

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Matthew Hennessy,

Complainant

against

Docket # FIC 2020-0576

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; and Board of Directors, Materials  
Innovation 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 2020-0448, 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 ("Docket #FIC 2020-0448"). The Commission takes administrative notice herein of the testimony and exhibits in Docket #FIC 2020-0448.

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;

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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 November 5, 2020,<sup>1</sup> the complainant appealed, alleging that on November 4, 2020 prior to convening in executive session, the respondent board violated the Freedom of Information Act by failing to:
  - (a) take a vote; and
  - (b) give some indication of the specific topic to be addressed in the executive session.

The complainant requested that the Commission impose a civil penalty upon the respondents Chairman, President and Director of Legal Services.

3. It is found that the respondent board held a special meeting on November 4, 2020 (“meeting”), during which it convened in executive session (“executive session”).
4. It is found that the notice/agenda for the meeting, in relevant part, indicated:

### III. Executive Session to:

- (1) Review Preliminary Drafts of feasibility estimates and evaluations regarding the development of MIRA’s FY 22 budgets pursuant to Conn. Gen. Stat. Sec. 1-210(b)(1).
- (2) Review certain trade secret information pertaining to potential future solid waste disposal process pursuant to Conn. Gen. Stat. Sec. 1-210(b)(5)(A).
- (3) Review certain commercial and financial information related to potential future opportunities and as pertains to MIRA’s future

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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.

strategic planning provided in confidence pursuant to Conn. Gen. Stat. Sec. 1-210(b)(5)(B).

5. It is also found that the minutes of the meeting, in relevant part, state:

Chairman Stein requested a motion to enter into Executive Session for the following purposes:

- (1) Review Preliminary Drafts of feasibility estimates and evaluations regarding the development of MIRA's FY 22 budgets pursuant to Conn. Gen. Stat. Sec. 1-210(b)(1);
- (2) Review certain trade secret information pertaining to potential future solid waste disposal process pursuant to Conn. Gen. Stat. Sec. 1-210(b)(5)(A);
- (3) Review certain commercial and financial information related to potential future opportunities and as pertains to MIRA's future strategic planning provided in confidence pursuant to Conn. Gen. Stat. Sec. 1-210(b)(5)(B).

The motion was made by Director Bailey and seconded by Director Adams... The motion previously made and seconded was approved unanimously by roll call....

6. 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).

7. With respect to the allegation of failure to take a vote described in paragraph 2(a) above, it is found that the video recording of the meeting does not show that the respondents took a vote, however the minutes do indicate that a vote was taken.

8. At the hearing in this matter, respondent Hunt testified and addressed the discrepancy between the video recording and the minutes. She testified that although the video recording does not show the vote, she recalls that she took notes of the motion, second and vote and later sent her notes to the individual who prepared the meeting minutes. She testified further that the IT staff member who assists the board with Zoom meetings and breaking out into executive sessions was, unbeknown to her and the board, not present during a portion of the meeting.

9. Although video recordings are typically the best evidence of what transpires, the Commission is mindful of the numerous challenges experienced by public agencies, during the Covid 19 pandemic, with smoothly recording and conducting public meetings remotely.

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10. Based on the credible testimony of respondent Hunt, it is found that the respondent board took the required vote prior to entering into executive session.

11. It is therefore concluded that the respondent board did not violate §1-225(f), G.S., as alleged in the complaint.

12. With respect to the allegation described in paragraph 2(b) above, that prior to convening in executive session, the board failed to give some indication of the specific topic to be addressed, it is found that the respondents did state the reasons for the executive session as described in paragraph 5, above.

13. It is therefore concluded that the respondents did not violate §1-225(f), G.S., as alleged in the complaint.

14. At the hearing in this matter the complainant raised an additional allegation and argued that the respondents convened in executive session on November 4, 2020, for an improper purpose.

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

16. At the hearing in this matter, the complainant further requested that the Commission conduct an in camera review of the records that formed the basis of the executive session.

17. While such review may potentially be relevant to address an allegation that the executive session was held for an improper purpose, based on the conclusion reached in finding 15 above, the request is denied as the Commission is without jurisdiction to address an allegation not fairly raised in the complaint.

18. Consideration of a civil penalty is not warranted since the respondents did not violate the FOI Act.

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

1. The complaint is hereby 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

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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

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