

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Matthew Hennessy,

Complainant

against

Docket # FIC 2020-0351

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,

Respondents

June 22, 2022

The above-captioned matter was heard as a contested case on January 18, 2022, and March 28, 2022, 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 hearing was conducted remotely pursuant to §149 of Public Act 21-2 (June Special Session). For hearing purposes, this matter was consolidated with Docket #FIC 2020-0281, Matthew Hennessy v. Donald Stein, Chair, Materials Innovation and Recycling Authority; Tom Kirk, President, Materials Innovation and Recycling Authority; and Materials Innovation and Recycling Authority ("Docket #FIC 2020-0281"). The Commission takes administrative notice herein of the testimony and evidence in Docket #FIC 2020-0281.

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 filed July 24, 2020,¹ the complainant appealed to this Commission, alleging that the respondent board (“board”) violated the Freedom of Information (“FOI”) Act, in that the agendas for the meetings held on July 15, 2020, June 10, 2020, May 28, 2020, and May 13, 2020,² failed to adequately describe the nature of the business to be discussed in executive session. The complainant further alleged that, at such meetings, the board failed to state the purpose of the executive session before entering into executive session. The complainant also requested the imposition of a civil penalty against the named individual respondents.

3. It is found that the board held regular meetings on the dates identified in paragraph 2, above. It is found that the agenda for each of those meetings indicated that the board may enter into executive session to discuss “pending litigation and pending RFP responses, potential lease of [Materials Innovation and Recycling Authority (“MIRA”)] real estate, trade secrets, personnel matters, security matters, and feasibility estimates and evaluations.”

4. It is found that, at each of the meetings identified in paragraph 2, above, the respondent Chairman Stein (“Stein”) made a motion to go into executive session for “the reasons stated on the agenda.” It is found that the motion was seconded and passed and that the board thereafter entered into executive session at each of these meetings.

5. With regard to the allegation that the agendas for the meetings identified in paragraph 2, above, were not sufficiently specific, §1-225(c), G.S., requires that notice of a regular meeting be given not less than twenty-four hours prior to the meeting to which such notice refers.

6. It is well settled that, with respect to the notice requirements in §§1-225(c) and (d)³, 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.* 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.

¹ 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 with the Commission on the issuance date and any appeal filed through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

² 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.

³ Section 1-210(d), G.S., pertains to the notice requirements for special meetings.

7. The Commission has consistently held that in order for the public to be fairly apprised of the reason for an executive session, the agency must give some indication of the specific topic to be addressed. Descriptions such as “personnel,” “personnel matters,” “legal,” or even “the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee,” are inadequate. See, e.g., Bill Effros v. Chairman, Planning and Zoning Commission, Town of Greenwich; Planning and Zoning Commission, Town of Greenwich; and Town of Greenwich, Docket #FIC 2020-0352 (October 13, 2021)(agenda item: “executive session to discuss pending litigation” does not fairly apprise the public); Bradshaw Smith v. Craig Cook, Superintendent of Schools, Windsor Public Schools, et al., Docket #FIC 2014-833 (September 24, 2015) (agenda item “Potential Executive Session to Review Attorney/Client Privileged Communication Regarding Personnel Matter,” did not fairly apprise the public of matter to be discussed); Richard L. Stone v. Board of Selectmen, Town of Cromwell, Docket #FIC 2010-738 (August 24, 2011) (agenda item “[e]xecutive session: [p]ersonnel,” did not fairly apprise the public of proposed matter to be discussed); Preston D. Schultz and the Citizens for Prudent Spending v. Board of Education, Woodstock Public Schools, Docket #FIC 2008-236 (February 25, 2009) (agenda item “discussion of attorney/client privilege [sic] documents and pending litigation,” did not fairly apprise the public); Bradshaw Smith v. Milo W. Peck, Jr., Member, Board of Education, Windsor Public Schools, Docket #FIC 2007-003 (August 8, 2007) (agenda item “employee personnel matters,” did not fairly apprise the public of the matter to be discussed in executive session); John Voket and the Newtown Bee v. Board of Education, Newtown Public Schools, Docket #FIC 2006-013 (October 11, 2006) (agenda item “executive session – personnel,” did not fairly apprise the public); Trenton Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048 (agenda item “executive session – personnel matters,” did not sufficiently state the reason for the executive session); and Robert Cox v. Ridgefield Board of Education, Docket #FIC 88-165 (January 25, 1989) (the agenda item listing executive session to “receive advice from legal counsel on a legal matter,” was insufficient).

8. The board conceded, and it is found, that the agenda item, as described in paragraph 3, above, for each of the meetings identified in paragraph 2, above, was not specific enough to fairly apprise the public of the business to be discussed in executive session.

9. It is therefore concluded that the board thereby violated §1-225(c), G.S., as alleged.

10. With respect to the allegation that the board failed to state the reason for the executive session at each of the meetings identified in paragraph 2, above, prior to entering into executive session, §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).

11. The board conceded, and it is found, that it did not state the reason or reasons for the executive session at each of the meetings identified in paragraph 2, above, prior to entering into executive session.

12. It is therefore concluded that the board thereby violated §1-225(f), G.S., as alleged.
13. At the hearing in this matter, the complainant argued that the Commission should impose a civil penalty against the respondents Hunt, Kirk and Stein, for violating the FOI Act.
14. Section 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.
15. It is found that Stein, as the board chairman, is the individual directly responsible for the violations found herein.
16. Regarding whether such violations were “without reasonable grounds”, it is found that Hunt has served as in-house legal counsel to MIRA and its predecessor 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.
17. It is found that 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 she was unaware of the Commission’s long-standing precedent and court decisions requiring a public agency to include information on its agendas that would be sufficiently specific to apprise the public of the matter the agency intended to discuss in executive session. It is found that, rather than advise the board that the description of the discussion in executive session be specific, she advised that such description be very broad and “over-inclusive.”
18. It is found that Stein relied on Hunt to provide legal advice and guidance with regard to the requirements of the FOI Act, and that it was reasonable for him to have done so.
19. It therefore cannot be found that the violations were “without reasonable grounds”.
20. It is concluded that, absent a finding that the violations were “without reasonable grounds,” the Commission may not impose a civil penalty against Stein.
21. The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the board and Stein shall strictly comply with the notice requirements in §§1-225(c) and 1-225(f), G.S.

2. The complaint against Hunt is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 22, 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, CHAIRMAN, BOARD OF DIRECTORS, MATERIALS INNOVATION AND RECYCLING AUTHORITY; BOARD OF DIRECTORS, MATERIALS INNOVATION AND RECYCLING AUTHORITY; c/o Attorney Duncan J. Forsyth, Halloran & Sage LLP, 225 Asylum Street, Hartford CT 06103 and Attorney Michael C. Collins, Esq., Halloran & Sage LLP, 225 Asylum Street, Hartford, CT 06103; AND MATERIALS INNOVATION AND RECYCLING AUTHORITY, 200 Corporate Place, Suite 202, Rocky Hill, CT 06067



Cynthia A. Cannata
Acting Clerk of the Commission