

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Maggio,

Complainant

against

Docket # FIC 2024-0043

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

Respondents

October 9, 2024

The above-captioned matter was heard as a contested case on July 1, 2024, 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 letter of complaint filed January 4, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the notice requirements set forth in §1-225a(a), G.S., for “hybrid” in-person/remote meetings with respect to the respondents’ regular meetings of December 7, 2023 and December 21, 2023.<sup>1</sup> The complainant requested that the Commission issue an order declaring null and void any action taken at such meetings.
3. Section 1-225a(a), G.S., provides:
  - (a) As used in this section, “public agency”, “meeting”, “executive session”, “electronic equipment” and “electronic transmission” have the same meanings as provided in section 1-200. On and after July 1, 2021, a public agency

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<sup>1</sup> Although not appearing in the FOI Act, the term “hybrid meeting” is commonly used to refer to meetings conducted both in person and remotely that are subject to the requirements of §1-225a(a), G.S. Consistent with such practice, and because both parties used that term throughout the proceedings in this matter, this decision will refer to such meetings as “hybrid meetings.”

may hold a public meeting that is accessible to the public by means of electronic equipment or by means of electronic equipment in conjunction with an in-person meeting, in accordance with the provisions of this section. Not less than forty-eight hours before any public agency, except for the General Assembly, conducts a regular meeting by means of electronic equipment, such agency shall provide direct notification in writing or by electronic transmission to each member of the public agency and 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 and on the Internet web site of the Secretary of the State for any such public agency of the state or quasi-public agency, 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, or in the office of the clerk of each municipal member of any multitown district or 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.

(b) Any public agency that conducts a meeting, other than an executive session or special meeting, as described in this section, solely by means of electronic equipment, shall (1) provide any member of the public (A) upon a written request submitted not less than twenty-four hours prior to such meeting, with a physical location and any electronic equipment necessary to attend such meeting in real-time, and (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; (2) ensure that such meeting is recorded or transcribed,

excluding any portion of the meeting that is an executive session, and such transcription or recording is posted on the agency's Internet web site and made available to the public to view, listen to and copy in the agency's office or regular place of business not later than seven days after the meeting and for not less than forty-five days thereafter; and (3) if a quorum of the members of a public agency attend a meeting by means of electronic equipment from the same physical location, permit members of the public to attend such meeting in such physical location....

4. Section 1-200(12), G.S., defines "electronic equipment" to mean "any technology that facilitates real-time public access to meetings, including, but not limited to, telephonic, video or other conferencing platforms."

5. It is found that prior to December 7, 2023, the respondents conducted their regular meetings as hybrid meetings, in that such meetings were held in person, but the public and members of the respondent Board of Selectmen ("Board") were allowed to participate by means of electronic equipment through the Zoom videoconferencing platform. It is further found that, during such meetings, members of the public who attended via Zoom were given the ability to provide public comment during any portions of the meetings in which public comment was allowed.

6. It is found that on December 7, 2023, at 7:30 p.m., the respondents held a regular meeting at Weston Town Hall ("December 7 Meeting").

7. It is further found that on December 6, 2023, sometime before 7:30 p.m., the respondents posted the agenda for the December 7 Meeting. It is found that the heading of the agenda stated that the meeting would be held at the "Weston Town Hall Meeting Room and via Zoom." It is also found that below the heading, the agenda invited the public to "click the link below to join the webinar," and further provided a phone number for the public to "[j]oin by phone."

8. The respondents conceded that the December 7 Meeting was a hybrid meeting, and that they failed to post a notice at least 48 hours prior to such meeting that notified the public of their intention to conduct a hybrid meeting. It is therefore concluded that the respondents violated §1-225a(a), G.S., with respect to the December 7 Meeting.

9. It is found that sometime after the December 7 Meeting, the respondents decided to return to holding their regular meetings solely in person.<sup>2</sup> It is further found that the respondents decided that as a matter of convenience to the public, they would livestream their regular

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<sup>2</sup> At the hearing, the respondents initially testified that the December 7 Meeting was not a hybrid meeting because the public was only allowed to view, but not participate in, the meeting via the Zoom link. Later in the testimony, however, the respondents could not recall exactly when they made the decision to return to holding regular meetings solely in person. In their post-hearing brief, the respondents conceded that the December 7 Meeting was a hybrid meeting and that they failed to comply with the notice requirements in §1-225a(a), G.S.

meetings via Zoom, but would not provide members of the public who watched such livestream the ability to provide comment or otherwise interact with those attending the in-person meeting.

10. It is found that the respondents held their next regular meeting on December 21, 2023, at 7:30 p.m. (“December 21 Meeting”). It is further found that the respondents livestreamed such meeting via Zoom, but that they set up the Zoom webinar in such a manner that any member of the public viewing the meeting through the link would not have the ability to speak or otherwise interact with attendees of the in-person meeting, and the respondents would not be able to modify such setting once the meeting commenced.

11. It is found that the agenda for the December 21 Meeting was posted less than 48 hours prior to the meeting. It is further found that such agenda differed from the December 7 Meeting agenda in the following ways: (1) the heading of the December 21 Meeting agenda stated that the meeting would be held at the “Weston Town Hall Meeting Room,” while omitting the additional language “and via Zoom” that appeared in the December 7 Meeting agenda; (2) the December 21 Meeting agenda invited the public to click a link to “view the meeting,” instead of to “join the meeting,” as appeared in the December 7 Meeting agenda; and (3) the December 21 Meeting agenda provided a phone number for the public to “[l]isten by phone,” rather than to “[j]oin by phone,” as appeared in the December 7 Meeting agenda.

12. At the hearing in this matter, the respondents’ town attorney testified that the changes to the December 21 Meeting agenda described in paragraph 11, above, were specifically intended to make clear that the public would be able to view or listen to, but not participate in, the December 21 Meeting via Zoom or by phone.

13. In their post-hearing brief, the respondents claimed that the notice requirements set forth in §1-225a(a), G.S., did not apply to the December 21 Meeting because such meeting was not “accessible to the public by means of electronic equipment,” within the meaning of such provision. The respondents contended that when a public agency holds an in-person meeting while providing the public a mechanism to listen to or watch the meeting live via electronic equipment, but does not offer any ability for participation through such electronic equipment, such meeting is not subject to the requirements of §1-225a(a), G.S.

14. The Commission has not previously interpreted the phrase “accessible to the public by means of electronic equipment,” within the meaning of §1-225a(a), G.S. However, construing such phrase in light of the entire statutory framework and the legislative history suggests that §1-225a(a), G.S., was not intended to apply when an agency simply provides a live broadcast or livestream of an in-person meeting.

15. First, although §1-225a(a), G.S., does not expressly state that a meeting is “accessible by means of electronic equipment” only if members of the public are allowed to fully participate in such meeting to the same extent as if they attended in person, it does require the notice and agenda for such meetings to 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.” This implies that the legislature intended the remote

meeting provisions to apply when the public was allowed to participate remotely as if they attended in person.

16. The legislative history further supports such interpretation. Section 1-225a, G.S., was added to the FOI Act in 2021 in the wake of the COVID-19 pandemic. Public Acts, Spec. Sess., June 2021, No. 21-2, §149. Prior to the passage of Public Act 21-2, no provision of the FOI Act specifically authorized remote meetings. To address the risk associated with conducting in-person meetings during the COVID-19 pandemic, Governor Lamont issued Executive Order No. 9H, section 1 of which expressly authorized public agencies to “hold a public meeting or hearing that provides for remote participation in its entirety, or for remote participation in conjunction with an in-person meeting ....” Significantly, Executive Order No. 9H expressly provided that “[r]emote participation shall include the opportunity to offer public comment, if otherwise generally permitted at such meetings, and the ability of electors or qualified voters to vote, if eligible pursuant to state statute, municipal charter, or other applicable legal authority, at any meeting, annual town meeting or special town meeting.”

17. Public Act 21-2 was passed by the General Assembly on June 17, 2021, less than two weeks before §1 of Executive Order No. 9H was set to expire. See Executive Order No. 12B, §3 (extending Executive Order 9H, §1 through June 30, 2021). Speaking in support of a prior version of the bill that would later be incorporated as §149 of Public Act 21-2, Representative Joe Zullo explained that the legislation “allows towns to continue the Governor’s executive order that permits electronic meetings.” Transcript, House of Representatives, June 7, 2021, p.789. See also Transcript, Planning & Development Committee, March 22, 2021, p.342, testimony of Betsy Gara, testifying on behalf of the Connecticut Council of Small Towns (noting that “Executive Orders are scheduled to expire ... [a]nd our towns are relying on the ability to hold remote meetings or remote hybrid meetings”). This history suggests that §149 of Public Act 21-2 was intended to allow public agencies to continue conducting meetings remotely as contemplated by Executive Order No. 9H, while implementing additional requirements to ensure that the public had sufficient notice of how to attend and participate in such meetings.

18. The Commission further notes that prior to Executive Order No. 9H and Public Act 21-2, nothing in the FOI Act prohibited public agencies from broadcasting their meetings live, whether by a conference call dial-in, on public access television, or via an internet livestream as the respondents did with respect to the December 21 Meeting. There is nothing in the text or legislative history of Public Act 21-2 that suggests an intention to impose new requirements on public agencies that provided such option to the public.

19. Based on the foregoing, it is found that the December 21 Meeting was not “accessible to the public by means of electronic equipment,” within the meaning of §1-225a(a), G.S. It is therefore concluded that the respondents did not violate §1-225a(a), G.S., with respect to the December 21 Meeting.

20. With respect to the complainant’s request that the Commission issue an order voiding any action taken at the December 7 Meeting, §1-206(b)(2), G.S., provides in relevant part that “[t]he commission may declare null and void any action taken at any meeting which a person was denied the right to attend ....”

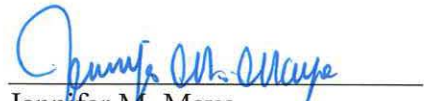
21. It is found that no evidence was presented that any person was unable to fully participate in the December 7 Meeting as a result of the respondents posting the instructions on how to attend such meeting via Zoom only 24 hours, rather than 48 hours, prior to the meeting. It is also found that no evidence was presented regarding what actions were taken by the respondents at the December 7 Meeting.

22. Based on the facts and circumstances of this case, the Commission declines to declare null and void any action taken at the December 7 Meeting.

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 requirements of §1-225a(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 9, 2024.

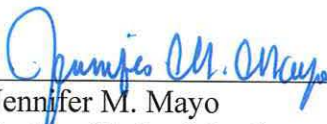
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

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

**FIRST SELECTWOMAN, 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, Suite 301, Westport, CT 06880

  
Jennifer M. Mayo  
Acting Clerk of the Commission