

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Luz Bueno,

Complainant

against

Docket #FIC 2023-0291

Chair, Advisory Committee on
Sustainability, Town of Darien; Advisory
Committee on Sustainability, Town of
Darien; and Town of Darien,

Respondents

May 22, 2024

The above-captioned matter was heard as a contested case on March 7, 2024 and April 5, 2024, at which times 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 dated June 8, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act in connection with a regular meeting of the respondent Advisory Committee on Sustainability (“Advisory Committee”) held on May 10, 2023 (“May 10th meeting”). Specifically, the complainant alleged that the Advisory Committee:
 - (a) failed to properly notice the May 10th meeting;
 - (b) improperly denied the complainant access to the May 10th meeting until it was halfway through;
 - (c) failed to properly post the agenda for the May 10th meeting;
 - (d) required the complainant to provide her full name in order to participate in the May 10th meeting, in violation of §1-225, G.S.; and
 - (e) denied the complainant the opportunity to speak during the public comment period of the May 10th meeting.

3. It is found that the Advisory Committee's May 10th meeting was conducted solely by means of electronic equipment.

4. With regard to the allegations described in paragraphs 2(a) and 2(c), above, §1-225a(a), G.S., provides, in relevant part:

[n]ot less than forty-eight hours before any public agency ... conducts a regular meeting by means of electronic equipment, such agency shall ... post a notice that such agency intends to conduct the meeting solely or in part by means of electronic equipment (1) in the agency's regular office or place of business, (2) in the office ... of the clerk of such subdivision for any public agency of a political subdivision of the state that is not a quasi-public agency ... and (3) if the agency has an Internet web site, on such Internet web site. Not less than twenty-four hours prior to any such meeting, such agency shall post the agenda for any such meeting in the same manner as the notice of the meeting in accordance with subdivisions (1) to (3), inclusive, of this subsection. Such notice and agenda shall include instructions for the public, to attend and provide comment or otherwise participate in the meeting, by means of electronic equipment or in person, as applicable and permitted by law. Any such notice and agenda shall be posted in accordance with the provisions of section 1-225.

5. At the hearing in this matter, the respondents testified, and it is found, that on May 7, 2023, the respondent Chair sent the notice and agenda for the May 10th meeting to the Town Clerk's Office for the Town of Darien ("Town Clerk's Office"). It is also found that on May 8, 2023, such notice and agenda were filed with the Town Clerk's Office. It is therefore found that the respondents timely filed the notice and agenda with the office of the clerk, pursuant to §1-225a(a)(2), G.S.

6. It is found, however, that at the time of the May 10th meeting, the notice posted to the town's website erroneously noticed the May 10th meeting as an in-person meeting that would take place in Room 206 at Darien Town Hall at 12:00 PM.

7. The respondent Chair testified, and it is found, that since the Advisory Committee began conducting meetings during the COVID-19 pandemic, all regular meetings of the Advisory Committee have been conducted solely by means of electronic equipment. The respondent Chair also testified that it was her understanding that once she files the notice and agenda for an upcoming meeting with the Town Clerk's Office, the Town Clerk then posts such notice and agenda to the town website. The respondent Chair further testified, and it is found, that the Town Clerk did not timely post the notice and agenda on such website for the May 10th meeting.

8. It is therefore concluded that the respondents violated §1-225a, G.S., by failing to timely post the notice and agenda for the May 10th meeting on the town's website, failing to notify the public that the respondents intended to conduct the May 10th meeting solely by use of electronic equipment, and failing to include instructions for the public to attend the May 10th meeting by means of electronic equipment.

9. With regard to the allegation in paragraph 2(b), above, §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.”

10. The complainant testified, and it is found, that in reliance upon the erroneous notice posted to the town's website, described in paragraph 6, above, she went to Darien Town Hall in order to attend the May 10th meeting. It is also found that after the complainant discovered the Advisory Committee was not meeting at Darien Town Hall, she sought assistance from someone in the Darien Town Hall, who was able to provide her with the correct access information for the meeting.¹ The complainant's witness credibly testified, and it is found, that the entire interaction with the Town of Darien employee took “a few minutes.” It is further found that once the complainant obtained the access information for the May 10th meeting, she returned to her car, where she was able to access such meeting using her cell phone.

11. It is found that, although the May 10th meeting was scheduled to begin at 12:00 PM, such meeting did not commence until approximately 12:10 PM, due to the lack of a quorum. It is also found that the complainant accessed the meeting approximately eleven minutes later at 12:21 PM.

12. The complainant alleged that the Advisory Committee purposefully attempted to exclude her from the May 10th meeting, so that the Advisory Committee could privately discuss item 4 on the May 10th meeting agenda: the “Swap Shop”. It is found, however, that although the “Swap Shop” was included on the meeting agenda, the Advisory Committee did not participate in any discussion of the “Swap Shop” at its May 10th meeting.

