

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)
Harvey Hubbell IV and Harvey) Report of Hearing Officer
Hubbell V, Complainants)
) Docket #FIC78-28
)
) against)
) May 15, 1978
)
Town of Newtown; and the Board)
of Education of the Town of)
Newtown, Respondents)

The above captioned matter was heard as a contested case on March 28, 1978 at which time the complainant Harvey Hubbell IV 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 respondent board is a public agency as defined by §1-18a(a), G.S.
2. On September 9, 1977 the complainant, Harvey Hubbell IV, filed a complaint with the Newtown board of ethics charging that an administrator of Newtown High School with breach of the Newtown code of ethics.
3. The aforesaid complaint was brought by the complainant on behalf of his son and every subsequent student in Newtown High School alleging certain improprieties with respect to student records.
4. The aforesaid complaint was referred by the Board of Ethics to the respondent board which scheduled a hearing on the matter just prior to its regular meeting on February 14, 1978.
5. The purpose of the aforesaid hearing was for the respondent board to hear the complaint in detail, to question the complainant on particulars, to make appropriate investigation in order to determine whether the complaint was well founded, and to take appropriate action.
6. The agenda for the February 14, 1978 meeting showed the hearing scheduled as Item 1 in the following manner:

EXECUTIVE SESSION

It is anticipated that an executive session will be called under the provisions of P.A. 77-609 from 7:30 p.m. to 9:00 p.m.

7. On February 14, 1978 at the scheduled time, the respondents board voted to go into executive session to discuss a personnel matter.

8. The attorney for the complainants disputed the propriety of the executive session and insisted that he had a right to have the proceedings recorded by a stenographer.

9. When the chairman of the respondent board insisted in holding the proceedings in executive session, the complainants left.

10. Thereafter, on February 16, 1978, the complainants filed an appeal to this Commission claiming that the actions of the respondent with respect to the proceedings on February 14, 1978 violated the Freedom of Information Act as codified in Chapter 3 of the Connecticut General Statutes.

11. The respondent board claimed that the hearing was properly scheduled as an executive session, under §1-18a(e)(5), G.S., because the Buckley Amendment and regulations issued pursuant to the amendment require the respondent board to preserve the confidentiality of student records.

12. 20 U.S.C. §1232g, commonly known as the Buckley Amendment, provides in pertinent part that no federal funds shall be made available to state and local agencies that have a policy or practice of permitting the release of education records, or personally identifiable information of students unless prior consent is obtained.

13. The aforesaid federal prohibition against disclosure is not compulsory or mandatory. It is merely a condition precedent to the granting of such funds.

14. It is found that the Buckley Amendment is not such a compulsory and mandatory provision of federal law as to exclude the requested documents from the category of public records under §1-19(b), G.S., and to make a discussion of those documents a proper subject of an executive session under §1-18a(e)(5), G.S.

15. The respondents further alleged that the hearing was properly scheduled as an executive session under §1-18a(e)(1), G.S., because its purpose was the discussion of personnel matters.

16. It is found that the hearing was scheduled for two primary purposes -- fact finding and decision making. The fact finding aspect involved questioning the complainant on the particulars of the complaint and determining whether the complaint was well founded; the decision making aspect involved a choice of appropriate action.

17. It is found that the fact finding aspect of the scheduled hearing did not constitute a proper purpose for executive session under §1-18a(e)(1), G.S., which limits the purposes of such an executive session to discussion which concerns "the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee...".

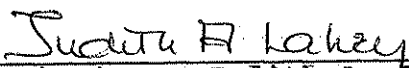
18. It is further found that insofar as the decision making aspect of the aforesaid hearing required discussion concerning the employment, performance, evaluation or dismissal of a public officer or employee that it was properly scheduled as an executive session under §1-18a(e)(1), G.S.

19. It is concluded that the respondent board violated §1-21 and §1-18a(e)(1), G.S., when it scheduled the entirety of the aforesaid hearing as an executive session.

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

1. The respondent board shall henceforth comply with §1-21, G.S., and §1-18a(e), G.S., by strictly limiting its scheduling of executive sessions to the purposes set forth in §1-18a(e), G.S.

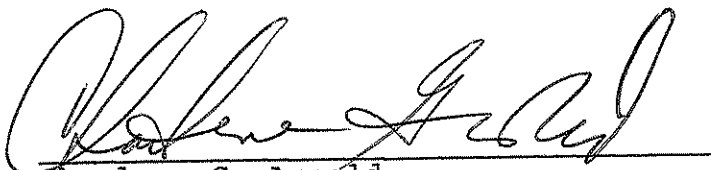
2. While the propriety of the respondent's agenda was not put directly in issue in this complaint, the Commission notes that the language used to describe the aforesaid hearing on the agenda, which is set forth at paragraph 6, *supra*, functioned to conceal the business of the respondent agency from the public rather than to give it notice. The agenda requirements of §1-21, G.S., are in part notice requirements, and while a degree of imprecision is understandable in a lay board, the type of circumlocution and "legalese" which appears at item 1 of the agenda would not satisfy the agenda requirements of §1-21, G.S.



Commissioner Judith A. Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on
June 14, 1978.



Charlene G. Arnold
Clerk of the Commission