

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Maggio,

Complainant

against

Docket #FIC 2023-0226

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

Respondents

April 10, 2024

The above-captioned matter was heard as a contested case on September 18, 2023, at which time the complainant and the respondents appeared 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 email received and filed May 8, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by inappropriately discussing a matter in an executive session.
3. Section 1-200(2), G.S., provides in relevant part, as follows:

“Meeting” means any hearing or other proceeding of a public agency [and] any convening or assembly of a quorum of a multimember public agency... 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, in relevant part, that “[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public....”
5. Section 1-200(6), G.S., provides, in relevant part, as follows:

“Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the

following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210. (Emphasis supplied).

6. Section 1-200(9), G.S., defines “pending litigation” as:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency’s consideration of action to enforce or implement legal relief or a legal right.

7. It is found that the respondent Board of Selectmen (“respondent board”) held a special meeting on May 3, 2023. It is further found that the agenda for said meeting indicated that the respondent board planned to convene in an executive session to discuss: “...pending litigation regarding the dog park and Board of Ethics, CGS §1-200.”

8. The complainant does not dispute that litigation was pending with regard to the dog park. However, the complainant contends that there was no litigation pending with regard to the matters concerning the town’s Board of Ethics.

9. It is found that, in early 2023 through May 2023, the respondent board was considering taking action to remove some, if not all members, of the then-sitting Board of Ethics

for the Town of Weston (the “Board of Ethics”) for just cause. It is found that the underlying issues stemmed from errors committed by the Board of Ethics with regard to certain requirements of the FOI Act, including the requirement to ensure that its meetings are open to the public. It is found that the respondent board planned to take up the issues concerning the Board of Ethics at a May 18, 2023 hearing.

10. It is found that, by email dated April 24, 2023, a member of the Board of Ethics requested that the respondent board issue a written statement of the issues that it planned to address at the May 18, 2023 hearing, and that it postpone such hearing by ninety days so that the members of the Board of Ethics could obtain private counsel. It is found that such correspondence was also forwarded to the town’s counsel.

11. It is found that, on April 24, 2023, the same member of the Board of Ethics referenced in paragraph 10, above, telephoned counsel for the respondent board during regular business hours and informed him that she was preparing legal papers to enjoin the board from proceeding with the May 18, 2023 hearing. It is found that such papers were never served on or delivered to the respondent board or its counsel.

12. It is also found that, by memorandum dated April 26, 2023, counsel for the respondent board prepared a legal memorandum to provide the respondent board with legal advice regarding the matters referenced in paragraphs 10 and 11, above.

13. At the contested case hearing, the respondents conceded that it was improper for the respondent board to convene in an executive session at the May 3, 2023 meeting for the purpose of discussing “pending litigation” concerning the Board of Ethics, as the respondent board 1) had not received a written notice setting forth a demand for legal relief or asserting a legal right, and stating the intention to institute an action before a court if such relief or right is not granted by the board; 2) had not been served with a complaint returnable to a court which seeks to enforce or implement legal relief or a legal right; and 3) was not considering taking its own action to enforce or implement legal relief or a legal right, within the meaning of §1-200(9), G.S.

14. As noted in paragraph 5, above, §1-200(6)(E), G.S., permits discussion in executive session of records that are exempt from public disclosure under the provisions of §1-210(b), G.S.

15. Section 1-210(b)(10), G.S., provides, in relevant part, that disclosure is not required of “communications privileged by the attorney-client relationship.”

16. It is found that the legal memorandum referenced in paragraph 12, above, was a “communication privileged by the attorney-client relationship” within the meaning of §1-210(b)(10), G.S., at the time of the respondent board’s May 3, 2023 meeting. It is further found that the executive session was convened so that the respondent board could receive and discuss the legal advice contained in said legal memorandum.

17. Accordingly, it is concluded that the respondent board properly convened in an executive session to receive the legal memorandum from and discuss the legal memorandum

with its counsel. It is therefore concluded that the respondents did not violate the provisions of §1-225(a), G.S., as alleged in the complaint.

18. However, §1-225(d), G.S., provides, in relevant part, that:

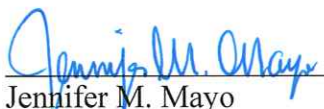
Notice of each special meeting of every public agency...shall be posted not less than twenty-four hours before the meeting to which such notice refers....

19. The Commission also notes that in Zoning Bd. of Appeals of the Town of Plainfield, the court observed that one purpose of a meeting agenda “is that the public and interested parties be apprised of the matters to be taken up at the meeting in order to properly prepare and be present to express their views” and that “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.” See Zoning Bd. of Appeals Town of Plainfield v. Freedom of Info. Comm’n, No. CV-00-0497917-S, 2022 WL 765186, at \*3-4 (Conn. Super. Ct. May 2, 2000), rev’d on other grounds, 66 Conn. App. 279 (2001).

20. It is concluded therefore that the respondents technically violated the provisions of §1-225(d), G.S., by failing to accurately describe the purpose of the May 3, 2023 executive session.

Based on the facts and circumstances of this case, no order by the Commission is hereby recommended.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 10, 2024.

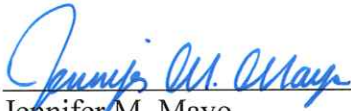
  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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:

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

**FIRST SELECTMAN, 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, Westport, CT 06880

  
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Jennifer M. Mayo  
Acting Clerk of the Commission