13. Based upon the findings in paragraphs 6, 10 and 11, above, it is concluded that the respondents violated §1-225(a), G.S., by denying the complainant access to the first eleven minutes of the May 10th meeting, due to the erroneous notice that was filed for the May 10th meeting.

14. With regard to the allegation in paragraph 2(d), above, §1-225(e), G.S., provides that “[n]o member of the public shall be required, as a condition to attendance at a meeting of any such body, to register the member's name, or furnish other information, or complete a questionnaire or otherwise fulfill any condition precedent to the member's attendance.”

15. Section 1-225a(e), provides, in relevant part:

¹ The Commission notes that it is concerned by the fact that the credible testimony of the complainant's witness regarding the complainant's interactions at Darien Town Hall conflicts with an affidavit submitted by the respondents. However, such conflict is, ultimately, not central to any potential violations of the FOI Act.

[a]ny member of ... the public who participates orally in a meeting of a public agency conducted by means of electronic equipment shall make a good faith effort to state such member's name and title, if applicable, at the outset of each occasion that such member participates orally during an uninterrupted dialogue or series of questions and answers.

16. It is found that when the complainant joined the May 10th meeting of the Advisory Committee, the respondent Chair saw that an individual, identified only as "Caller 01", had joined the meeting and asked if the unidentified individual would be willing to identify herself. It is also found, however, that the respondent Chair did not require the complainant to state her name or furnish other information as a condition precedent to attending such meeting. It is further found that at the time that the respondent Chair asked the complainant to identify herself, the complainant was already attending the meeting by use of electronic equipment.

17. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in paragraph 2(d), above.

18. With regard to the allegation in paragraph 2(e), above, §1-225a(b), G.S., provides, in relevant part:

[a]ny public agency that conducts a meeting, other than an executive meeting or special meeting, as described in this section, solely by means of electronic equipment, shall (1) provide any member of the public ... (B) the same opportunities to provide comment or testimony and otherwise participate in such meeting that such member of the public would be accorded if such meeting were held in person, except that a public agency is not required to adjourn or postpone a meeting if a member of the public loses the ability to participate because of an interruption, failure or degradation of such person's connection to the meeting by electronic equipment

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

[n]othing in this section shall be construed to require a public agency to offer members of the public who attend a meeting by means of electronic equipment the opportunity for public comment, testimony or other participation if the provision of such opportunity is not required by law for members of the public who attend such a meeting in person.

20. It is found that because the agenda for the May 10th meeting provided for public comment, the respondents were required to allow members of the public the same opportunity to participate in public comment by means of electronic equipment that such members would be accorded if the meeting were held in person.

21. It is found that, upon accessing the May 10th meeting from her cell phone, the complainant addressed the Advisory Committee, relayed her issues accessing such meeting, and insinuated that the notice and agenda for the meeting were intentionally posted to the town's website incorrectly.

22. It is found that the respondent Chair apologized to the complainant twice for any issues that may have occurred and then muted the complainant, in order to proceed with the Advisory Committee's ongoing meeting discussion. It is also found that, although the public comment period was listed as the first item on the meeting agenda, the respondent Chair informed the complainant that she would have an opportunity to address the Advisory Committee at the end of the May 10th meeting.

23. It is found that, towards the end of the May 10th meeting (with approximately 1:33 minutes left), the respondent Chair attempted to unmute the complainant to allow her to provide public comment, but encountered technical issues and was unsuccessful. It is also found that other members of the Advisory Committee attempted to resolve the issue and instruct the complainant on how she could unmute herself, but were, likewise, unsuccessful. It is further found that the complainant did not unmute herself.


24. It is found that because the Advisory Committee had finished its agenda, and the respondent Chair was unable to unmute the complainant or confirm that the complainant was still on the phone, the Advisory Committee voted to adjourn the May 10th meeting.

25. It is concluded, based on the facts and circumstances of this case, that the respondents did not violate the FOI Act, as alleged in paragraph 2(e), above.

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

1. Henceforth, the respondents shall strictly comply with the notice provisions of §1-225a, G.S., and the open meetings requirements set forth in §1-225(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 22, 2024.


Molly E. Steffes
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:

LUZ E BUENO, 123 Hoyt Street, Darien, CT 06820

**CHAIR, ADVISORY COMMITTEE ON SUSTAINABILITY, TOWN OF DARIEN;
ADVISORY COMMITTEE ON SUSTAINABILITY, TOWN OF DARIEN; AND
TOWN OF DARIEN**, c/o Attorney John Wayne Fox, Curtis, Brinckerhoff & Barrett, P.C.,
666 Summer Street, Stamford, CT 06901



Molly E. Steffes
Acting Clerk of the Commission