

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Kathryn Zandri,

Complainant

against

Docket # FIC 2020-0109

Chairman, Town Council, Town of
Prospect; Town Council, Town of Prospect;
and Town of Prospect,

Respondents

March 24, 2021

The above-captioned matter was heard as a contested case on December 18, 2020, 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 March 2, 2020², the complainant appealed to the Commission, alleging that the respondents violated §§1-225(a) and 1-225(f) of the Freedom of Information ("FOI") Act in relation to three public meetings of the respondent Town Council, each on January 17, 2020, January 21, 2020, and February 4, 2020. Specifically, the complainant alleges that the respondents violated the FOI Act in that:
 - (a) The agendas of each of the aforementioned meetings "fail to communicate to the public the business to be transacted in executive session" in that the "agendas fail to list the actual matter being discussed in executive session";

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

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

- (b) The minutes of the January 17, January 21 and February 4, 2020 meetings do not record a vote of the members to enter and exit the executive session, nor do the minutes identify who attended each executive session; and
- (c) The respondents failed to file any minutes for the January 17, 2020 meeting.

3. During the hearing and on brief the respondents conceded that they committed several violations of the FOI Act, as alleged by the complainant, and that they acknowledged as such at subsequent public meetings of the Town Council. The respondents contend that, although these violations occurred, they make their best attempts to comply with the FOI Act and have since taken steps to address their errors. However, the respondents request that the Commission dismiss the complaint in that several allegations are time barred, and that the complainant failed to request any specific relief.

4. During the hearing, the complainant requested the Commission order the respondents to participate in FOI Act training.

5. Section 1-206(b) provides, in relevant part, that

(1) Any person ... wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the FOI Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. *A notice of appeal shall be filed not later than thirty days after such denial*, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken...

....

(2) In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection ... the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. The commission may declare null and void any action taken at any meeting which a person was denied the right to attend

6. It is found that the January 17, 2020 meeting agenda was filed on January 14, 2020; that the January 21, 2020 meeting agenda was filed on January 17, 2020; and that the February 4,

2020 meeting agenda was filed on February 3, 2020. It is further found that the complainant attended all three meetings of the Town Council and that none of the meetings were secret or unnoticed.

7. It is therefore found that the allegations of the complainant with respect to the January 17 and 21 meeting agendas are time barred in that the complainant failed to file a notice of appeal with the Commission no later than thirty days after the alleged denial. Therefore, the Commission lacks jurisdiction to adjudicate the allegations regarding the agendas for the January 17 and 21 meetings. However, the complainant's allegation regarding the February 4, 2020 meeting agenda is not time barred, as the complaint to the Commission was filed on March 2, 2020.

8. With respect to the complainant's allegations regarding the minutes of each meeting, the Commission has held that "the responsibility to create minutes and make them available for public inspection is a continuing one and that the failure to meet such responsibility is a continuing violation...." See Docket #FIC 1988-362, William J. Beach v. Chairman, Winsted Zoning Board of Appeals and Winchester Building Inspector (December 14, 1988).

9. It is found that minutes for the January 17, 2020 meeting were not filed; minutes for the January 21, 2020 meeting were filed on February 19, 2020; and minutes for the February 4, 2020 meeting were filed on February 19, 2020. The complainant's appeal to the Commission was filed on March 2, 2020. Because no minutes have been filed for the January 17, 2020 meeting, and because the notice of appeal was filed within thirty days of the date in which the remaining minutes were filed, the Commission has jurisdiction to adjudicate the complainant's allegations pertaining to the meeting minutes.

10. With respect to the complainant's allegation that the respondents violated the FOI Act in that the February 4 meeting agenda fails "to communicate to the public the business to be transacted in executive session", §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, (1) in such agency's regular office or place of business...."

11. 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 a 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. FOI Comm'n., 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. FOI Comm'n., 66. Conn. App. 279 (2001).

12. The Commission 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 "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).

13. It is found that the respondent Town Council held a meeting on February 4, 2020 in which an executive session was convened. It is further found that the meeting agenda gives notice of the executive session as follows: “Executive Session pending litigation and related strategies and invite Mayor Bob.”

14. Based on the credible evidence presented at the hearing, and the concessions by the respondents with respect to the alleged violation, it is concluded that the respondents violated §1-225, G.S., by failing to fairly apprise the public of the action to be taken with respect to the executive session.

15. Next, the complainant alleges that the minutes of the January 17, 21 and February 4, 2020 meetings of the Town Council do not record a vote of the members to enter and exit the executive session, and do not identify the individuals who were in the executive session.

16. Section 1-225(a), G.S., provides, in relevant part, that “[t]he 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.”

17. Further, §1-225(f), G.S., provides that “a public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.”

18. Additionally, §1-231(a), G.S., provides, in relevant part, that “the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.”

19. As already set forth herein, the May 4, 2020 meeting minutes reflect that no minutes were filed for the January 17, 2020 meeting. It is further found that the January 21, 2020 and May 4, 2020 Town Council meeting minutes reflect that an executive session was held on January 17, 2020. It is found, therefore, that the respondents violated §1-225(a), G.S., by failing to file minutes for the January 17, 2020 meeting.

20. As to the minutes of the January 21, 2020 and February 4, 2020 meetings of the respondent Town Council, it is found that the respondents violated §§1-225(a) and 1-231(a), G.S., in that the minutes do not record the votes taken to enter and exit the executive session and fail to document who was in attendance at said executive sessions.

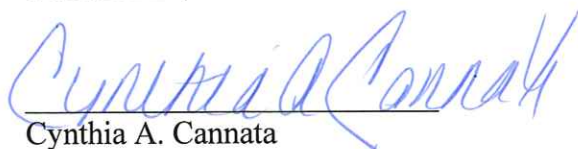
21. Therefore, it is concluded that the respondents violated the FOI Act as alleged by the complainant with respect to the February 4, 2020 meeting agenda, failing to file minutes for the January 17, 2020 meeting, and failing to record the votes taken to enter and exit executive session at each of the January 21 and February 4, 2020 meetings, and record who was in attendance at said executive sessions.

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(a), 1-225(c), 1-225(f), and 1-231(a), G.S.

2. Forthwith, the respondents, or their designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session. The training session shall be conducted as part of a public meeting of the Town Council and all members shall attend the training session.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 24, 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:

KATHRYN ZANDRI, 271 Sycamore Drive, Prospect, CT 06712

CHAIRMAN, TOWN COUNCIL, TOWN OF PROSPECT; TOWN COUNCIL, TOWN OF PROSPECT; AND TOWN OF PROSPECT, c/o Attorney David S. Hardy, Carmody Torrance Sandak & Hennessey LLP, 195 Church Street, PO Box 1950, New Haven, CT 06509-1950



Cynthia A. Cannata
Acting Clerk of the Commission