

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

John Cilio,

Complainant

against

Docket #FIC 2020-0154

Chairman, Senior Housing
Commission; Town of Sherman;
and Town of Sherman,

Respondents

March 24, 2021

The above-captioned matter was heard as a contested case on December 29, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts 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. It is found that, by email dated March 11, 2020, the complainant requested that the respondents provide him with copies of records regarding "the names and contact information of the commercial developers the Commission planned to contact (hereinafter "the requested records")."
3. By email dated March 29, 2020 and filed March 30, 2020, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by:
 - a. failing to provide him with copies of the requested records;
 - b. conducting a March 23, 2020 meeting of the respondent commission in violation of the FOI Act, because the public did not have access to such meeting;
 - c. improperly rescheduling a meeting to a federal holiday;
 - d. failing to state the purpose of an executive session conducted at a meeting on February 24, 2020 in the minutes of such meeting; and

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

e. failing to set forth in the minutes of the February 24, 2020 meeting, an oath administered during such meeting.

4. With regard to the allegation described in paragraph 3.a, above, §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.

5. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

7. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless they are exempt from disclosure.

8. It is found that the respondents disclosed copies of the requested records to the complainant on May 26, 2020.

9. The complainant contends that the disclosure was not prompt.

10. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not

possible, the agency should explain the circumstances to the requester.

11. First Selectman Don Lowe and Ted Hollander, a member of the respondent commission, appeared at the contested case hearing and testified on behalf the respondents.

12. It is found that the circumstances surrounding the timing of the request for public records in this case were unprecedented. It is found that the respondents were doing their best to move business forward, including responding to public record requests and conducting public meetings, at the start of the COVID-19 pandemic.

13. It is found that, under the facts and circumstances of the case, the disclosure of records to the complainant was prompt.

14. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., as alleged in paragraph 3.a, above.

15. With regard to the allegation described in paragraph 3.b, above, §1-225(a), G.S., provides in relevant part that “[t]he meetings of all public agencies. . . shall be open to the public.”

16. It is found that the respondent commission conducted a meeting on March 23, 2020.

17. It is found that, when the notice of the March 23 meeting was posted, the respondents forgot to include the dial-in information for this meeting for members of the public.

18. It is found that, like many public agencies attempting to conduct business at the start of the COVID-19 pandemic, the respondents found themselves in very unfamiliar territory. It is found that the March 23 meeting was the first remote meeting that the respondent commission conducted. It is found that, although the respondents had obtained a dial-in telephone number so that members of the public could access the meeting, they inadvertently forgot to include the telephone number on the meeting notice.

19. Based on the testimony of the complainant, it is found that, other than the inadvertent mistake regarding the March 23 meeting, the respondent commission’s remote meetings following the March 23 meeting have been accessible to the public by way of remote technology.

20. Nevertheless, it is concluded that the respondents violated the provisions of §1-225(a), G.S., as alleged in paragraph 3.b, above, when they conducted the March 23 meeting without providing the public a method to access such meeting.

21. With regard to the allegation described in paragraph 3.c, above, §1-230, G.S., provides in relevant part that “. . . If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day.”

22. It is found that January 20, 2020 was Martin Luther King Day, a federal holiday. Thus, if the respondent commission had a scheduled regular meeting for January 20, 2020, such

regular meeting should not have taken place on such day, by operation of law. However, the respondents did not have a regular meeting scheduled for such holiday.

23. Rather, it is found that the respondent commission had a regular meeting scheduled for January 20, 2020 which was rescheduled to January 27, 2020. It is found that, when the respondents rescheduled the January 20 regular meeting to January 27, such meeting became a special meeting.

24. Accordingly, it is concluded that the respondents did not violate §1-230, G.S., as alleged in paragraph 3.c, above.

25. With regard to the allegations described in paragraphs 3.d and 3.e, above, §1-225(a), G.S., further 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. . . Each public agency shall make, keep and maintain a record of the proceedings of its meetings.”

26. It is found that the respondent commission conducted a meeting on February 24, 2020, during which it convened in executive session.

27. Section 1-225(f) 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.”

28. With regard to the allegation described in paragraph 3.d, above, it is found that the minutes indicate the vote to enter executive session, but not the purpose of the session. Based on the facts and circumstances of this case, it is also found that such minutes do not sufficiently describe such vote. Accordingly, it is concluded that the respondent commission violated §1-225(a), G.S., as alleged in paragraph 3.d, above.

29. With regard to the allegation described in paragraph 3.e, above, the complainant also contends that the chairman of the respondent commission administered and/or discussed an oath for a new commissioner at the February 24 meeting, but that the minutes of such meeting did not specifically contain the oath.

30. It is found that the minutes of the February 24 meeting, under the heading entitled “New Business,” contain the following description: “Discussion of Letter to prospective Commissioners – no changes suggested.” It is found that, during the February 24 meeting, the respondent commission discussed the requirements for the new commissioner. It is found that such public discussion included the fact that the new commissioner had to agree to the respondent commission’s mission statement contained in the “Letter.” It is found that the complainant refers to such mission statement as an “oath.”

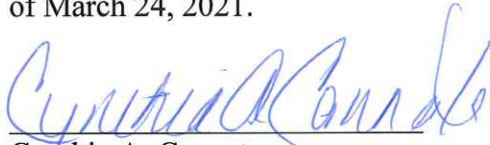
31. It is well settled that the FOI Act does not require verbatim minutes. Rather, the Commission has long held that minutes must contain, at a minimum, the date, time and place of the meeting, members present, action taken, and the votes of members with respect to such action. See, e.g. Margaret Faber v. Middle Haddam Historic Dist., Town of East Hampton, Docket No. 2007-441 (Feb. 27, 2008).

32. It is found that the description of the minutes described in paragraph 30, above, was sufficient to apprise the public of the discussion that occurred at the February 24 meeting with regard to the new commissioner, and that there was no requirement to set forth a verbatim text. Accordingly, it is concluded that the respondents did not violate §1-225(a), G.S., as alleged in paragraph 3.e, above.

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

1. With regard to the respondents' failure to include a remote access number in the notice of the March 23, 2020 meeting, no order is recommended.
2. Henceforth, the respondents shall strictly comply with the provisions of §1-225(a), G.S.

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:

JOHN CILIO, PO Box 543, Sherman, CT 06784

CHAIRMAN, SENIOR HOUSING COMMISSION, TOWN OF SHERMAN; AND TOWN OF SHERMAN, Mallory Town Hall, 9 Route 39 North, PO Box 39, Sherman, CT 06784



Cynthia A. Cannata
Acting Clerk of the Commission