

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION
UPON REMAND

Paul Michalski,

Complainant

against

Docket #FIC 2022-0120

Chairman, Board of Education, Town of
Darien; Board of Education, Town of
Darien; Superintendent of Schools, Darien
Public Schools; and Darien Public Schools,

Respondents

May 13, 2026

The above-captioned matter was heard as a contested case on July 8, 2022, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the July 8 hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Spec. Sess.), as amended by §1 of Public Act 22-3.

A proposed final decision prepared by the hearing officer was mailed to the parties on September 9, 2022. In the proposed final decision, the hearing officer recommended that the Commission find that the respondents held a special meeting on January 25, 2022, and that such meeting was properly noticed. Moreover, because the complainant filed his complaint more than thirty days after an alleged violation concerning an executive session discussion at the special meeting, and because said meeting was neither "an unnoticed or secret meeting," within the meaning of §1-206(b)(1), G.S., the hearing officer further recommended that the Commission conclude that it lacked jurisdiction over the complaint and dismiss the matter.

At a regular meeting of the Commission on October 12, 2022, the Commission considered the proposed final decision. After entertaining argument from the parties, the Commission unanimously adopted the proposed final decision. *See Michalski v. Chairman, Bd. of Educ., Town of Darien, et al.*, Docket #FIC 2022-0120 (Oct. 12, 2022). Notice of the final decision was mailed to the parties on October 19, 2022.

On December 19, 2022, the complainant appealed the Commission's final decision to the Superior Court. *See Michalski v. Freedom of Info. Comm'n*, HHB-CV-23-607756-S. On

January 30, 2024, the Superior Court heard oral argument on the appeal. During oral argument, both parties contended that, on January 25, 2022, the respondent board held an in-person special meeting but also provided the public with a way to view such meeting through a YouTube link. Because the complainant was unable to view the meeting through the YouTube link and because it was unclear from the administrative record whether other individuals were unable to view the meeting through the YouTube link, the Court ordered the Commission to contact the respondent board in order to provide the Court with an answer to the following question: did the YouTube link malfunction for all members of the public who attempted to use it or was the failure specific to the complainant? In addition, the Court noted that, at the January 30 oral argument, the complainant represented that he had video proof that the YouTube link did not properly function. The Court informed the complainant that he could file a motion with the Commission requesting that such evidence be added to the administrative record. Finally, the Court ordered the Commission to supplement the administrative record on file with the Court with any additional evidence received from the respondents and/or accepted from the complainant.

By motion filed February 27, 2024, the complainant requested that the Commission supplement the administrative record with additional evidence. At a regular meeting of the Commission on March 27, 2024, the Commission considered the complainant's request. After deliberation, the Commission voted unanimously to supplement the administrative record with a copy of a video link to the January 25, 2022 special meeting, which was posted on the respondent board's YouTube page. *See* Compl.'s Suppl. Ex. O.

By filing dated April 4, 2024, the Commission supplemented the administrative record on file with the Superior Court with additional evidence that it received from both the complainant and the respondents, as follows: (1) Compl.'s Suppl. Ex. O and (2) the Affidavit of Dr. Alan Addley, Superintendent of Darien Public Schools. In the affidavit, Superintendent Addley averred, in relevant part, that (1) notice of the January 25, 2022 special meeting was posted on the Darien Public Schools' website; (2) such notice stated that "Doors open at 6:00 p.m. for the 6:15 p.m. meeting"; (3) the special meeting of the Darien [BOE] was not livestreamed; and (4) the public portion of the special meeting was recorded and that the recording could still be accessed.

On April 30, 2024, the Superior Court entertained a second oral argument on the appeal. After oral argument, the Court remanded the case to the Commission, ordering that a substitute hearing officer¹ be assigned to the underlying matter in order to conduct an additional contested case hearing to further investigate, *inter alia*, the malfunctioning of the YouTube link at the January 25, 2022 special meeting, and then issue a post-remand proposed decision. The Court further ordered that, upon conclusion of the remand proceedings, the Commission again supplement the administrative record on file with the Court with any additional evidence received by the Commission while the case was on remand.

¹ The Commission notes that the assignment of a substitute hearing officer was necessary as the hearing officer who presided over the initial contested case hearing was no longer in the Commission's employ at the time the case was remanded.

By order dated January 2, 2025, the assigned hearing officer informed the parties that a contested case hearing on remand was scheduled for February 10, 2025, at which time the parties should be prepared to present evidence concerning the following issue:

Was the respondent Board of Education's January 25, 2022 special meeting noticed as solely an in-person meeting, or was such meeting noticed as an in-person meeting with an accompanying live-stream viewing option?

On February 10, 2025, this matter was heard as a contested case on remand, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

Following the February 10, 2025 hearing on remand, pursuant to an order of the hearing officer, the respondents submitted an after-filed exhibit, concerning when and where the minutes of the January 25, 2022 special meeting were made available for public inspection. Such exhibit was admitted into evidence as follows:

Respondents' Exhibit 9 (after-filed): Affidavit of Dr. Eric Byrne, Superintendent of Darien Public Schools, dated April 8, 2026.

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 March 14, 2022, the complainant appealed to the Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by entering executive session for an impermissible purpose during a special meeting of the respondent board on January 25, 2022.
3. Section 1-206(b)(1), G.S., provides, in relevant part, that:

[a]ny person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held.

(Emphasis added.)

4. Section 1-225, G.S., provides, in relevant part, that:

- (a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public... Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

(Emphasis added.)

5. Section 1-225a, G.S., provides, in relevant part, that:

- (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 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 meeting², in accordance with the provisions of this section....
- (c) Any public agency...that conducts a special meeting shall include in the notice of such meeting whether the meeting will be conducted solely or in part by means of electronic equipment and, not less than twenty-four hours prior to such meeting, shall post such notice and an agenda of the meeting in accordance with the provisions of subsection (d) of section 1-225. If such special meeting is to be conducted by means of electronic equipment, such notice and agenda shall include instructions for the public, by means of electronic equipment or in person, to attend and provide comment or otherwise participate in the meeting, as applicable and permitted by law.

6. 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.”

² Although not appearing in the FOI Act, the term “hybrid meeting” is commonly understood to refer to meetings that are conducted in such a way that members of the public are permitted to attend both in person and remotely and that are subject to the requirements of § 1-225a, G.S. See generally *James Maggio v. First Selectman, Bd. of Selectmen, Town of Weston, et al.*, Docket #FIC 2024-0043 (Oct. 9, 2024) (setting forth the legislative history of § 1-225a, G.S.).

7. It is found that, on January 24, 2022, the respondents posted a combined agenda for both a special meeting scheduled to take place on January 25, 2022, at 6:15 pm (the “special meeting”), and a regular meeting scheduled to take place at 7:30 pm, following the special meeting (the “regular meeting”).

8. It is found that the agenda of the special meeting contained the following items of business, which were all scheduled to be discussed by the respondent board members in executive session:

- (a) ‘pending litigation’ as defined in Section 1-200(9) of the [FOI] Act, specifically whether to file an application with the Darien Planning and Zoning Commission to revise the conditions concerning the use of the lights at the Football Stadium at Darien High School;
- (b) attorney client privileged memorandum regarding pending legal claims of Brian Zuro, Charles Zuro and/or Sarah Zuro (*Zura, et al. v. Darien Board of Education, et al.*, CV21-5024880-S); and
- (c) negotiations pursuant to Connecticut General Statute 1-200(6)(B).

9. It is found that the notice of the special meeting further provided that:

The Board of Education meeting will be available to the public in person and via Zoom...Doors will open at 6:00 p.m. for the 6:15 p.m. meeting. The Board will move to adjourn into executive session [for the special meeting] and reconvene into public session at 7:30 pm [for the regular meeting]. If you are present and wish to give public comment, but are unable to get a seat, you will be required to wait outside and you will be invited into the room when it is your turn to speak.

...

Those members of the community wishing to participate in public comment³ should join the meeting via Zoom: [link followed].

Those members of the community wishing to view only, should do so through the Darien YouTube link: [link followed].

10. It is found that, by email January 24, 2022, the complainant informed the respondents that he had reviewed the agenda for the January 25, 2022 special meeting and

³ The Commission notes that, while the agenda for the regular meeting contained an action item for public comment, the agenda for the special meeting did not.

believed that the discussion concerning revision of the conditions controlling the use of the lights at the Football Stadium at Darien High School, referenced in paragraph 8(a), above, was not appropriate for executive session. It is further found that the complainant stated: “[i]f you proceed with an executive session, I will file a formal complaint with the Commission.”

11. It is found that, by email dated January 24, 2022, the respondent chairman informed the complainant that, because §1-200(9), G.S., which defines “pending litigation,” includes “the agency’s consideration of action to enforce or implement legal relief or a legal right,” the respondent board believed that it was within its rights to discuss the agenda item referenced in paragraph 8(a), above, in executive session.

12. It is found that, by email dated January 24, 2022, the complainant informed the respondents that he was confident that an executive session discussion concerning the matter described in paragraph 8(a), above, would violate the open meeting provisions of the FOI Act.

13. It is found that, by email dated January 26, 2022, the complainant informed the respondents that he attempted to watch the special meeting to see the respondent board open the meeting and adjourn to executive session, but neither the Zoom nor the YouTube link worked for him. It is further found that the complainant posed the following question to the respondent chairman: “[w]ere lights discussed in executive session as per the original agenda?”

14. It is found that, by email dated February 23, 2022, the complainant requested that the respondents “let him know” whether the January 25, 2022 special meeting took place as scheduled.

15. It is found that, by email dated February 25, 2022, the respondent superintendent provided the complainant with links to various records, including the minutes of the respondent board’s January 25, 2022 special meeting.

16. As noted in paragraph 2, above, the complainant filed his complaint with the Commission on March 14, 2022--that is, 48 days following the January 25, 2022 special meeting.

17. The complainant contends that, because the Zoom link and YouTube link for the January 25, 2022 special meeting malfunctioned and because the respondents did not respond to his questions concerning the special meeting, he was not required to file an appeal with the Commission until he received actual notice that the special meeting occurred. The complainant further contends that he received actual notice that the special meeting occurred on February 25, 2022. *See* ¶ 15, above.

18. It is found that, both the special meeting and the regular meeting were intended to be “hybrid” meetings, because, in addition to permitting members of the public to attend the meetings in person, the respondents included a Zoom link referenced in paragraph 9, above, to provide members of the public with an additional way to attend the meetings. *See* ¶ 5, above.

19. It is further found that the respondents also included a YouTube link referenced in paragraph 9, above, to provide members of the public with a way to view (as opposed to attend) the special and the regular meetings.

20. It is found, however, that, due to a technical error, the individual who set up the links for the special and regular meetings inadvertently overlooked part of the electronic set up for the special meeting, which rendered the links for such meeting inoperable. Ultimately, the only way for members of the public to attend the special meeting was in person.

21. Nonetheless, it is found that the minutes of the special meeting were prepared after business hours on January 25, 2022, and made available for public inspection at the respondent board's office on January 26, 2022. *See Respondents' Ex. 9 (after-filed).*

22. The Commission notes that prior to October 1, 2017, §1-210(b)(1), G.S., provided, in relevant part, that:

[a]ny person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held.

(Emphasis added).

23. In *Lowthert v. Town of Wilton, et al.*, Docket #FIC 2014-444 (June 10, 2015) (“*Lowthert Final Decision*”), a town building committee conducted a vote by email. At the building committee's next public meeting, the chairman acknowledged that the committee members had conducted a vote by email and his statement concerning the vote was memorialized in the meeting minutes. *Lowthert Final Decision*, ¶¶ 6-7. Despite the public acknowledgement of the email vote, the complainant contended that she did not receive notice of the secret meeting until she was provided copies of certain records in response to an FOI request, which was more than thirty days from the date when the meeting minutes acknowledging the building committee's error were approved. The Commission concluded that the phrase “notice in fact” included both actual notice and constructive notice, i.e., notice that can be inferred from facts that a person had a means to know and is thus imputed to that person. *Lowthert Final Decision*, ¶ 8. Because the Commission determined that the complainant had “notice in fact” that the email vote occurred when the meeting minutes were approved and because the complainant's appeal had been filed more than thirty days from such date, the Commission concluded that it did not have jurisdiction over the appeal. *Lowthert Final Decision*, ¶¶ 9-10.

