

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
Barbara J. Wardenburg,) Report of Hearing Officer
Complainant)
against) Docket #FIC76-181
Town of Ridgefield and the)
Board of Education of the Town)
of Ridgefield, Respondents)
December 7, 1976

The above captioned matter was heard as a contested case on November 12, 1976, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

The Connecticut Education Association moved to be designated as a party pursuant to §27 of the Rules of Practice of this Commission. Such motion was denied. The Connecticut Education Association then moved for leave to intervene pursuant to §28 of the Rules of Practice of this Commission. Such motion was granted to the extent that the intervenor could participate in oral argument and file written briefs or memoranda.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies as defined by §1(a) of P.A. 75-342.
2. At a meeting held on October 6, 1976, the respondent board voted to convene in executive session to confer with counsel.
3. By letter of complaint filed with this Commission on October 20, 1976, the complainant alleged that the respondent board convened in executive session for a purpose not permitted under §1(e) of P.A. 75-342. The complainant also alleged that nonboard members were present in the aforesaid executive session, in violation of §11 of P.A. 75-342.
4. Subsequently, the complainant requested and received from the respondent board a copy of the minutes of the October 6, 1976 meeting consisting of 2 pages. The complainant was charged \$1.00 per page. The complainant further alleged, by same letter, that this charge exceeded the cost to the respondent board in violation of §5 of P.A. 75-342.

5. Some communications are privileged by the attorney-client relationship, under §2(b)(9) as provided for in §1(e)(5) of P.A. 75-342. To provide a proper occasion for an executive session, however, those communications must relate to the discussion of matters which would result in the disclosure of a §2(b) public record.

6. There was no showing at the hearing on this complaint that discussion in the October 6, 1976 executive session was based upon a §2(b) record.

7. It is therefore found that the respondent board did not meet in executive session on October 6, 1976 for a proper purpose within the meaning of §1(e) of P.A. 75-342.

8. Four individuals, not members of the respondent board, were present in the aforesaid executive session. At least one of those nonmembers remained in attendance beyond the period in which P.A. 75-342 entitled him to participate in the executive session.

9. It is found that the respondent board violated §11 of P.A. 75-342 by not limiting attendance in the executive session to the period for which the presence of nonboard members was necessary.

10. The copying charge of \$1.00 per page constituted an estimate based upon charges fixed by the Town Clerk. The respondent board had not undertaken an actual cost analysis.

11. It is further found that the charge of \$1.00 per page exceeds the actual cost of copying the requested record under P.A. 75-342.

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

1. Henceforth, the respondent board shall in all respects comply with the provisions of P.A. 75-342 concerning executive sessions, as stated §§6, 8, 11 and as delineated above.

2. The respondent board shall forthwith compute its actual cost of copying the document requested herein. In computing such cost, the respondent board shall include the following items only: actual personnel costs in retrieving, copying and returning to files the requested document; the actual cost of two 8½" x 11" sheets of photocopying paper; and the actual direct costs of operating the photocopy machines used in complying with the complainant's request, including any charge by the owner of the photocopying machine for processing two pages through such

machine, and the prorated cost of rental, ink, chemicals and service charge.

3. After completing the computation described in paragraph 2 of this order, respondents shall forthwith provide the complainant with a statement of the actual cost of photocopying the requested record, and shall forthwith remit to the complainant the amount overcharged.



Commissioner Herbert Brucker

as Hearing Officer

Approved by order of the Freedom of Information Commission on
December 22, 1976.



Leslie Ann McGuire
Clerk of the Commission