

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Dander,

Complainant

against

Docket # FIC 2020-0600

Board of Police Commissioners, City of
New Haven; and City of New Haven,

Respondents

February 23, 2022

The above-captioned matter was heard as a contested case on October 28, 2021, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 the respondents convened a regular meeting of the Board of Police Commissioners on October 13, 2020. It is found that one of the agenda items was described only as "executive session." No further description or reason for the executive session was listed on such agenda. Additionally, it is found that the minutes of the October 13, 2020, meeting indicate that "Commissioner Ribeiro moved to enter executive session for preliminary drafts and notes."
3. By letter of complaint filed November 23, 2020,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by

¹ On March 25, 2020, the Governor issued Executive Order 7M (§2(1)), thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), requiring the filing of an appeal with the Freedom of Information Commission not later than thirty days after any alleged denial. Executive Order 7M (§2(1)) applied to any appeal filed prior to April 19, 2021. The Governor also issued Executive Order 7M (§2(2)), thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M (§2(2)), which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains jurisdiction over the complaint.

failing to properly notice an executive session held as part of an October 13, 2020, regular meeting and entering into an executive session for an improper reason.

4. Section 1-225(a), G.S., provides in relevant part that “[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.”

5. “Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes:

(A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting;

(B) 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;

(C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security;

(D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and

(E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

6. At the hearing, the respondents denied that the notice was improper and contended that the executive session was held to discuss preliminary notes and drafts and that pursuant to §1-200(6)(E), G.S, this was an allowable reason for executive session.

7. With regard to the October 13, 2020, agenda, the Commission has repeatedly stated that in order for the public to be fairly apprised of the business to be transacted during an executive session, the public agency must give some indication of the specific topic to be addressed, prior to convening such session. Therefore, descriptions such as “personnel,” “personnel matters,” “legal” or even “the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee” are inadequate and do not state the reason for convening in executive session, within the meaning of §1-225(f), G.S. See Kate King and the

Stamford Advocate v. Water Pollution Control Authority, City of Stamford, et al., Docket #FIC 2012-502 (May 8, 2013).

8. 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.

9. In Trenton E. Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048 (Aug. 8, 1990), the Commission found that the phrase “executive session - personnel matters” was too vague to communicate to the public what business would be transacted.

10. 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.

11. It is found that the agenda item described in paragraph 2, above, was not sufficiently specific to apprise the public of the business to be transacted or action proposed and failed to state a proper reason for such executive session pursuant to §1-200(6), G.S.

12. At the hearing, the respondents contended that the executive session was held pursuant to §1-200(6)(E), G.S. The respondents argued that any public discussion of the subject matter discussed in executive session would have resulted in the disclosure of information contained in preliminary drafts and notes which are exempt from disclosure pursuant to §1-210(b)(1), G.S.

13. Section 1-210(b)(1), G.S., provides that “nothing in the Freedom of Information Act shall be construed to require disclosure of preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.”

14. It is found that the respondents’ witness, Captain Zannelli, was present at the executive session on October 13, 2020. Based upon his testimony, it is found that the purpose of the executive session was to provide the Board of Police Commissioners with an oral update on the status of open internal investigations. It is found that such executive sessions are routinely held for the purpose of discussing open internal affairs investigations and are typically attended by the chief of police, all commission members, the captain assigned to the internal affairs division and the city’s corporation counsel.

15. It is found that the respondents failed to offer as evidence any report or other record considered to be a preliminary draft or note. To the extent the witness prepared a written

summary of the open internal affairs investigations to aid him in his presentation during the executive session, the respondents failed to prove that such record was a preliminary draft or note and therefore exempt from disclosure pursuant to §1-210(b)(1), G.S.

16. It is found that the subject matter of the executive session was not any particular public record, but instead an oral report regarding the status of open police internal investigations. The respondents failed to prove that the executive session was held to discuss information or records that are exempt from disclosure pursuant to §1-210(b)(1), G.S. Therefore, it is concluded that the executive session was not held in accordance with §1-200(6), G.S. Accordingly, it is found that the respondents violated §1-225(a), G.S., as alleged in the complaint.

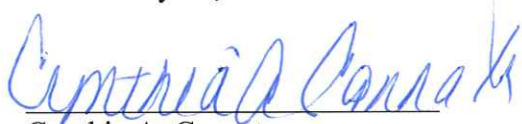
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall create minutes of the executive session held October 13, 2020, indicating the subject matters that were discussed. Such minutes shall be filed as a supplement to the existing minutes of such public meeting and shall include the names of all persons present for such executive session.

2. Not later than 60 days after the mailing of the Notice of Final Decision in this matter, the respondent Board of Police Commissioners will arrange for training by a representative of the Commission. Such training will address the notice and conduct of public meetings and executive sessions.

3. Henceforth, the respondents shall strictly comply with §1-225(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 23, 2022.



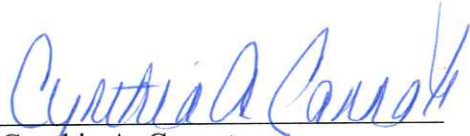
Cynthia A. Cannata
Acting Clerk of the Commission

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:

DAVID DANDER, 56 School Road, Colchester, CT 06415

BOARD OF POLICE COMMISSIONERS, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Catherine E. LaMarr, Office of the Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission