

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Suzanne Irwin,

Complainant

against

Docket # FIC 2024-0084

Chair, Kent Memorial Library Commission,
Town of Suffield; Kent Memorial Library
Commission, Town of Suffield; and Town
of Suffield,

Respondents

January 22, 2025

The above-captioned matter was heard as a contested case on November 18, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

On September 4, 2024, the respondents moved to dismiss the complainant's claim that the respondents failed to comply with the notice requirements of §1-200(6)(A), G.S., contending that: the right to prior notification and the right to request that an executive session discussion pursuant to §1-200(6)(A), G.S., be conducted as part of an open meeting is the right of the individual who is to be discussed during executive session; the complainant was not the individual who was to be discussed during the executive session at issue; and, therefore, the complainant lacked standing to bring such a claim. At the hearing on this matter, the undersigned hearing officer heard argument from the parties on the respondents' motion to dismiss and indicated that the motion to dismiss would be addressed in the Report of Hearing Officer.

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 former director of the Kent Memorial Library in the Town of Suffield resigned in the early fall of 2023.
3. It is found that the respondent Kent Memorial Library Commission (the "respondent Library Commission"), convened a meeting on September 12, 2023. It is further found that, at such meeting, the respondent Library Commission voted to form a search committee (the "Search Committee") concerning the hiring of a new director of the Kent Memorial Library ("Library Director").

4. It is found that the respondent Library Commission convened a special meeting on November 30, 2023 ("November 30, 2023 Meeting"). It is also found that two of the agenda items for the November 30, 2023 Special Meeting were described as:

II. Executive Session for [the respondent Library Commission] and Library Director Search Sub-Committee

- The Library Director Search Sub-Committee will present candidate information to the [the respondent Library Commission] for consideration for the position of Library Director of the Kent Memorial Library.

III. Vote to present Library Director Candidate to First Selectman.

5. It is found that at the November 30, 2023 Meeting, the respondent Library Commission convened in executive session to discuss a particular candidate for the Library Director position. It is further found that, upon exiting the executive session, the respondent Library Commission voted to present such candidate to the First Selectman.

6. It is found that the respondent Library Commission convened a special meeting on December 12, 2023 ("December 12, 2023 Meeting") at which meeting the respondent Library Commission voted to rescind its decision to present to the First Selectman the candidate it had chosen for the Library Director position, and to allow the respondent Library Commission to review all applicants.

7. It is found that the respondent Library Commission convened a regular meeting on January 9, 2024, at which the respondent Library Commission voted to discharge the Search Committee.

8. It is found that the respondent Library Commission convened a special meeting on January 25, 2024 ("January 25, 2024 Meeting") and that one of the agenda items for such meeting was described as "**Executive Session re: HR Presentation of Library Director Candidate** that was recommended by the [S]earch Committee." (Emphasis in original.)

9. Additionally, it is found that the minutes for the January 25, 2024 Meeting stated, the following:

Claire Kawalec moved for the commission to enter executive session for the Town Human Resource Director Karin Ziemba to present a candidate for the [L]ibrary [D]irector opening to the [respondent Library C]ommission. **Michael Alexopoulos** seconded the motion. The motion went to a vote and passed unanimously. The [respondent Library C]ommission went into executive session at 7:20 p.m.

The [respondent Library C]ommission came out of executive session at 7:44 p.m.

Klaire Bielonko moved that the [respondent Library C]ommission review all resumes which have been received for the open [L]ibrary [D]irector position and review the status of each application. **Jim Irwin** and **Christine Sinopoli** seconded the motion. The motion passed unanimously.

(Emphasis in original.)

10. By email dated and filed February 8, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act during the January 25, 2024 Meeting by: (a) convening an executive session to discuss the candidate who the Search Committee had recommended for the Library Director position because, according to the complainant, the Library Commission was no longer considering such candidate; and (b) the respondents never notified such candidate that he would be discussed in executive session, as required by §1-200(6)(A), G.S.

11. Section 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.”

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

‘Executive sessions’ means a meeting of a public agency at which the public is excluded for one or more of the following purposes:
(A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting

13. With respect to the allegations described in paragraph 10(a), above, the complainant claimed that the January 25, 2024 executive session was improper because the respondent Library Commission had voted to rescind the decision to present the proposed candidate to the First Selectman during the December 12, 2023 Meeting, as found in paragraph 6, above. The respondents contended that, regardless of such vote on December 12, 2023, the respondent Library Commission was still considering the proposed candidate at all times relevant to these proceedings and, in particular, during the January 25, 2024 executive session.

14. At the hearing on this matter, a member of the respondent Library Commission (the “Library Commission Member”) testified, and it is found, that he attended the January 25, 2024 Meeting and was present before, during and after the executive session that was convened during such meeting.

15. The Library Commission Member testified, and it is found, that the candidate for the Library Director position, referenced in paragraphs 5 and 6, above, who the respondent Library Commission voted to present to the First Selectman but then voted to rescind such decision, was Richard Tutwiler.

16. The Library Commission Member also testified, and it is found, that during the executive session of the January 25, 2024 Meeting, the Human Resource Director for the Town of Suffield (the "HR Director"), made a presentation to the respondent Library Commission concerning, and the members of the respondent Library Commission discussed, Mr. Tutwiler's candidacy for the Library Director position, as described in the agenda and minutes for the January 25, 2024 Meeting.¹ See ¶¶ 8 and 9, above.

17. It is found that, after the respondent Library Commission exited the executive session, and during the open session of the January 25, 2024 Meeting, the respondent Library Commission voted to review all resumes that had been submitted for the Library Director position.

18. It is found that, by email dated December 15, 2023, the HR Director emailed Mr. Tutwiler informing him that the membership of the respondent Library Commission had changed and that it planned to revisit the recommendations of the previous members and the Search Committee concerning the Library Director position. It is further found that, in such December 15, 2023 email, the HR Director also stated: "we hope you will remain interested."

19. Despite the complainant's contention that, at the time of the January 25, 2024 Meeting, the respondent Library Commission no longer had a formal candidate to present to the First Selectman, it is found that the respondent Library Commission nonetheless discussed Mr. Tutwiler with respect to the open Library Director position during the Executive Session of the January 25, 2024 meeting, which discussion comes within the purview of §1-200(6)(A), G.S.²

20. It is concluded that the respondents did not violate the provisions of §§1-225(a) and 1-200(6), G.S., as alleged in paragraph 10(a), above, because, it is found that the respondent Library Commission discussed the potential employment of Mr. Tutwiler, during the January 25, 2024 executive session, in accordance with the agenda for such meeting and §1-200(6)(A), G.S.

21. With respect to the complainant's allegation described in paragraph 10(b), above, that the respondents failed to comply with the notice requirements of §1-200(6)(A), G.S., as found in paragraph 15, above, Mr. Tutwiler was the candidate discussed during the executive session of the January 25, 2024 Meeting, not the complainant.

22. As this Commission has previously stated, "the right to prior notification and the

¹ The Commission notes that, during the hearing on this matter, the Library Commission Member testified that the respondent Library Commission then discussed, during the executive session on January 25, 2024, the next steps for reviewing all of the resumes that were submitted for the Library Director position. The complainant also contended that such discussion was not permissible under §1-200(6)(A), G.S., because such statute only permits discussion of a single potential employee and that only a personnel search committee, pursuant to §1-200(2), G.S., was permitted to discuss several potential candidates, but, at the time of the January 25, 2024 Meeting, no personnel search committee existed. However, such allegations were not fairly raised in the complaint. Therefore, whether discussing the next steps for reviewing all of the applications that were submitted was proper under the FOI Act is not at issue in this matter. In addition, no evidence was presented that the other applications were specifically discussed during the January 25, 2024 executive session, only next steps for reviewing such applications.

² The issue of whether this process was proper pursuant to the respondent Library Commission's rules, or some other regulations or laws is not within the Commission's jurisdiction and is not at issue in this matter.

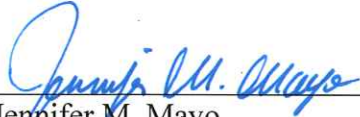
right to request that an executive session discussion pursuant to §1-200(6)(A), G.S., be conducted as part of an open meeting is the right of the individual who is slated for discussion during executive session.” *Linda Congdon-Marr v. Mae Ellen Lyons, Chairperson, Board of Education, Brooklyn Public Schools, et al.*, Docket #FIC 2015-467 (April 19, 2016), citing *Ellen Andrews v. Director, State of Connecticut, Office of the Healthcare Advocate, et al.*, Docket #FIC 2014-791 (August 18, 2015).

23. Consequently, it is concluded that the complainant does not have standing to file a complaint alleging a violation of another individual’s rights under the FOI Act.³

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 22, 2025.



Jennifer M. Mayo
Acting Clerk of the Commission

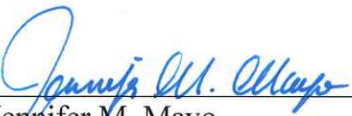
³ Because the Commission finds that the respondents did not violate any of the complainant's rights under the FOI Act with respect to appropriate notice to the proposed candidate, the Commission grants the respondents' motion to dismiss and declines to make any findings with respect to whether such candidate was properly notified, as alleged in paragraph 10(b), above.

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:

SUZANNE IRWIN, 58 Marbern Drive, Suffield, CT 06078

CHAIR, KENT MEMORIAL LIBRARY COMMISSION, TOWN OF SUFFIELD; KENT MEMORIAL LIBRARY COMMISSION, TOWN OF SUFFIELD; AND TOWN OF SUFFIELD, c/o Attorney Derek E. Donnelly and Attorney Eric Duey, Blackburn & Donnelly, LLC, 2 Concorde Way, Suite 3C, P.O. Box 608, Windsor Locks, CT 06096



Jennifer M. Mayo
Acting Clerk of the Commission