

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Anita Arakelian,

Complainant

against

Docket # FIC 2023-0241

Chairman, Board of Education, West  
Hartford Public Schools; Board of  
Education, West Hartford Public Schools;  
Chair, Policy Subcommittee, Board of  
Education, West Hartford Public Schools;  
and Policy Subcommittee, Board of  
Education, West Hartford Public Schools,

Respondents

May 8, 2024

The above-captioned matter was heard as a contested case on December 7, 2023, and February 23, 2024, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

On November 13, 2023, the complainant filed a Motion to Subpoena Witnesses, requesting that the Hearing Officer issue a subpoena for the Chair of the Policy Subcommittee, Board of Education, West Hartford Public Schools (“Policy Subcommittee”) as well as two other members of the Policy Subcommittee. On November 13, 2023, the Hearing Officer denied the Motion to Subpoena Witnesses.

During the December 7, 2023 contested case hearing, the complainant indicated that she wanted to offer an additional witness to testify who was only available to testify on that date remotely, to which the respondents objected. The Hearing Officer denied the request for permission to allow the witness to testify remotely. However, the Hearing Officer continued the matter for a second hearing date to allow the witness to testify in person.

The continued hearing was scheduled for January 19, 2024. On January 18, 2024, the complainant requested a postponement of the hearing scheduled for January 19, 2024, because the witness she wanted to testify indicated, on January 18, 2024, that she would not appear at the hearing to testify without being subpoenaed. Also, on January 18, 2024, the complainant filed a second Motion to Subpoena Witnesses requesting that the Hearing Officer subpoena this witness as well as the Chair of the Policy Subcommittee and another member of the Policy Subcommittee. The Hearing Officer granted the Motion to Subpoena with respect to the witness who had previously agreed to testify but denied the motion with respect to the two other individuals.

The Commission issued the Subpoena on February 9, 2024, and the complainant caused the Subpoena to be served on the witness, via abode service, on February 20, 2024. The witness appeared and testified at the continued hearing scheduled for February 23, 2024.

On February 28, 2024, the Hearing Officer ordered the respondents to submit to the Commission for in camera inspection an unredacted copy of the record reviewed by the Policy Subcommittee, during the executive session convened at its May 11, 2023 meeting. On March 4, 2024, the respondents filed a Motion for Reconsideration of Order to Submit Records for In Camera Inspection and Request to Be Heard, as well as a Motion to Stay the Order to Submit Records for In Camera Inspection. The Hearing Officer denied both motions and the request.

On April 4, 2024, pursuant to an order of the Hearing Officer, the respondents filed an after-filed exhibit, which has been marked Respondents' Exhibit 4 (after-filed): Affidavit of Carolyn Perkins.

On April 9, 2024, the complainant filed an Affidavit, in response to the Respondents' Exhibit 4 (after-filed), which has been marked Complainant's Exhibit Q (after-filed): Affidavit of Anita Arakelian.

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. It is found that the respondents convened a meeting of the Policy Subcommittee, on May 11, 2023 at 6:00 P.M. ("May 11, 2023 Meeting"). It is found that one of the agenda items for the May 11, 2023 Meeting was described only as "Executive Session." It is found that no further description or reason for the executive session was listed on such agenda. Additionally, it is found that the minutes for the May 11, 2023 Meeting indicated, under section "II. Executive Session," the following:

Jason Chang asked for unanimous consent to enter executive session for the purpose of discussing a communication protected by the attorney client privilege concerning the Board's public comment policy. There was no objection and the subcommittee moved to executive session. Attorney Dodge, Mrs. McKernan and Dr. Morrow were invited to join the Executive session. Executive session ended at 7:07 pm.

3. By email dated and filed May 16, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act as follows:

the Chairperson, Lorna Thomas-Farquharson, of the policy subcommittee of the West Hartford Board of Education [{"BOE"}], did not allow for public attendance of its subcommittee when she failed to properly give notice [of] the May 11, 2023 meeting of [P]olicy [S]ubcommittee. Ms. Thomas-Farquharson's convening

the May 11<sup>th</sup> meeting is in violation of Connecticut General Statute [§]1-206(b) open access to public agency meetings. ...

