

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
Journal Inquirer,)
Complainant) Report of Hearing Officer
against) Docket #FIC78-130
Town of East Windsor; and the) September 27, 1978
Police Commission of the Town)
of East Windsor,)
Respondents)
)

The above captioned matter was heard as a contested case on September 18, 1978, 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:

1. The respondents are public agencies within the meaning of §1-18a(a), G.S.
2. By letter filed with the Commission on June 28, 1978, the complainant alleged that the respondent commission violated the requirements of §1-21 and §1-18a(e), G.S. on June 13, 1978 by holding an executive session for an improper purpose and by failing to cite a proper reason for the session in its motion to go into executive session.
3. During its June 13, 1978 regular meeting, after a vote on the motion which stated that the reason for the executive session was to discuss personnel, the respondent commission went into executive session for approximately two hours.
4. During the executive session the respondent commission discussed a part-time clerical position, discipline procedure, probationary personnel status, supernumerary status, and supernumerary pay scale.
5. The respondent commission claimed that the executive session was held for a proper purpose under §1-18a(e)(1), G.S.
6. §1-18a(e)(1), G.S. provides that a proper purpose for an executive session is discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that the discussion be held at an open meeting.

7. The discussion of the part-time clerical position included whether or not to promote the individual who held the position and a discussion of the mechanics and procedure required for the change.

8. The discussion of probationary personnel centered on whether or not to remove certain specific individuals from probation.

9. None of the individuals who had been on probationary status and who were specific subjects of this discussion had been notified by the respondent commission of its intention to discuss them in executive session.

10. The discussion of a supernumerary status concerned in general whether or not the respondent commission should utilize supernumerary personnel to fill positions which had been vacated by full-time personnel.

11. The discussion of supernumerary pay scale concerned whether or not to increase the pay of the supernumeraries.

12. It is found that the portion of the aforesaid executive session which was limited to discussion involving the evaluation and the appointment of the part-time clerk and the evaluation of the status of individuals who were on probation was a proper purpose for an executive session within the meaning of §1-18a(e)(1), G.S.

13. It is found that the remainder of the discussion in the executive session was improper and not within the meaning of §1-18a(e)(1), G.S., including the discussion of mechanics and procedure for promotion of the part-time clerk, discussion of discipline procedure, supernumerary status and supernumerary pay scale.

14. It is found that since under §1-18a(e)(1), G.S. individuals who are the subject of discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee may require that such discussion be held at an open meeting, it is necessary for those individuals to receive notice in advance of the meeting at which they will be discussed.

15. It is found, therefore, that the respondent commission violated §1-18a(e)(1) when it failed to notify the individuals who were on probationary status that their performance would be discussed at the executive session on June 13, 1978.

16. It is concluded that a substantial part of the two hour executive session was not held for a proper purpose within the meaning of §1-18a(e)(1), G.S.

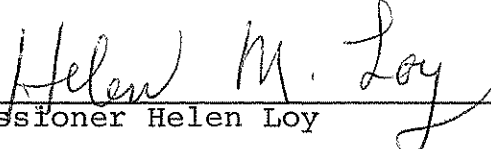
17. It is further concluded that insofar as the executive session was properly held for discussion of personnel within the meaning of §1-18a(e)(1), G.S. the motion to go into executive session was a proper motion.

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

1. The respondent commission shall henceforth comply with the requirements of §1-18a(e), G.S. by restricting its executive sessions to the proper purposes enumerated therein, and by notifying public officers and employees whose appointment, employment, performance, evaluation, health or dismissal is being discussed that they have a right under §1-18a(e)(1), G.S. to require such discussion to be held at an open meeting.

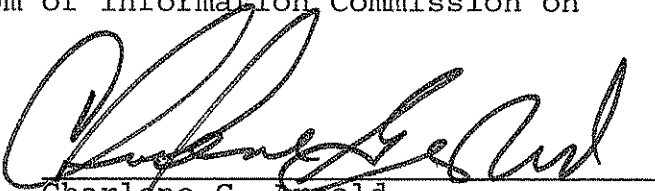
2. The Commission observes that the findings in Docket #FIC78-129 and in this case suggest that certain agencies of the respondent town typically interpret §1-18a(e) too broadly and typically hold their executive sessions for improper purposes. The Commission regards this case as an opportunity to put the respondent police commission on notice that the executive session provisions of the Freedom of Information Act are to be interpreted strictly.

3. The Commission further calls attention to §1-21i(d), G.S. which provides for the imposition of fines upon public officials where rights created under the Freedom of Information Act are denied and such denial was wilful and there was no reasonable grounds for such denial.



Commissioner Helen Loy
as Hearing Officer

Approved by order of the Freedom of Information Commission on
November 8, 1978.



Charlene G. Arnold
Clerk of the Commission