FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by — FINAL DECISION

Robert Schacht and
Millers Pond Company, LLC,

Complainants

against — Docket #FIC 2022-0056

Barry Weiner, Chairman,
Water and Water Pollution Control
Authority, City of New London;
Marianna McGuirk, Executive
Assistant, Water and Water Pollution
Control Authority, City of New London;
and Water and Water Pollution Control
Authority, City of New London,

Respondents — January 25, 2023

The above-captioned matter was heard as a contested case on October 28, 2022, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.

2. By email received on February 3, 2022, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to maintain on its website, for at least 45 days, a recording of the December 9, 2021 regular meeting of the Water and Water Pollution Control Authority ("WWPCA") held solely by means of electronic equipment, in violation of §149 of Public Act 21-2 (June Sp. Sess.).

3. More specifically, the complainants alleged that on January 1, 2022, they accessed the WWPCA's website to search for the recording of the December 9th meeting and could not locate it.

4. At the time of the December 9th meeting, §149 of Public Act 21-2 (June Sp. Sess.) provided, in part that:

> (b) Any public agency that conducts a meeting, other than an executive session or special meeting, as described in this section, solely by means of electronic equipment, shall…(2) ensure that such meeting is recorded or transcribed, excluding any portion of the meeting that is an executive session, and such transcription or recording is posted on the agency's Internet web site and made available to the public to view, listen to and copy in the agency's office or regular place of business not later than seven days after the meeting and for not less than forty-five days thereafter….[1]

5. Section 1-206(b)(1), G.S., provides in relevant part:

> [a]ny person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. [Emphasis added].

6. Accordingly, the complainants were required, under §1-206(b)(1), G.S., to file their appeal with respect to the December 9th meeting within thirty days of the denial, which in this case was alleged to have occurred on January 1, 2022.

7. Because the appeal was filed on February 3, 2022, and not within thirty days of the alleged violation (January 1, 2022), the Commission does not have jurisdiction over such appeal.

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 January 25, 2023.

Jennifer M. Mayo
Acting Clerk of the Commission

[1] Section 149 of Public Act 21-2 (June Sp. Sess.) was subsequently amended and codified as Conn. Gen. Stat. §1-225a.

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:

ROBERT SCHACHT AND MILLERS POND COMPANY, LLC, c/o Attorney Jon B. Chase, Jon B. Chase, PLLC, 34 Church Street, Mystic, CT 06355

BARRY WEINER, CHAIRMAN, WATER AND WATER POLLUTION CONTROL AUTHORITY, CITY OF NEW LONDON; MARIANNA MCGUIRK, EXECUTIVE ASSISTANT, WATER AND WATER POLLUTION CONTROL AUTHORITY, CITY OF NEW LONDON; AND WATER AND WATER POLLUTION CONTROL AUTHORITY, CITY OF NEW LONDON, c/o Brian K. Estep, Esq., Conway, Londregan, Sheehan & Monaco, P.C., 38 Huntington Street, PO Box 1351, New London, CT 06320

Jennifer M. Mayo
Acting Clerk of the Commission

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