On the agenda is listed the item, Executive Session. I include the minutes of this meeting, which were published on the website at 2:23 pm, which provides that the Executive Session was for attorney-client privilege. This exemption for open access is a very narrow scope. I feel that Ms. Lorna Thomas-Farquharson's information on the minutes providing attorney-client privilege does not fall under this narrow scope of executive session.<sup>1</sup>

As we know from the Ridgefield precedence, the work product of unnoticed meetings are rendered invalid, null and void. With this in mind, I appeal to your expertise regarding this matter.<sup>2</sup>

4. By emails dated May 18, 2023, and May 23, 2023, the complainant sought to amend her complaint to include additional claims.<sup>3</sup> It is found that, in such emails, the complainant either reiterated her prior claims, or failed to allege violations of the FOI Act, and therefore such claims will not be further addressed herein.<sup>4</sup>

### Scope of the Complaint

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<sup>1</sup> It is found that the remaining allegations in the complaint constitute background factual allegations or other claims that do not allege violations of the FOI Act. For example, the complaint also alleged that the Chair of the Policy Subcommittee failed to identify whether the May 11, 2023 Meeting was a regular, special or emergency meeting. It is found that the FOI Act does not mandate that meeting notices or agendas must state whether a particular meeting is a regular, special or emergency meeting, although it is preferable for such notice or agenda to do so. In this case, it is found that the May 11, 2023 Meeting was a special meeting, based upon the evidence in the record and the acknowledgement by the respondents. In addition, the complaint alleged that the chairperson of the Policy Subcommittee failed to respond to the complainant's "letter of inquiry," sent on May 15, 2023. The Commission notes that the FOI Act does not require public agencies to answer questions. Accordingly, the complainant's additional claims and statements set forth in the complaint will not be further addressed herein.

<sup>2</sup> The Commission interprets this request as a request that the Commission declare the actions taken at the May 11, 2023 Meeting invalid, null, and void.

<sup>3</sup> Additionally, on July 25, 2023, the complainant emailed the Commission a "follow-up to [her] email exchange with the FOIC Ombudsman" along with attachments related to the parties' discussions with the ombudsman. At the contested case hearing, the Hearing Officer sustained an objection to the admissibility of the July 25, 2023 email and attachments because, absent consent from all parties, communications between the parties and the ombudsman are not permitted into evidence, pursuant to §1-21j-29(d), Reg. of Conn. State Agencies. Accordingly, any claims set forth in the July 25, 2023 email will not be further addressed herein.

<sup>4</sup> For example, in her May 18, 2023 email to the Commission, the complainant complains that one of the members of the Policy Subcommittee referred to the FOI Act as "the Sunshine Laws Act." The Commission notes that sunshine laws are laws requiring public disclosure of public agency meetings and records and, therefore, the FOI Act is, in fact, a sunshine law. Additionally, the failure to correctly state the name of the FOI Act is not a violation of the FOI Act. In her May 23, 2023 email, the complainant contended that she had an interest in attending and participating in the May 11, 2023 Meeting and suggested that it was unfair or improper for the respondents to provide specific notice of the May 11, 2023 Meeting to a public school administrator, but not to the complainant. The Commission notes that, even though there may be individuals to whom the subject matter of public meetings may be relevant, neither desire nor interest can enlarge a multi-member public agency's notice requirements for special meetings under §1-225(d), G.S., of the FOI Act.

5. At the hearing in this matter and on brief, the respondents contended that the scope of the complaint was limited solely to a claim that the May 11, 2023 Meeting was unnoticed.

6. Our Supreme Court has made clear that “[a]s a practical matter, the FOIA is used repeatedly by members of the public who are unschooled in technical, legalistic language distinctions.” Perkins v. Freedom of Info. Comm’n, 228 Conn. 158, 167 (1993) (“Perkins”). The Supreme Court, in disagreeing with the trial court in Perkins, also said: “[T]he trial court ... relied on distinctions that are overly formal and legalistic in light of the public policy expressed by the FOIA. The overarching legislative policy of the FOIA is one that favors ‘the open conduct of government .... As we have repeatedly noted, ‘[o]ur construction of the FOIA must be guided by the policy favoring disclosure....’ Perkins, at 166-167.

7. It is found that although the complaint, in part, alleges that the respondents failed to properly notice the May 11, 2023 Meeting, that claim is not the sole basis for the complaint. Based upon a broad reading of the complaint as a whole, as described in paragraph 3, above, it is found that the complainant also fairly raised allegations in the complaint that put at issue the sufficiency of the agenda item for the May 11, 2023 Meeting that merely indicated “Executive Session,” as well as whether the executive session entered into during the May 11, 2023 Meeting was convened for a proper purpose.<sup>5</sup>

#### **Notice of the May 11, 2023 Meeting**

8. With regard to the contention that the respondents failed to properly provide notice for the May 11, 2023 Meeting, §1-225(d), G.S., provides, in relevant part, as follows:

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 secretary or clerk shall cause any notice received under this section to be posted in his or her office....

9. At the hearings in this matter, the complainant testified, and it is found, that she first learned of the May 11, 2023 Meeting on May 12, 2023. The complainant further testified, and it is found, that she reviewed the BOE website on May 9, 2023 and, at the time that she reviewed the BOE website, no notice of the May 11, 2023 Meeting was posted on such website. The complainant also testified, and it is found, that she did not examine the BOE website on May 10, 2023. The complainant’s first witness testified, and it is found, that she reviewed the BOE website as well as the website for her child’s school prior to May 11, 2023, but she did not see any notice or agenda posted for the May 11, 2023 Meeting. However, the complainant’s first witness testified, and it is found, that she could not recall the exact dates that she reviewed such

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<sup>5</sup> During the hearings in this matter and on brief, the complainant raised additional allegations against the respondents that were not fairly raised in the complaint, and therefore, such allegations will not be further addressed herein.

websites.<sup>6</sup>

10. Based upon the complainant's testimony, it is found that the complainant did not inquire with the Town Clerk for the Town of West Hartford regarding any posted notices for the Policy Subcommittee meetings because she did not believe that it was reasonable to require her to have to contact the Town Clerk. The complainant's first witness also testified, and it is found, that she did not contact the Town Clerk regarding Policy Subcommittee meeting notices or agendas.

11. By sworn affidavit dated April 4, 2024, Respondents' Exhibit 4 (after-filed), the Executive Assistant of the Assistant Superintendent for Administration for the West Hartford Public Schools (the "Executive Assistant"), who has been employed with the West Hartford Public Schools for forty-eight years, averred, and it is found, that she received the agenda for the May 11, 2023 Meeting on May 9, 2023, and that she went to the Town Clerk's Office on May 10, 2023 to post the agenda, twenty-four hours in advance of the May 11, 2023 Meeting. The Executive Assistant also averred, and it is found, that she posted the agenda for the May 11, 2023 Meeting on the Town Clerk's Agenda Board, a bulletin board outside of the Town Clerk's Office where all public agency agendas are posted, in accordance with the standard practice in the Town Clerk's Office at the time.<sup>7</sup>

12. By sworn testimony in her affidavit, the Executive Assistant averred, and it is found, that, on May 10, 2023, she submitted a helpdesk ticket for the IT Department to post the May 11, 2023 Meeting agenda to the BOE website. At the hearing, the respondents' witness, the IT Manager for the West Hartford Public Schools, testified and offered documentary evidence, and it is found, that the agenda for the May 11, 2023 Meeting was posted on the BOE website by 11:25 a.m., on May 10, 2023, more than twenty-four hours in advance of the meeting.

13. Accordingly, it is concluded that the respondents did not violate §1-225(d), G.S., with respect to the filing of the notice for the May 11, 2023 Meeting.

### **Sufficiency of the Executive Session Agenda Item**

14. With regard to the contention that the respondents failed to sufficiently notice the executive session convened as part of the May 11, 2023 Meeting, §1-225(d), G.S., provides in relevant part that "the notice of [each special meeting of every public agency] shall specify the

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<sup>6</sup> In her complaint and at the hearings in this matter, the complainant alleged that the meeting minutes for April 18, 2023 BOE regular meeting and the agenda for May 2, 2023 BOE regular meeting did not mention the May 11, 2023 Meeting. However, the FOI Act does not have any such requirement, and therefore these claims are irrelevant and will not be further addressed herein.

<sup>7</sup> By sworn affidavit dated April 9, 2024, Complainant's Exhibit Q (after-filed), the complainant averred, and it is found, that she went to the "West Hartford Town Clerk's Office, [on] April 8, 2024 to review the West Hartford Board of Education's Agendas on file with the West Hartford Town Clerk's Office." The complainant further averred, and it is found, that the agenda for the May 11, 2023 Meeting was not included in the files she reviewed, which she was informed were the files in which the West Hartford Public Schools documents were maintained. It is found that none of the statements in the complainant's April 9, 2024 affidavit directly disputes the sworn statements of the Executive Assistant that she posted the agenda for the May 11, 2023 Meeting in the Town Clerk's Office on May 10, 2023 and nothing in the complainant's affidavit demonstrates that the agendas for the Policy Subcommittee were actually maintained in the same files that she reviewed on April 8, 2024.

time and place of the special meeting and the business to be transacted. . . .”

15. It is well established that a meeting agenda must “fairly apprise the public of the action proposed,” and of the “matters to be taken up at the meeting in order to [permit the public] to properly prepare and be present to express their views.” See Zoning Board of Appeals of the Town of Plainfield v. Freedom of Info. Comm’n, Docket No. CV 99-047917-S, 2000 WL 765186 (Superior Court, Judicial District of New Britain, May 3, 2000), reversed on other grounds, Zoning Board of Appeals of the Town of Plainfield v. Freedom of Info. Comm’n, 66 Conn. App. 279 (2001).

16. This Commission repeatedly has held that, in order for the public to be fairly apprised of the reason for an executive session, the public agency must give some indication of the specific topic to be addressed and descriptions such as “personnel,” “personnel matters,” “legal,” or even “the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee,” are inadequate. See e.g., Brenda White v. Greg Amy, Chairman, Westfield Fire Comm’n et al., Docket #FIC 2022-0466 (November 15, 2023) (“Executive Session” was not sufficiently specific to apprise the public of the business to be transacted); Bradshaw Smith v. Craig Cook, Super. of Sch., Windsor Pub. Sch. et al., Docket #FIC 2014-833 (September 24, 2015) (agenda item “Potential Executive Session to Review Attorney/Client Privileged Communication Regarding Personnel Matter,” did not fairly apprise the public of matter to be discussed); Richard L. Stone v. Bd. of Selectmen, Town of Cromwell, Docket #FIC 2010-738 (August 24, 2011) (agenda item “[e]xecutive session: [p]ersonnel,” did not fairly apprise the public of proposed matter to be discussed).

17. On brief, the respondents admitted that the agenda item, described in paragraph 2, above, which identified the executive session for the May 11, 2023 Meeting, “lacked specificity.”

18. It is found that the agenda item described in paragraph 2, above, was not sufficiently specific to apprise the public of the business to be transacted or action proposed and failed to state a reason for convening in executive session.

19. It is therefore concluded that the respondents failed to sufficiently apprise the public of the specific topic to be discussed in executive session during the May 11, 2023 Meeting, in violation of §1-225(d), G.S.

### **Purpose of the Executive Session**

20. With respect to whether the executive session of the May 11, 2023 Meeting was convened for a proper purpose, §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.”

21. Section 1-200(6), G.S., provides in relevant part:

‘[e]xecutive sessions’ means a meeting of a public agency at which the public is excluded for one or more of the following purposes:

...(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.

22. As described in paragraph 2, above, the minutes for the May 11, 2023 Meeting stated that the Policy Subcommittee entered executive session for the purpose of discussing a communication protected by the attorney client-privilege concerning the Board's public comment policy.

23. The complainant's second witness, a member of the Policy Subcommittee, testified, and it is found, that she was present during the executive session portion of the May 11, 2023 Meeting and that, during such executive session, the Policy Subcommittee discussed a written document that related to a BOE policy. She additionally testified, and it is found, that the Corporation Counsel and two administrators for the West Hartford Public Schools were present during such executive session and no members of the public were present.

24. Pursuant to an order of the hearing officer, dated February 28, 2024, the respondents submitted to the Commission an unredacted copy of the record discussed during the executive session of the May 11, 2023 Meeting, described in paragraph 23, above, for an in camera inspection, along with an in camera index. The respondents submitted such record to the Commission on March 7, 2024.

25. On the in camera index, the respondents indicated that the record submitted for in camera inspection is a "communication protected by the attorney client privilege concerning the Board's Public Comment policy," and exempt from disclosure under §§1-210(b)(10) and 52-146r, G.S.

26. Section 1-210(b)(10), G.S., provides, in relevant part, that nothing under the FOI Act requires the disclosure of "communications privileged by the attorney-client relationship."

27. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the attorney-client privilege, which is set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002) ("Maxwell"). In Maxwell, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

28. Section 52-146r(2), G.S., defines "confidential communications" as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

29. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, at 149.

30. Based upon all of the evidence in the record, especially the face of the in camera record itself, it is found that the respondents made a request for legal advice to their attorney and that the attorney put his advice in writing in the form of a written legal memorandum. It is found that the legal memorandum is clearly marked at the top: “Privileged and Confidential – Attorney Client Communication.” It is found that the legal memorandum was transmitted in confidence between counsel and public officials or other employees acting within the scope of their employment with the respondents. It is further found that the memorandum relates to legal advice sought by the public agencies from their attorney and received by the public officials acting on behalf of the agencies from their attorney. It is also found that the respondents did not waive the privilege.

31. After having received counsel’s written legal advice, it is found that the Policy Subcommittee properly convened in executive session to discuss such advice with its attorney.

32. It is found that §1-210(b)(10), G.S., exempts the memorandum described in paragraphs 23, 24, 25, and 30, above, from mandatory disclosure, and it is concluded that §1-200(6), G.S., permitted the respondents to discuss the memorandum in executive session.

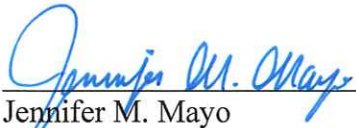
33. It is therefore further concluded that the respondents did not violate §1-225(a), G.S.

34. With regard to the complainant’s request that the actions taken at the May 11, 2023 Meeting be declared null and void by this Commission, under the facts and circumstances of this case, the Commission declines to consider such relief.

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 §1-225(d), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 8, 2024.

  
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Jennifer M. Mayo  
Acting Clerk of the Commission

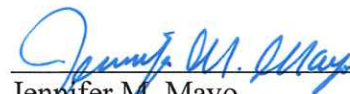


PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**ANITA ARAKELIAN**, 48 West Normandy Drive, West Hartford, CT 06107

**CHAIRMAN, BOARD OF EDUCATION, WEST HARTFORD PUBLIC SCHOOLS; BOARD OF EDUCATION, WEST HARTFORD PUBLIC SCHOOLS; CHAIR, POLICY SUBCOMMITTEE, BOARD OF EDUCATION, WEST HARTFORD PUBLIC SCHOOLS; AND POLICY SUBCOMMITTEE, BOARD OF EDUCATION, WEST HARTFORD PUBLIC SCHOOLS**, c/o Attorney Cynthia Lauture, Office of the Corporation Counsel, 50 South Main Street, Room 319, West Hartford, CT 06107

  
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Jennifer M. Mayo  
Acting Clerk of the Commission