

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Joseph Socha, III,

Complainant

against

Docket # FIC 2023-0437

Chair, Town Council, Town of Montville;  
Town Council, Town of Montville; and  
Town of Montville,

Respondents

July 24, 2024

The above-captioned matter was heard as a contested case on March 22, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

On April 3, 2024, pursuant to the order of the hearing officer, the respondents submitted an affidavit and a series of emails, which have been marked as Respondents' Exhibit 1 (after-filed).

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 filed August 28, 2023, the complainant appealed to the Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by conducting a secret meeting sometime between June 2, 2023 and July 31, 2023, at which the respondents decided to retain an attorney to investigate an ethics complaint against a member of the respondent Montville Town Council ("Council").
3. It is found that during all times relevant to this complaint, Alfred J. Mandler, Lenny Bunnell, Sr., and Thomas McNally were members of the Council, with Mr. McNally serving as Chairperson. It is further found that Mr. Bunnell and Mr. McNally were the Democratic and Republican candidates, respectively, for Mayor of the Town of Montville ("Town") during the 2023 mayoral election.<sup>1</sup>

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<sup>1</sup> After the events at issue, Mr. Bunell was elected Mayor of the Town, and Mr. Mandler and Mr. McNally lost their bids for re-election to the Council. Thus, at the time of the hearing in this matter, Mr. Bunnell, Mr. Mandler, and Mr. McNally were no longer members of the Council.

4. It is found that by email dated June 2, 2023, Mr. Mandler sent Mr. McNally a letter containing an ethics complaint against Mr. Bunnell.

5. It is found that upon receiving Mr. Mandler's email, Mr. McNally forwarded the complaint to all members of the Council except for Mr. Mandler and Mr. Bunnell, as well as the Mayor and the Town Clerk. It is further found that Mr. McNally's email recommended that the Council refer the matter to the Town Attorney for investigation, and advised that "per the Town Ethics Policy we are not allowed to comment on this while the investigation is ongoing."<sup>2</sup>

6. It is found that Council member Robert Yuchniuk responded to Mr. McNally's email expressing his agreement that the matter should be referred to the Town Attorney for investigation. It is further found that Mr. Yuchniuk's email was sent to all recipients of Mr. McNally's email.

7. It is found that the Mayor responded to Mr. Yuchniuk's email noting that the Town "used outside counsel for ethics complaints against elected officials as they are charged with appointing the [T]own [A]ttorney which could surely be viewed as a conflict."

8. It is found that on or around June 12, 2023, Mr. McNally, purporting to act on behalf of the Council, retained Attorney Mark Block of Block, Janney & Sisley, LLC, to investigate Mr. Mandler's ethics complaint against Mr. Bunnell.

9. It is found that by letter dated July 31, 2023, Attorney Block notified Mr. Bunnell that he had "been appointed by the Town Council ... to investigate and render an opinion" regarding Mr. Mandler's complaint, and requested that Mr. Bunnell contact him to discuss the matter.

10. It is found that by letter dated August 14, 2023, Mr. Bunnell responded to Attorney Block's letter, noting that he objected to Attorney Block's investigation because the Council never voted at a public meeting to appoint him, and because his appointment was not in accordance with certain procedures required by the Town's Code of Ethics.

11. With respect to the Commission's jurisdiction over this matter, §1-206(b)(1), G.S., provides in relevant part:

Any person ... denied the right to attend any meeting of a public agency or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] 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.

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<sup>2</sup> It is also found that after sending the complaint to the other members of the Council, Mr. McNally forwarded the complaint to Mr. Bunnell and notified him that the complaint would "most likely be investigated by the Town Attorney."

12. It is found that the complainant learned of the alleged secret meeting sometime after Attorney Block's July 31, 2023, letter to Mr. Bunnell, described in paragraph 9, above. It is further found that the complainant filed the complaint within 30 days of receiving actual or constructive notice of such alleged meeting. It is therefore concluded that the Commission has jurisdiction over the complaint.

