

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Antonia C. Moran,

Complainant

Final Decision

against

Docket #FIC79-152

Board of Higher Education of the
State of Connecticut; and Chair-
man of the Board of Education of
the State of Connecticut,

January 21, 1980

Respondents

The above captioned matter was heard on October we and October 30, 1979, at which times the complainant and the respondents appeared and presented testimony, eshibits 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. Conn. Gen. Stats. §10-323d provides with respect to the board in relevant part that "the board of higher education shall prepare and present to the general assembly, on or before September 1, 1979 a proposal for the organization of the higher education structure, and shall include in this proposal recommendations to be acted upon by the general assembly."

3. Conn. Gen. Stats. §10-323 also provides in relevant part that

(a) The board of higher education shall establish statewide policy for Connecticut's system of public higher education and in furtherance of such policy shall: ... (2) prepare for the governor and the general assembly periodic reports on the conditions and needs of the system including but not limited to a single priority listing of all capitol projects and recommendations to merge, close, or otherwise alter existing programs, facilities, or campuses....

4. In order to fulfill its statutory mandate the respondent board held a series of workshops and a retreat during the month of June 1979.

5. By letter filed with this Commission July 13, 1979, the complainant alleged that on June 4, 7, 21, 22 and 23, 1979 the respondent board had failed to comply with the notice and minutes provisions of §1-21, G.S., that it held improper executive sessions in violation of §1-18a(e), G.S.; and that it failed to make public records available in violation of §1-15 and §1-19(a), G.S.

6. It is found that the Commission lacks jurisdiction over the meetings which occurred on June 4 and June 7 because under §1-21i(b) an appeal must be filed within thirty days of the violation complained of.

7. The agenda for the June 18, 1979 workshop included the following seven items:

- I. The Case for Change
- II. Comprehensive Two-Year Institutions
- III. Four-Year Institutions
- IV. Capital Facilities Plan
- V. Board of State Academic Awards
- VI. Role of Board of Higher Education in Collective Bargaining
- VII. Total Role of Board of Higher Education

8. The preliminary agenda for the gatherings of the Lakeville retreat on June 21, 22, and 23, included the following items:

June 21, 1979 - 8:00 p.m. - 9:30 p.m.

Executive Session

June 22, 1979 - 8:30 a.m. - 11:30 a.m.

- A) Fiscal Flexibility
- B) Tuition Policy
- C) Fee Policy
- D) Student Financial Assistance
- E) Minority Enrollments

11:30 a.m. - 12:30 p.m.

Faculty Advisory Counsel - Discussion

1:30 p.m. - 2:30 p.m.

- F) Enrollment Planning
- G) Consolidated Capital Planning Process

2:30 p.m. - 5:00 p.m.

S) Structure

7:30 p.m. - 9:30 p.m.

Executive Session

June 23, 1979 - 8:30 a.m. - 9:30 a.m.

- I) Postsecondary Cooperative Grant Program
- J) Coordination - Two and Four-Year Institution
- K) Coordination - Off-campus Offerings
- L) Relationship of Programs to Manpower Needs

9:30 a.m. - 10:30 a.m.

Wrap-up

10:30 - 12 Noon

Executive Session

9. None of the aforesaid gatherings were the subject of public notice, nor were minutes prepared in accordance with §1-21, G.S.

10. Nonetheless the members of the respondent board were all given telephone notice of gatherings, agendas were prepared, and the meetings were open to all board members who chose to attend as well as to members of the public.

11. The respondent board discussed staff proposals concerning higher education in Connecticut at all of the aforesaid gatherings.

12. During the retreat on June 21, 22, and 23 the members of the respondent board changed staff recommendations on the structure of the governing body for higher education in Connecticut and gave tacit approval to the remainder of the proposals.

13. It is found that all of the aforesaid gatherings of the respondent board were meetings of a public agency within the meaning of §1-18a(b), G.S. in that they were proceedings of a public agency to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

14. It is therefore concluded with respect to the aforesaid meetings that the respondent board violated the notice and minutes provisions of §1-21, G.S.

15. The Complainant alleged that §1-15 and §1-19(a), G.S. were violated because she was denied copies of documents which were distributed to the respondent board at the retreat.

16. At the retreat on June 22, 1979, the complainant requested copies of all the papers which were provided members of the respondent board for its consideration.

17. After extensive argument, a staff member provided the complainant with most of the papers; however, she was not allowed to keep copies of the papers on collective bargaining and capital projects.

18. The respondents claim first that the papers denied the complainant were exempt under §1-19(b)(1) as preliminary drafts or notes with respect to which the public agency had determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.

