

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Italian-American Heritage Group of New
Haven LLC,

Complainant

against

Docket # FIC 2020-0285

Board of Park Commissioners, City of New
Haven; and City of New Haven,

Respondents

June 23, 2021

The above-captioned matter was heard as a contested case on April 29, 2021, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

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 letter of complaint filed June 29, 2020, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by:
 - (a) voting on a matter that was not on the agenda for the respondent's June 17, 2020 meeting ("June 17th meeting")²;
 - (b) failing to make the minutes of the June 17th meeting available for public inspection within seven days of the meeting;
 - (c) failing to post the minutes of June 17th meeting on the city's website within seven days of the meeting;

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

² The complaint states: "[the] agenda contains no item reflective of the removal of a statue of Christopher Columbus from Wooster Square Park in New Haven. Upon information and belief, the...Board took a vote that evening to unanimously remove the statue. Said omission is the equivalent of the absence of an agenda."

(d) failing to make the votes taken at the June 17th meeting available for public inspection within 48 hours of such meeting; and

(e) failing to record such votes in the meeting minutes.

The complainant requested that the Commission order the respondent board to make the minutes of the June 17th meeting available for inspection, and to post the minutes on the city's website. Additionally, the complainant requested that the Commission declare the actions taken by the respondent board at the June 17th meeting null and void.

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

"[t]he meetings of all public agencies...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, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings. (Emphasis added).

4. Section 1-225(c), G.S., provides, in relevant part, that:

The 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, (1) in such agency's regular office or place of business, and (2)...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state....Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings. (Emphasis added).

5. It is found that the respondent board held a regular meeting on June 17, 2020. It is found that, during the June 17th meeting, a discussion by the board took place concerning the removal of the statue of Christopher Columbus located in the city's Wooster Square Park. It is found that the agenda for the June 17th meeting did not include any item relating to the removal

of the statue, and it is further found that the respondent board did not vote to add this item to the agenda prior to discussing and voting on the matter. Moreover, it is found that the board came to a consensus during the meeting to order removal of the statue, and that the board did not take a formal vote to approve such action.

6. It is found that minutes of the June 17th meeting were not created until approximately one month after the June 17th meeting, and that a record of the votes taken at the meeting were not made available to the public within 48 hours.³ It is further found that the minutes do not contain a record of the votes taken at the meeting.

7. It is therefore concluded that the respondents violated §1-225(a), as alleged in the complaint and as set forth in paragraphs 2(b), 2(d) and 2(e) of the findings, above.

8. With regard to the allegation set forth in paragraph 2(a), above, counsel for the complainant, at the hearing in this matter, represented that there was significant public interest in the removal of the statue and argued that therefore, the respondent board should have included discussion of such matter as an item on the meeting agenda. She further argued that had the agenda fairly apprised the public that the board intended to discuss this matter, members of the complainant would have attended the meeting.

9. Although §1-225(c), G.S., permits a public agency to add an item to the agenda of a regular meeting upon two-thirds vote of the members present and voting, the respondent board in this case, did not vote to add the matter to the agenda, as found in paragraph 5, above. “The legislature intended a two-thirds vote to add an agenda item as a way to prevent agencies from avoiding the requirement of public disclosure under the Act.” Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, 66 Conn. App. 279, 285 (2001). This requirement is “not a matter of exalting form over substance” in that “a member of a public agency may be in favor of approving a new agenda item, but also against adding the item without prior notice to the public.” Id.

10. It is therefore concluded that the respondents violated §1-225(c), G.S., by discussing and voting on a matter that was not on the agenda and which was not added to the agenda by two-thirds vote.

11. With regard to the allegation set forth in paragraph 2(c), above, §1-225(a), G.S., by its plain language, specifically exempts a public agency of a political subdivision of the state from the requirement to post minutes of its meetings on an internet website.

12. It is found that the respondents are public agencies of a political subdivision of the state.

13. It is therefore concluded that the respondents did not violate §1-225(a), G.S., as alleged in the complaint and as set forth in paragraph 2(c), above.

³ The Commission has on numerous occasions held that a consensus reached by the members of a public agency concerning formal action to be taken by the public agency is tantamount to a vote.

14. The Commission declines to consider the complainant's request that the Commission declare the votes taken at the June 17th meeting null and void.

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

1. The respondent board shall create a record of the votes taken at the June 17th meeting; amend the minutes of the meeting to reflect such votes; and make such amended minutes available to the public in its office or in the office of the city clerk within 14 days of the date of the Notice of Final Decision in this case.
2. Within 14 days of the date of the Notice of Final Decision in this case, a representative of the respondent board shall contact the staff of the Commission to arrange training for all members of the respondent board regarding the requirements of the FOI Act.
3. Henceforth, the respondents shall strictly comply with the requirements of the FOI Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 23, 2021.



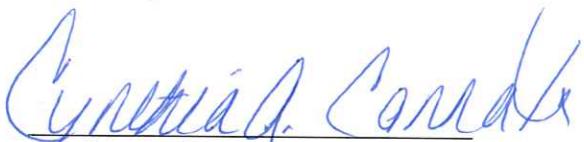
Cynthia A. Cannata
Acting Clerk of the Commission

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:

ITALIAN-AMERICAN HERITAGE GROUP OF NEW HAVEN LLC, c/o Attorney Patricia Cofrancesco, Law Offices of Patricia A. Cofrancesco, 89 Kimberly Avenue, East Haven, CT 06512

BOARD OF PARK COMMISSIONERS, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Catherine E. LaMarr, Office of the Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission