

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Maggio,

Complainant

against

Docket # FIC 2024-0265

First Selectwoman, Board of Selectmen,
Town of Weston; Board of Selectmen,
Town of Weston; and Town of Weston,

Respondents

October 9, 2024

The above-captioned matter was heard as a contested case on August 26, 2024, at which time the complainant 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. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. By letter of complaint filed May 13, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by holding an unnoticed meeting in violation of §1-225(a), G.S.

3. Section 1-200(2), G.S., provides in relevant part:

“Meeting” means any 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....

4. Section 1-225(a), G.S., provides:

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of

any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

5. It is found that the respondent Board of Selectmen is comprised of 3 selectmen, and that 2 members constitute a quorum.

6. It is found that on April 24, 2024, the Town of Weston ("Town") held its Annual Town Budget Meeting ("Town Meeting" or "Meeting") at Weston High School to consider and act upon the respondent Board of Selectmen's ("Board") proposed budget for the 2024-2025 fiscal year. It is further found that the First Selectwoman was present to discuss the proposed budget, that the discussion was facilitated by a Moderator who was not a member of the Board, and that the Town Attorney served as Parliamentarian. It is found that the First Selectwoman, the Moderator, and the Town Attorney were all on the stage during the Town Meeting, with members of the public sitting in the audience.

7. It is found that during the Town Meeting, various amendments were approved to reduce certain appropriations proposed by the Board.

8. It is further found that one such amendment reduced the proposed salary of a Town employee who worked in the Tax Collector's office. It is found that after the approval of such amendment, the First Selectwoman alerted the Town Attorney that she wished to speak with him for the purpose of obtaining legal advice. It is found that, without notifying the Moderator or those in attendance, and without a vote to recess the Town Meeting, the First Selectwoman and the Town Attorney left the Town Meeting and met privately off-stage.¹

9. It is found that the First Selectwoman asked the Town Attorney for legal advice regarding potential liability to the Town as a result of the amendment described in paragraph 8, above, and that the Town Attorney and the First Selectwoman engaged in a private discussion concerning such legal advice. It is further found that approximately 2 minutes later, Kerem Dirlenc, another member of the Board who was in attendance, approached the First Selectwoman and the Town Attorney and objected to them interrupting the Town Meeting while it was ongoing to meet privately. It is found that the Town Attorney told Mr. Dirlenc that he had been providing legal advice to the First Selectwoman, and that they would return to the Meeting shortly.

¹ At the hearing, the respondents acknowledged that the First Selectwoman should not have left the Town Meeting without notice, and that the better course would have been to request a recess.

10. At the hearing, the Town Attorney testified credibly that any discussion concerning the legal advice sought by the First Selectwoman ceased once Mr. Dirlenc approached, and that, thereafter, only a brief exchange ensued related to Mr. Dirlenc's concern that they should return to the stage and resume the Town Meeting.

11. At the hearing, the testimony presented by the parties differed primarily concerning the length of time that transpired once Mr. Dirlenc approached the Town Attorney and the First Selectwoman. The Town Attorney testified that no more than 1-2 minutes passed after Mr. Dirlenc approached, at which time they returned to the Town Meeting.² The complainant testified that approximately 10 minutes passed from the time Mr. Dirlenc approached to the time the group returned to the Town Meeting.³

12. However, the complainant acknowledged that he had no knowledge of what was said during the discussion among the Town Attorney, the First Selectwoman, and Mr. Dirlenc. In addition, in response to an inquiry by the hearing officer, the complainant further acknowledged that he was not aware of any additional witnesses who had such knowledge.

13. The complainant claimed that even if the discussion among the Town Attorney, the First Selectwoman, and Mr. Dirlenc only related to Mr. Dirlenc's concern regarding the need to resume the Town Meeting, such a discussion constituted a "meeting" of the Board, within the meaning of §1-200(2), G.S., because the Town Meeting concerned the budget proposed by the Board.

14. Based on the credible testimony presented at the hearing, it is found that once Mr. Dirlenc approached the Town Attorney and the First Selectwoman, any substantive discussion concerning the budget ceased, and the First Selectwoman immediately told Mr. Dirlenc that he could not be present during such discussion. It is further found that no discussion concerning the budget occurred during the time Mr. Dirlenc was present.

15. With respect to the complainant's claim that a discussion concerning the propriety of the First Selectwoman and the Town Attorney interrupting the Town Meeting would itself constitute a "meeting" of the Board, within the meaning of §1-200(2), G.S., it is found that the brief exchange regarding the need to return to the stage so that the Town Meeting could resume was not a discussion concerning "a matter over which the public agency has supervision, control, jurisdiction or advisory power" §1-200(2), G.S.

² The First Selectwoman and Mr. Dirlenc submitted affidavits which substantially corroborated the Town Attorney's testimony. When the respondents sought to introduce the affidavits into evidence, the complainant initially objected on the ground that the First Selectwoman and Mr. Dirlenc were not present for cross-examination. The hearing officer sustained such objection and stated that the hearing would be continued so that the First Selectwoman and Mr. Dirlenc could appear and be subject to cross-examination. Thereafter, the complainant withdrew his objection, and the affidavits were marked as full exhibits.

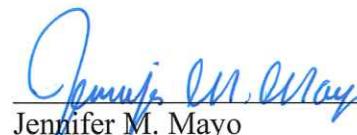
³ The complainant also presented the testimony of his wife, which was consistent with the complainant's testimony.

16. Based on the foregoing, it is found that the respondents did not hold an unnoticed “meeting,” within the meaning of §1-200(2), G.S. It is therefore concluded that the respondents did not violate §1-225(a), G.S., as alleged by the complainant.⁴

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 9, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

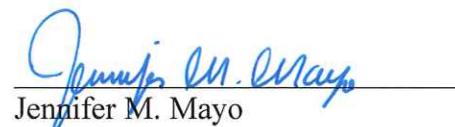
⁴ Notwithstanding such conclusion, the Commission notes that spontaneous discussions among members of a multimember public agency—especially those that occur at a public gathering that concerns a matter closely related to the public business of the agency—carry an inherent risk that such members may inadvertently hold an unnoticed meeting by discussing a matter over which the agency has supervision, control, jurisdiction, or advisory power. For that reason, members of a multimember public agency should exercise caution when engaging in such discussions.

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:

JAMES MAGGIO, 48 High Noon Road, Weston, CT 06883

FIRST SELECTWOMAN, BOARD OF SELECTMEN, TOWN OF WESTON; BOARD OF SELECTMEN, TOWN OF WESTON; AND TOWN OF WESTON, c/o Attorney Nicholas R. Bamonte, Berchem Moses PC, 1221 Post Road East, Suite 301, Westport, CT 06880



Jennifer M. Mayo

Acting Clerk of the Commission