

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Matthew Hennessy,

Complainant

against

Docket # FIC 2020-0448

Donald Stein, Chairman, Board of Directors,  
Materials Innovation and Recycling  
Authority; Board of Directors, Materials  
Innovation and Recycling Authority;  
Tom Kirk, President, Materials  
Innovation and Recycling Authority; Laurie  
Hunt, Director of Legal Services,  
Materials Innovation and Recycling  
Authority; and Materials Innovation and  
Recycling Authority,

Respondents

August 10, 2022

The above-captioned matter was heard as a contested case on June 15, 2022, 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 remotely through the use of electronic equipment, pursuant to §149 of Public Act No. 21-2 (June Special Session), as amended by §1 of Public Act No. 22-3. For hearing purposes, this matter was consolidated with Docket #FIC 2020-0576, Matthew Hennessy v. Laurie Hunt, Director of Legal Services, Materials Innovation and Recycling Authority; Tom Kirk, President, Materials Innovation and Recycling Authority; Donald Stein, Chairman, Materials Innovation and Recycling Authority; and Materials Innovation and Recycling Authority ("Docket #FIC 2020-0576"). The Commission takes administrative notice herein of the testimony and exhibits in Docket #FIC 2020-0576.

In addition, at the request of the parties, the Commission takes administrative notice of the record in Docket #FIC 2020-0281, Matthew Hennessy v. Donald Stein, Chairman, Board of Directors, Materials Innovation and Recycling Authority; Board of Directors, Materials Innovation and Recycling Authority; Tom Kirk, President, Materials Innovation and Recycling Authority; Laurie Hunt, Director of Legal Services, Materials Innovation and Recycling Authority; and Materials Innovation and Recycling Authority and Docket #FIC 2020-0351, Matthew Hennessy v. Laurie Hunt, Director of Legal Services, Materials Innovation and

Recycling Authority; Tom Kirk, President, Materials Innovation and Recycling Authority; Donald Stein, Chairman, Board of Directors, Materials Innovation and Recycling Authority; Board of Directors, Materials Innovation and Recycling Authority; and Materials Innovation and Recycling Authority.

The case caption has been amended to accurately reflect the names and titles of the parties.

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 dated and filed with the Freedom of Information (“FOI”) Commission (“Commission”) on September 17, 2020,<sup>1</sup> the complainant appealed, alleging that the respondents violated the Freedom of Information Act on August 12, 2020 when the respondent board convened in executive session without giving some indication of the specific topic to be addressed prior to entering such session.
3. The complainant requested in his complaint that the Commission impose a civil penalty upon the respondents Chairman, President and Director of Legal Services.
4. It is found that the respondent board held a regular meeting on August 12, 2020 (“meeting”).
5. It is found that the meeting agenda, in relevant part, indicated:

Executive session to discuss pending litigation and pending RFP responses, potential lease of MIRA real estate, trade secrets, personnel matters, security matters, and feasibility estimates and evaluations.
6. It is found that the minutes of the meeting, in relevant part, indicated:

Chairman Stein requested a motion to enter into Executive Session to discuss pending litigation and pending RFP responses, potential lease of MIRA real estate, trade secrets, personnel matters, security matters and feasibility estimates and evaluations. The motion was made by Director Shanley and seconded by Director Hayden...The

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<sup>1</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §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 before the Commission on the issuance date and any appeal filed through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter. In addition, although §1-206(b)(1), G.S., requires that an appeal be filed with the Commission within 30 days of an alleged violation, Executive Order 7M (§2(2)) suspended such requirement for appeals filed between March 25, 2020, and April 19, 2021.

motion previously made and seconded was approved unanimously by roll call... The Executive Session commenced at 10:30 a.m.

7. Section 1-225(f), G.S., provides:

[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. (Emphasis added).

8. At the hearing in this matter, the board conceded, and it is found, that prior to entering into executive session on August 12, 2020, it did not state the reason or reasons for such executive session, within the meaning of §1-225(f), G.S.

9. It is therefore concluded that the respondent board violated §1-225(f), G.S., as alleged in the complaint.

10. At the hearing in this matter the complainant raised an additional allegation and argued that the respondents convened in executive session on August 12, 2020, for an improper purpose.

11. It is found that such improper purpose executive session allegation was not fairly raised in the complaint. Accordingly, the Commission lacks jurisdiction to address it.

12. With respect to the complainant's request that the Commission impose a civil penalty against the respondents Chairman, President and Director of Legal Services for violating the FOI Act, §1-206(b)(2), G.S., provides, in relevant part:

...upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

13. It is found that respondent Stein, as the Chairman of the board, is the individual directly responsible for the violation described in paragraphs 8 and 9, above.

14. Regarding whether the violation was "without reasonable grounds", it is found that respondent Hunt has served as in-house legal counsel to MIRA and its predecessor agency

CRRA for approximately 17 years. It is found that, in that capacity, she advises the agency, its board, and officers on legal matters, including the requirements of the FOI Act.

15. It is found that respondent Hunt had, at the time of the hearing in this matter, attended at least two FOI training sessions conducted by the Commission's public information officer. However, it is also found that Hunt was unfamiliar with the law as it relates to the requirement in §1-225(f), G.S., that a public agency state the reasons for an executive session prior to entering into an executive session.

16. It is found that respondent Stein relied on Hunt to provide him with legal advice and guidance with regard to the requirements of the FOI Act, and that it was reasonable for him to have done so.

17. It therefore cannot be found that the violation was "without reasonable grounds".

18. It is concluded that, absent a finding that the violation was "without reasonable grounds," the Commission may not impose a civil penalty.

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

1. Henceforth, respondents Stein and board shall strictly comply with §1-225(f), G.S.
2. The complaint against respondents Hunt and Kirk is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 10, 2022.




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:

**MATTHEW HENNESSY**, c/o Attorney Michael C. Harrington, FordHarrison, LLP, 185 Asylum Street, Suite 610, Hartford, CT 06103

**LAURIE HUNT, DIRECTOR OF LEGAL SERVICES, MATERIALS INNOVATION AND RECYCLING AUTHORITY; TOM KIRK, PRESIDENT, MATERIALS INNOVATION AND RECYCLING AUTHORITY; DONALD STEIN, CHAIR, MATERIALS INNOVATION AND RECYCLING AUTHORITY; AND MATERIALS INNOVATION AND RECYCLING AUTHORITY**, c/o Attorney Michael C. Collins, Esq., Halloran & Sage LLP, 225 Asylum Street, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission