

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Bill Effros,

Complainant

against

Docket # FIC 2020-0352

Chairman, Planning and Zoning
Commission, Town of Greenwich;
Planning and Zoning Commission,
Town of Greenwich; and
Town of Greenwich,

Respondents

October 13, 2021

The above-captioned matter was heard as a contested case on May 14, 2021, and July 15, 2021, at which times 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 May 14th hearing was conducted telephonically,¹ and the July 15th hearing was conducted remotely.² For hearing purposes, this matter was consolidated with Docket #FIC 2020-0246, William Effros v. Chairman, Planning and Zoning Commission, Town of Greenwich; Planning and Zoning Commission, Town of Greenwich; and Town of Greenwich.

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 July 27, 2020,³ the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act G.S., in the following manner:

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

² Pursuant to §149 of Public Act 21-2 (June Special Session).

³ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. S1-206(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 over this matter.

[t]he Town of Greenwich is conducting all of its business under the veil of bogus “Executive Session” Zoom meetings not available to the public in real time; using documents not publicly available prior to meetings; without notice or agenda; with no record of who attended; followed by scripted “public meetings” that can be understood only in the context of the prohibited secret meetings that precede them,” in violation of General Statutes §1-200(6)(B)....”

At the hearing in this matter, the hearing officer asked the complainant to clarify his allegations and the complainant stated that he was alleging that the respondents violated the FOI Act in that:

(a) they met in executive session for an improper purpose on June 15, 2020, July 16, 2020, and July 27, 2020; and

(b) the agenda for the meetings held on June 15, 2020, July 16, 2020, and July 27, 2020 did not adequately describe the nature of the business to be discussed.

In addition, the complainant alleged in his July 27th complaint, and at the hearing, that various actions taken or not taken by the respondents in relation to the meetings identified in paragraph 2(a) and (b), above, violated Executive Order 7B, issued by Governor Lamont in response to the Covid-19 pandemic.

3. At the hearing in this matter, the respondents argued that the executive sessions were proper because they were held for the purpose of discussing strategy with respect to a pending lawsuit.

4. Section 1-225(a) requires generally that the meetings of all public agencies be open to the public. However, pursuant to §1-200(6)(B), G.S., the public may be excluded from an executive session held for the purpose of discussing “strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof because of the member’s conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled.”

5. The respondents’ witnesses, who were present for the discussions in executive session on the dates in question, credibly testified at the hearing, and it is found, that the sole purpose of the executive sessions was to discuss a settlement offer in a pending lawsuit. It is found that at the time of the executive sessions in question, there was a lawsuit pending in the superior court to which the respondent Planning and Zoning Commission was a party. It is also found that the respondents’ discussions in executive session constituted “strategy or negotiations” within the meaning of §1-200(6)(B), G.S.

6. Based upon the foregoing, it is found that the respondents did not meet in executive session for an improper purpose on June 15, 2020, July 16, 2020, and July 27, 2020.

7. Accordingly, it is found that the respondents did not violate the §1-225, G.S., as alleged.

8. With regard to the allegation that the agendas for the meetings held on June 15, 2020, July 16, 2020, and July 27, 2020, were not sufficiently specific, §1-225(d), G.S., requires that notice of a special meeting be given not less than twenty-four hours prior to the meeting to which such notice refers.

9. It is found that a notice of “Executive Session Meeting Virtually via Zoom”, for each of the meetings identified in paragraph 2(a) and 2(b), above, was posted on the website of the respondent Planning and Zoning Commission. It is also found that each notice listed one item of business, i.e.: “Executive Session to discuss pending litigation”.

10. The courts have opined, with respect to the notice requirements in §§1-225(c) and (d), G.S., that one purpose of a meeting agenda is to allow “the public and interested parties to be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views.” Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-99-0497917-S (May 3, 2000). “A notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participating in the meeting.” *Id.*

11. In Trenton E. Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048 (date), the Commission found that the phrase “executive session - personnel matters” was too vague to communicate to the public what business would be transacted.

12. In Durham Middlefield Interlocal Agreement Advisory Board v. FOIC et al., Superior Court, Docket No. CV 96 0080435, Judicial District of Middletown, Memorandum of Decision dated August 12, 1997 (McWeeny, J.), the court concluded that it was reasonable for the Commission to require something more detailed than “Executive Session Re: Possible Litigation” in a special meeting notice.

13. The respondents argued at the hearing in this matter, that they did not identify the name of the pending lawsuit in any of the notices at issue because to do so would have revealed their “strategy” with respect to such lawsuit. According to the respondents’ witnesses, the fact that the respondent commission met three times about this particular lawsuit, if revealed, would have “tipped their hand” and weakened the respondent commission’s bargaining position.