13. With respect to the merits of the complaint, §1-225(a), G.S., provides in relevant part that "[t]he meetings of all public agencies ... shall be open to the public."

14. Section 1-200(2), G.S., in relevant part, defines "meeting" to mean "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."

15. In previous cases, the Commission has concluded that email communications among a quorum of a multimember public agency constitute a "meeting" when such communications involve an exchange of information between or among multiple members of the agency, rather than a one-way communication from one member of an agency to the other members. Compare *Peak, et al. v. Goldson, et al.*, Docket #FIC 2018-0386 (May 22, 2019) (series of phone calls and emails among board members to discuss and vote on action to be taken regarding student's suspension constituted a meeting); *Hardison v. Harmon, et al.*, Docket #FIC 2018-0053 (Nov. 14, 2018) (series of three emails between agency members about issue pending before agency constituted a meeting); *Emerick v. Ethics Commission, Town of Glastonbury*, Docket #FIC 2004-406 (Aug. 10, 2005) (emails among agency members to comment on draft rules and regulations and discuss other agency business constituted a meeting) with *Gookins v. Cerf, et al.*, Docket #FIC 2023-0027 (Jan. 10, 2024) (email by one member to a quorum of a multimember public agency not a meeting where no members responded to email).

16. It is found that the email exchange described in paragraphs 5 through 7, above, included a quorum of the Council. It is further found that the Council had "supervision, control, jurisdiction or advisory power" over the subject matter of such exchange, namely, Mr. Mandler's ethics complaint against Mr. Bunnell. See Montville Town Code § 49-5.A ("The Town Council is hereby established as the committee authorized and approved to investigate allegations of unethical conduct against a Town elected or appointed official ..."). It is also found that because two members of the Council exchanged their views regarding how the Council should proceed with respect to the ethics complaint, the respondents "discuss[ed] ... a matter over which the [Council] has supervision, control, jurisdiction or advisory power."

17. Based on the foregoing, it is found that the email exchange described in paragraphs 5 through 7, above, constituted a "meeting" with the meaning of §1-200(2), G.S. It is therefore concluded that the respondents violated §1-225(a), G.S., by holding a meeting that was not open to the public.<sup>3</sup>

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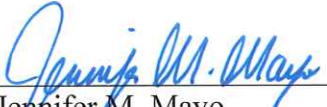
<sup>3</sup> The Commission notes that Exhibit 1, described in the introduction on page 1, above, includes another email exchange from around the same time period among all members of the Council regarding a separate ethics complaint against Mr. Mandler, in which Mr. McNally states that, notwithstanding the referral of the complaint

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

1. Within 30 days of the date of the Notice of Final Decision, the respondents shall create minutes of the meeting described in paragraphs 5 through 7 of the findings and conclusions, above, and make such minutes available for public inspection in accordance with §1-225(a), G.S. The respondents shall further append to such minutes a copy of the June 2, 2023 email exchange marked as Exhibit F in this matter.

2. Henceforth, the respondents shall strictly comply with the open meeting requirements of §1-225, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 24, 2024.

  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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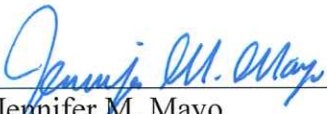
against Mr. Bunnell for investigation, the complaint against Mr. Mandler was “being handled by the mayor and HR” because “[t]he [Council] has no authority to take any action against an elected official.” While the complainant has not raised any claim with respect to this issue, such email exchanges further highlight the need for members of multimember public agencies to exercise caution when communicating by email about agency business.

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:

**JOSEPH SOCHA, III**, 3 Ventura Drive, Oakdale, CT 06370

**CHAIR, TOWN COUNCIL, TOWN OF MONTVILLE; TOWN COUNCIL, TOWN OF MONTVILLE; AND TOWN OF MONTVILLE**, c/o Attorney Richard S. Cody, Suisman Shapiro Wool Brennan Gray & Greenberg, PC, PO Box 1591, New London, CT 06320

  
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Jennifer M. Mayo  
Acting Clerk of the Commission