24. On appeal, the Commission argued once the veil of secrecy concealing an unnoticed meeting is lifted by an agency's public admission that such a meeting occurred, the public's right to know is protected, and the thirty-day clock begins to run for everyone. *See Lowthert v. Freedom of Info. Comm'n*, No. HHBCV156030425S, 2017 WL 950990, at *4 (Conn. Super. Ct. Jan. 17, 2017) (“*Lowthert*”). While the Court recognized the validity of the Commission’s argument, which sought to balance the public’s right to know against a public agency's need for finality with respect to its decisions, the Court found that §1-206(b)(1), G.S., started the limitation period from the date when “*the person filing the appeal receives notice in fact that such a meeting was held.*” *Lowthert*, 2017 WL at *5 (emphasis in original.). Accordingly, the Court held that phrase “notice in fact” required personal notice to the person appealing. *Id.*

25. In 2017, and in response to the Superior Court’s decision in *Lowthert*, the legislature amended the provisions of §1-210(b)(1), G.S., to its current version, which now provides that, in the case of an unnoticed or secret meeting, an appeal to the Commission must be filed no later than thirty days after the person filing the appeal receives *actual or constructive notice* that such a meeting may have been held. *See* Public Act 17-86 (eff. Oct. 1, 2017).

26. Regarding the complainant’s contention that the respondents should have answered his question about the special meeting, *see* ¶¶ 13, 14, 17, above, the Commission has long held that nothing in the FOI Act obligates public agencies to answer a citizen’s questions. *See, e.g. Sandra Staub, Esq., et al. v. City of Bridgeport, et al.*, Docket #FIC 2012-127 (Jan. 9, 2013) (concluding that, because nothing in the FOI Act requires a public agency to answer questions, the respondents did not violate the Act by refusing to provide answers to the complainant’s questions); *Chad St. Louis v. Chief Med. Examiner, State of CT, Office of the Chief Med. Examiner, et al.*, Docket #FIC 2009-389 (May 4, 2010) (dismissing the complainant’s appeal concerning the respondents’ failure to answer questions because “nothing in the FOI Act requires public agencies to answer questions”).

27. It is found that the respondents’ January 25, 2022 special meeting was properly noticed on January 24, 2022, in accordance with the provisions of §1-225a, G.S. It is further found that the complainant’s own evidence establishes that the respondents posted notice of the meeting on January 24, 2022 and that he saw such notice. *See* Compl.’s Ex. C, E.

28. It is further found that the failure of the Zoom and YouTube links to function properly during the special meeting was an *access* issue, not an unnoticed or secret meeting issue. Accordingly, if the complainant wished to file a complaint concerning the respondents’ failure to provide the public with proper access to the January 24, 2022 special meeting he would have had to do so within thirty days of such meeting, in accordance with the standard “thirty days” filing provision of §1-206(b)(1), G.S.

29. Moreover, even if the January 25, 2022 special meeting could somehow be considered unnoticed because the Zoom link and the YouTube link did not function--which the Commission does not conclude based on the findings in paragraph 27, above, the complainant, at a minimum, had *constructive notice* that such meeting occurred on January 26, 2022. In this regard, it is found that the minutes of the January 25, 2022 special meeting were prepared after business hours on January 25, 2022 following the meeting and were available for public

inspection at the respondent board's office during normal business hours on January 26, 2022. See ¶ 4, above; *see also* Respondents' Ex. 9 (after filed).

30. Even under the construction outlined in paragraph 29, above, it is found that the complaint in this matter was not timely filed in accordance with the "actual or constructive notice" provision of §1-206(b)(1), G.S.

31. Therefore, the Commission reaffirms its original conclusion in this matter: because the respondents' special meeting was neither "secret nor unnoticed" within the meaning of §1-206(b)(1), G.S., the Commission lacks jurisdiction over 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 May 13, 2026.


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:

PAUL MICHALSKI, 371 Middlesex Road, Darien, CT 06820

CHAIRMAN, BOARD OF EDUCATION, TOWN OF DARIEN; BOARD OF EDUCATION, TOWN OF DARIEN; SUPERINTENDENT OF SCHOOLS, DARIEN PUBLIC SCHOOLS; AND DARIEN PUBLIC SCHOOLS, c/o Attorney Thomas B. Mooney, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission