

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Lisa Backus and the Connecticut Health
Investigative Team,

Complainants

against

Docket # FIC 2021-0594

Chairperson, Connecticut Medical
Examining Board, State of Connecticut,
Department of Public Health; Connecticut
Medical Examining Board, State of
Connecticut, Department of Public Health;
and State of Connecticut, Department of
Public Health.

Respondents

September 28, 2022

The above-captioned matter was heard as a contested case on March 23, 2022, at which time the complainants 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). The hearing officer amended the case caption to reflect the designated respondents more accurately.

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, by email dated September 24, 2021, the complainants requested to attend a September 29, 2021 meeting of a workgroup of the Connecticut Medical Examining Board ("CMEB"), and also requested a copy of "a list of working group members and the agenda for the meeting and any back up materials."
3. It is found that, by email dated September 24, 2021, the respondents denied both requests.
4. By email of complaint filed October 15, 2021, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her access to the workgroup meeting and copies of the records identified in paragraph 2, above.

5. At the hearing, the respondents contended that the September 29, 2021 convening of the workgroup was not a meeting of the CMEB, within the meaning of §1-200(2), G.S., and therefore the complainant had no right to attend, or obtain copies of records related to such meeting. Alternatively, the respondents argued that the appeal to the Commission was moot because, at the time of the hearing, the workgroup no longer existed.

6. It is found that the workgroup has not convened since March 2, 2022. At the time of the hearing in this matter, the workgroup no longer existed. However, the issue in this case is whether the complainants were improperly denied access to the September 29, 2021 workgroup gathering and the records requested. The Commission can afford the complainants practical relief, in the event it finds a violation of the FOI Act, including ordering the creation of minutes of the meeting and disclosure of records. Consequently, this case is not moot and the Commission has jurisdiction to review the allegations set forth therein.

7. Section 1-200(2), G.S., defines “meeting” as:

[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 over which the public agency has supervision, control, jurisdiction, or advisory power.

8. Section 1-225(a), G.S., provides, in relevant part, that “the meetings of all public agencies, except executive sessions . . . shall be open to the public.”

9. As set forth in City of Meriden v. Freedom of Info. Comm'n, 338 Conn. 310, 321–22 (2021) (“City of Meriden”), there are three statutory definitions of a “meeting” under the FOI Act: (1) “any hearing or other proceeding of a public agency,” (2) “any convening or assembly of a quorum of a multimember public agency,” and (3) “any communication by or to a quorum of a multimember public agency.”

10. It is found that the CMEB convened a public meeting on May 18, 2021, at which time one of its members suggested “that the Board form a workgroup to include [Department of Public Health, or “DPH”] staff and the Office of the Attorney General [“OAG”], to discuss issues related to the Board’s mission, functions and legislation.”

11. It is found that the CMEB publicly discussed that the workgroup would be comprised of less than a quorum of the CMEB. It is found that the CMEB did not vote to form the workgroup and did not appoint members to the workgroup. Rather, it is found that individual members of the CMEB volunteered to participate. It is found that the CMEB did not vote to task the workgroup with a specific goal or directive and did not delegate any of its authority to the workgroup.

12. It is found that between May 18, 2021 and March 2, 2022, the workgroup met and discussed issues they believed the CMEB may consider addressing. It is found that during and following the March 2, 2022 gathering of the workgroup, the CMEB chairperson compiled a

“summary of ideas” to present to the CMEB at its March 15, 2022 public meeting. It is further found that the CMEB was not obligated to take any action following receipt of the workgroup’s “summary of ideas.”

13. With respect to the September 29, 2021, convening of the workgroup at issue in this matter, it is found that less than a quorum of the CMEB attended. It is therefore concluded that the convening of the workgroup did not constitute the “convening or assembly of a quorum of a multimember public agency,” and therefore did not meet the second statutory definition of a meeting within the meaning of §1-200(2), G.S.

14. It is also found that the September 29, 2021 convening of the workgroup did not constitute a “communication by or to a quorum of a multimember public agency,” as the workgroup did not consist of a quorum of the CMEB, nor did the workgroup communicate to a quorum of the CMEB when it met. It is therefore concluded that the convening of the workgroup did not meet the third definition of a meeting within the meaning of §1-200(2), G.S.

15. With respect to the remaining definition of a meeting within 1-200(2), G.S., namely, a “hearing or other proceeding of a public agency,” in City of Meriden our Supreme Court concluded that:

[f]or a gathering of individuals who are members of a public agency to constitute a ‘hearing or other proceeding,’ therefore, it must be comprised of individual members of that public agency *who have express authority to take action on behalf of the public agency*. This authority may be conferred by statute, regulation, ordinance, charter, or other legal authority . . . Because a ‘hearing or other proceeding’ does not require a quorum of a public agency’s members to constitute a meeting, a group comprising less than a quorum of a public agency may conduct a ‘hearing or other proceeding’ when it has the express authority to take action.

Id. at 326.

16. It is found that neither the workgroup, nor any individual member of the CMEB participating in such workgroup, had any express authority to act on behalf of the CMEB. It is further found that neither the workgroup nor any individual member took action on behalf of the CMEB.

17. Consequently, it is concluded that the September 29, 2021 convening of the workgroup was not a “hearing or other proceeding” of the CMEB, and therefore was not a meeting, within the meaning of §1-200(2), G.S.

18. At the hearing, the complainants argued that the workgroup was a committee of the CMEB, within the meaning of §1-200(1), G.S., and therefore a public agency subject to the open meeting provisions of the FOI Act. However, such issue was not fairly raised in the complaint. Rather, the complaint alleged only that the September 29, 2021 workgroup gathering was a meeting of the CMEB, and the respondents improperly denied the complainant access to such meeting. Accordingly, the Commission lacks jurisdiction to adjudicate whether the workgroup

was a committee of the CMEB.

19. Based on the foregoing, it is concluded that the respondents did not violate §1-225(a), G.S. when they denied the complainant access to the September 29, 2021 gathering of the workgroup.

20. With respect to the complainant's request for records set forth in paragraph 2, above, §1-200(5), G.S., provides:

“[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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[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.

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

23. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

24. It is found that, on or about March 15, 2022, the respondents provided the complainant with the names of the individuals who participated in the workgroup but did not otherwise comply with the complainant's request for records.

25. At the hearing, the CMEB chairperson credibly testified, and it is found, that the respondents do not maintain an agenda responsive to the complainant's request. The chairperson further testified that she believed that the respondents may maintain records responsive to the request for “back up materials,” which she reasonably interpreted as public records reviewed by the workgroup in relation to the September 29, 2021 gathering. However, it is found that the respondents did not conduct a search for such records.

26. Based on the foregoing, it is found that the respondents failed to prove that they provided all records responsive to the request, described in paragraph 2, above, to the

complainant.

27. Accordingly, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

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

1. Forthwith, the respondents shall conduct a search for, and provide copies of, all records responsive to the complainant's request for "back up materials," as set forth in paragraph 2, above, free of charge.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 28, 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:

LISA BACKUS AND THE CONNECTICUT HEALTH INVESTIGATIVE TEAM, 25 Winding Meadow Drive, Kensington, CT 06037

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; AND STATE OF CONNECTICUT, MEDICAL EXAMINING BOARD, c/o Assistant Attorney General Elizabeth Bannon, State of Connecticut, Office of the Attorney General, 165 Capitol Avenue, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission