complainant’s application, during the open session of the January 17<sup>th</sup> meeting. The Director also testified, and it is found, that the respondents then asked the complainant to leave the meeting in order to enter executive session to discuss another application for appointment to the SBMA.<sup>2</sup> The Director further testified, and it is found, that no action was taken on the complainant’s application at the January 17<sup>th</sup> meeting and that no discussion of the complainant’s application occurred during the ensuing executive session.

9. It is therefore concluded that the respondents did not violate §1-200(6)(A), G.S., as alleged in the complaint.

10. With regard to the allegation described in paragraph 2(b), above, it is found that the respondents informed the complainant that he would be invited back into the January 17<sup>th</sup> meeting at the conclusion of the executive session. At the hearing, the Director admitted, and it is found, that the respondents failed to invite the complainant back into such meeting upon the conclusion of the executive session.

11. It is found, however, that the SBMA took no action during the executive session, no business was taken up after the executive session, and that, upon exiting executive session, the SBMA merely voted to adjourn the January 17<sup>th</sup> meeting.

12. It is therefore concluded that, although it was inadvertent, by failing to invite the complainant back into the January 17<sup>th</sup> meeting at the conclusion of the executive session, the respondents committed a technical violation of §1-225(a), G.S.

13. With regard to the allegation described in paragraph 2(c), above, the Director admitted, and it is found, that the minutes of the January 17<sup>th</sup> meeting were not posted until the first few days of February 2023. It is therefore found that the earliest the January 17<sup>th</sup> meeting minutes could have been posted was February 1, 2023, which is fifteen (15) days subsequent to the January 17<sup>th</sup> meeting.

14. Consequently, it is concluded that the respondents violated §1-225(a), G.S., by failing to timely file the minutes of the January 17<sup>th</sup> meeting.

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<sup>2</sup> The Commission notes that, although it was not alleged in the complaint and therefore cannot be considered herein (see FN 1, above), the respondents admitted that they failed to record or transcribe the January 17<sup>th</sup> meeting, as required by §1-225a(b), G.S. The respondents are encouraged to record or transcribe future meetings of the SBMA that are held solely by means of electronic equipment, in order to avoid violations of the FOI Act.

15. After consideration of the entire record in this case, the Commission in its discretion declines to consider the imposition of a civil penalty against the respondents.

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

1. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's director of education and communications to schedule training on the FOI Act.

2. Henceforth, the respondents shall strictly comply with the open meeting and minutes provisions of §1-225(a), G.S.

  
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C. Zack Hyde  
as Hearing Officer