14. It is found, however, that identification of the pending litigation on the agendas would not have revealed any “strategy” or “negotiations” of the respondents. It is further found that the notices did not include sufficient information to fairly apprise the public of the matters to be discussed at the meetings.

15. It is therefore concluded that the respondents violated §1-225(d), G.S., as alleged.

16. In his post hearing brief, the complainant raised, for the first time, the allegation that the respondents violated the FOI Act with regard to the meetings identified in paragraph 9, above, because the respondent commission did not notice or hold a public meeting on the dates in question, and then vote to enter into executive session during such public meetings. However, such allegation was not fairly raised in the complaint and therefore the Commission is without jurisdiction to adjudicate such claim.

17. With respect to the allegation that the respondents violated Executive Order 7B, the hearing officer ordered the parties to file briefs on the issue of whether this Commission had authority to enforce Executive Order 7B. The complainant declined to brief the issue and the respondents submitted a brief in which they argued that the Commission does not have jurisdiction to enforce Executive Order 7B because the Commission's jurisdiction is limited to interpreting and enforcing its own statutes.

18. The Commission takes administrative notice of the letter dated March 10, 2020, from the Governor to the Secretary of the State and the General Assembly, in which the Governor declared public health and civil preparedness emergencies, pursuant to §§19a-131a and 28-9, G.S., due to the Covid-19 pandemic. It is found that Executive Order 7B was issued pursuant to such declaration.⁴

19. Executive Order 7B itself does not specify the penalty for violation of such order. However, §19a-131a(d), G.S., provides that “[a]ny individual who...violates the provisions of any order issued pursuant to sections 19a-131 to 19a-131i...shall be fined no more than one thousand dollars or imprisoned not more than one year, or both, for each offense. In addition, §28-22, G.S., provides that “[a]ny person who...wilfully impedes, interferes with or otherwise obstructs any lawful civil preparedness activity or other preparedness function of the national or state government or of the government of any political subdivision of the state, or who violates any provision of this chapter, shall be guilty of a class D felony.

20. The Commission is a creature of statute with limited jurisdiction; it can only administer and enforce the provisions set forth in the FOI Act. Dept. of Public Safety v. Freedom of Information Commission, 103 Conn. App. 571, 577 (2007). It is found that Executive Order 7B did not expand the Commission's jurisdiction.

21. Moreover, as set forth in paragraph 19, above, the penalties for violating an executive order issued pursuant to §§19a-131a(d) and 28-22, G.S., are largely criminal in nature and enforceable by the Commissioner of Public Health and/or state and local law enforcement agencies.

22. Based upon the foregoing, it is concluded that this Commission did not have authority to enforce Executive Order 7B during the time period it was in effect.

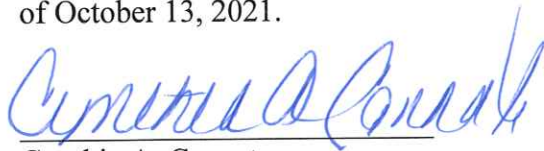
23. Accordingly, it is further concluded that the Commission lacks jurisdiction over the allegation that the respondents violated Executive Order 7B.

⁴ Executive Order 7B expired on June 30, 2021

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 notice requirements in §1-225(d), G.S.
2. Within 14 days of the date of the Notice of Final Decision in this case, a representative of the respondent commission shall contact the staff of the FOI Commission to arrange training for all members of the respondent commission regarding the requirements of the FOI Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 13, 2021.



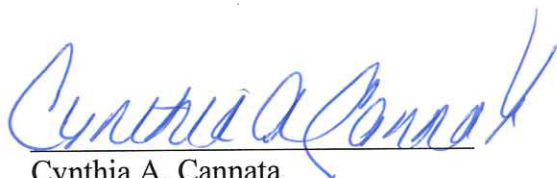
Cynthia A. Cannata
Acting Clerk of the Commission

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:

BILL EFFROS, 41 Old Church Road, Greenwich, CT 06830

CHAIRMAN PLANNING AND ZONING COMMISSION, TOWN OF GREENWICH; PLANNING AND ZONING COMMISSION, TOWN OF GREENWICH; AND TOWN OF GREENWICH, c/o Attorney Abby Wadler, Greenwich Town Attorney Office, 101 Field Point Road, Greenwich, CT 06830



Cynthia A. Cannata
Acting Clerk of the Commission