

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Shawn Murphy,

Complainant

against

Docket #FIC 2020-0583

Michael Urgo, First Selectman, Town of
North Stonington; and Board of Selectmen,
Town of North Stonington,

Respondents

March 9, 2022

The above-captioned matter was heard as a contested case on October 22, 2021, 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 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, generally once each month, the respondent first selectman organizes an "All Boards and Commissions Chair" workshop ("workshop"), typically attended by one member of each of the town's boards and commissions. It is found that the purpose of these workshops is to allow the members to keep one another informed of the various projects and issues affecting their respective board or commission.
3. It is found that one such workshop was held remotely on October 29, 2020, and that all three members of the Board of Selectmen ("board") attended.
4. It is found that, by email dated November 2, 2020, the complainant requested from the respondents a copy of the "meeting invitation, agenda, list of invitees, list of attendees, and minutes" for an alleged special meeting of the board held on October 29, 2020.
5. It is found that, by email dated November 2, 2020, the respondents acknowledged the request described in paragraph 4, above, and informed the complainant that the virtual gathering of the board held on October 29, 2020, was not a special meeting of the board, and that therefore, some of the requested records did not exist.

6. It is found that, by email dated November 3, 2020, the respondents disclosed to the complainant the substantive text of the invitation for the workshop and a list of those in attendance at such workshop.

7. By letter of complaint, dated November 9, 2020 and filed November 13, 2020¹, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by:

- (a) failing to properly notice a special meeting of the board held on October 29, 2020, in violation of §1-225(d), G.S.;
- (b) failing to timely file the minutes for a special meeting of the board held on October 29, 2020, in violation of §1-225(a); and
- (c) failing to provide him with a copy of the meeting invitation for a special meeting of the board held on October 29, 2020.

The complainant also requested that this Commission impose civil penalties against the respondents.

8. With regard to the allegations described in paragraphs 7(a) and 7(b), above, §1-225(a), G.S., requires that the meetings of all public agencies be open to the public and that the minutes pertaining to such meetings be available for public inspection. Section 1-225(d), G.S., requires such meetings to be noticed.

9. Section 1-200(2), G.S., defines “meeting,” in relevant part, as follows:

[a]ny hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter of which the public agency has supervision, control, jurisdiction or advisory power.

10. The respondent, First Selectman Michael Urgo (“First Selectman Urgo”), testified, and it is found, that although he spoke at the gathering in order to facilitate discussion among the many participants, he did not discuss any issues with the other members of the board present at

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 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 to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction.

the workshop. First Selectman Urgo also testified, and it is found, that none of the other members of the board contributed to the discussion in any way during the workshop.

11. Selectman Robert Carlson (“Selectman Carlson”) testified, and it is found, that he attended the workshop in order to observe and listen, but he did not participate in discussions. Selectman Carlson further testified, and it is found, that the board took no action at the workshop.

12. Selectwoman Nita Kincaid (“Selectwoman Kincaid”) testified, and it is found, that she attended the workshop, but did not participate in the discussions once the event began. Selectwoman Kincaid further testified, and it is found, that the board took no action at the workshop.

13. It is therefore concluded that, the gathering of the board at the workshop, did not constitute a “meeting” of the board within the meaning of §1-200(2), G.S. Because there was no meeting, it is concluded that board was not required to comply with the notice and minutes requirements in §§1-225(a) and 1-225(d), G.S.

14. Based on the foregoing, it is concluded that the respondents did not violate §1-225(d) or §1-225(a), G.S.

15. With regard to the complainant’s request for a copy of the “meeting invitation, described in paragraph 7(c), above, §1-200(5), G.S., provided, at the time of the request:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.²

16. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to ... (3) receive a copy of such records in accordance with section 1-212.

² Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

17. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

18. It is found that, because there was no meeting of the board, the respondents do not maintain any record responsive to such request.³

19. Accordingly, it is concluded that the respondents did not violate the disclosure requirements in §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

20. Because the respondents did not violate the FOI Act, consideration of the complainant’s request for the imposition of a civil penalty is not warranted.

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 March 9, 2022.



Cynthia A. Cannata
Acting Clerk of the Commission

³ However, although not required to do so, the respondents provided to the complainant a copy of the invitation for the workshop.

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:

SHAWN MURPHY, 23 Kingswood Drive, North Stonington, CT 06359

FIRST SELECTMAN, TOWN OF NORTH STONINGTON; AND BOARD OF SELECTMEN, TOWN OF NORTH STONINGTON, c/o Attorney Nicholas F. Kepple, Suisman Shapiro, Attorneys-at-Law, 20 S. Anguilla Road, P.O. Box 1445, Pawcatuck, CT 06379



Cynthia A. Cannata
Acting Clerk of the Commission