

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Joe Quaranta,

Complainant

against

Docket # FIC 2023-0219

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

Respondents

March 13, 2024

The above-captioned matter was heard as a contested case on November 30, 2023, 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 email dated and filed on May 5, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act during a May 5, 2023 special meeting of the respondent Board of Selectmen. Specifically, the complainant alleged that “[t]here was several votes, including voting to ban public participation. There was no mention on the agenda to vote, only discuss.” The complainant requested that the actions taken during the May 5, 2023 special meeting be nullified, and the Board of Selectmen be ordered to complete mandatory FOI training.¹
3. Section 1-225(d), G.S., provides in relevant part that:

¹ During the hearing in this matter, the complainant expressed concerns regarding the respondents’ decision to temporarily suspend public comment at its Board of Selectmen meetings. “The Commission notes that, while meetings of a public agency are required to be open to the public, the FOI Act does not require a public agency to permit members of the public to speak or comment at its meetings.” Docket #FIC 2013-384, John Mosby v. Chairman Board of Education, Norwalk Public Schools et al. (Apr. 9, 2014). Accordingly, to the extent the complainant alleges the respondents violated the FOI Act by suspending public comment, such issue is not properly before the Commission and will not be considered.

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 on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state *The notice shall specify the time and place of the special meeting and the business to be transacted.* (Emphasis added).

4. It is found that the respondent Board of Selectmen ("respondent board" or "board") held a special meeting on May 5, 2023.

5. It is found that under the "Business" section of the agenda for the May 5, 2023 special meeting, three items were listed: (i) Annual Town Meeting; (ii) Discussion of Public Comment; and (iii) Shepaug Dam Tour.

6. It is found that during the May 5, 2023 special meeting, the respondent board voted on agenda items (i) and (ii) as described in paragraph 5, above.²

7. It is found that regarding agenda item (i) (i.e., "Annual Town Meeting"), Selectman Patrick Roy made a motion to schedule the Annual Town meeting for May 16, 2023, and indicated what items would be voted on at that meeting. It is found that this motion was seconded by Selectman Kim Tester and carried unanimously.

8. It is found that regarding agenda item (ii) (i.e., "Discussion of Public Comment"), the board discussed the temporary suspension of the public comment period typically provided during its meetings. It is further found that after discussing the matter, Selectman Russ Diriezno made a motion to "suspend Communications from the Public from the agenda and revisit it in the future. . . ." It is found that this motion was seconded by Selectman Kim Tester and carried unanimously.

9. It is found that the complainant attended the May 5, 2023 special meeting, and was present for the board's discussions and votes.

10. The Commission has previously considered whether a public agency may vote during a special meeting despite the agenda for such meeting not specifying that a vote would be taken. In Docket #FIC 2015-534, Patricia Mechare v. Andrea Downs, Chairman, Board of Education, Regional School District 1 et al. (May 11, 2016), the Commission determined that the Board of Education did not violate the FOI Act when voting on a matter listed on the agenda as "Anticipated Executive Session for Purpose of Superintendent Evaluation and Contract." The Commission concluded that "it is inherent in the meeting agenda that the business included therein might be considered *and* acted upon, including by way of vote, at the meeting." (Emphasis in original).

² The complainant did not raise issue with agenda item (iii) (i.e., "Shepaug Dam Tour") in his complaint or at the November 30, 2023 hearing in this matter. Accordingly, agenda item (iii) will not be further addressed herein.

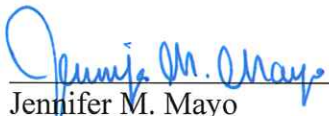
11. Similarly, in Docket #FIC 2007-249, Jay Kronfeld v. Board of Education Regional School District #12 (Nov. 28, 2007), the Commission determined that a special meeting agenda item providing “Discussion of Building Project Strategies” was “specific enough to fairly apprise the public that the respondent would discuss and possibly vote to put forth a referendum concerning the construction of a new school” See also Docket #FIC 1994-201, Lisa Wlodarski et al. v. Ridgefield Board of Police Commissioners (Mar. 22, 1995) (finding that an agenda item to “interview” candidates “was not so restrictive so as to preclude the respondent from voting to select one of the candidates for the vacant position.”)

12. Based on the foregoing, and the facts and circumstances of this case, it is found that the respondent board’s agenda was specific enough to fairly apprise the public that the respondents would discuss and possibly act (i.e., vote) on the matters listed on the agenda for the May 5, 2023 special meeting. It is therefore concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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 March 13, 2024.



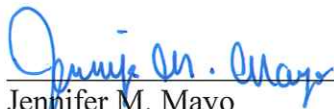
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JOE QUARANTA, 1 Judds Bridge Road, Roxbury, CT 06783

FIRST SELECTMAN, BOARD OF SELECTMEN, TOWN OF ROXBURY; BOARD OF SELECTMEN, TOWN OF ROXBURY; AND TOWN OF ROXBURY, c/o Attorney Gail E McTaggart, Secor, Cassidy & McPartland, P.C., 41 Church Street, Waterbury, CT 06702



Jennifer M. Mayo
Acting Clerk of the Commission