19. At one of its workshops the respondent board determined in executive session that it would not permit public access to its discussion on the staff papers relating to collective bargaining and capitol projects.

20. The reason that such discussions were to be held in executive session were that such topics were "politically sensitive."

21. Prior to the retreat copies of the staff papers had been circulated both among staff and board members.

22. Packages of papers were distributed to all board members at the retreat.

23. It is found that the papers were not "preliminary drafts or notes" within the meaning of §1-19(b)(1), G.S., but rather they were completed position papers which stated the problems and options in Connecticut higher education for the consideration of the respondent board.

24. It is further found that the board discussion at which it was determined to close discussions on the papers on collective bargaining and capitol projects because they were politically sensitive did not constitute a determination that the public interest in withholding such documents clearly outweighs the public interest in disclosure.

25. The respondent board further asserted that the papers on collective bargaining and capital projects were exempt from disclosure under §1-19(b)(9), G.S., and §1-19(b)(7), G.S.

26. §1-19(b), G.S. exempts from disclosure statements of strategy and negotiations with respect to collective bargaining.

27. The paper on collective bargaining examined issues such as class size and teaching schedules and the management advantages of a thick or thin contract. It included "key decision points" and various alternatives with respect to key decision points.

28. The respondent board has no authority to represent the constituent units of the state system of higher education in collective bargaining negotiations.

29. It is found that the paper on collective bargaining was too speculative and too remote from actual strategy or discussion of statements concerning strategy and negotiations within the meaning of §1-19(b) 9, G.S.

30. §1-19(b) 7, G.S. exempts from disclosure "the contents of real estate appraisals, engineering or feasibility estimates, and evaluations made for by an agency relative to the acquisition of property or to prospective public supply and construction contracts."

31. The two papers which had been distributed to board members discussed the roles of state agencies and boards in capitol planning and consideration of planning for capitol improvements over the next four years.

32. Part of the documentation reviewed by the board included a map showing sites, not all of which were owned by the state.

33. The proposals for capitol development which were discussed were based in part upon engineering assessments and/or feasibility estimates and evaluations concerning proposed construction.

34. It is found that portions of the papers on capitol improvements are exempt from disclosure under §1-19(b)(7), G.S., but only in so far as those portions actually disclose the contents of real estate appraisals, engineering or feasibility estimates made for or by an agency relative to the acquisition of property or prospective public supply and construction contracts.

35. It is concluded that the respondent board violated the public records provisions of §1-15 and §1-19, G.S. when it denied the complainant copies of the papers of collective bargaining and capitol projects except with respect to those portions of the papers on capitol projects which were actually exempt from disclosure under §1-19(b)(7), G.S.

36. The complainant further alleged that the respondent board had violated the requirements of §1-21 and §1-18(e), G.S. by holding illegal executive sessions on June 18, June 21, June 22, and June 23.

37. The complainant claimed that the respondent board held improper executive sessions on June 18, 21, and 22, to discuss collective bargaining and capital projects.

38. The respondent claimed the aforesaid discussions were exempt on the following grounds:

(a) discussion of strategy and negotiations with respect to collective bargaining is not a meeting under §1-18a(b), G. S.

(b) discussion of records, reports and statements of strategy and negotiations with respect to collective bargaining are a proper purpose for an executive session under §1-18a(e) (5) and §1-19(b) (9), G.S., and §1-19(b) (1), G. S.

(c) discussion of capital projects is a proper purpose for an executive session under §1-18a (e) (5), G.S. and §1-19(b) (7), G.S. and §1-19(b) (1), G.S.

39. All of the executive sessions were held to discuss staff papers in order to implement the legislative mandate of the respondent board, i.e. to report upon the needs of the higher education system and to develop legislative proposals for the higher education system.

40. It is found that none of the executive sessions were properly discussions of strategy or negotiation with respect to collective bargaining and therefore none were exempt from the requirements of the Freedom of Information Act under §1-18a(b), G.S.

41. All of the aforesaid executive sessions focused upon the staff papers and the recommendations contained therein concerning collective bargaining and capitol projects.

42. §1-18a(e) (5), G.S. provides that discussion which would result in disclosure of public records or the material contained therein which is exempt from disclosure under §1-19(b), G.S. is a proper subject matter for an executive session.

43. Since for the reasons stated at paragraphs 15 through 29, the paper on collective bargaining is not a preliminary draft or note within the meaning of §1-19(b) (1), G.S., nor a record, report or statement with respect to collective bargaining within the meaning of §1-19(b) (9), G.S., the discussion of that paper would not be a proper purpose for an executive session within the meaning of §1-18a(e) (5), G.S.

44. Since for the reasons stated at paragraphs 15 through 23 and 30 through 35 the papers on capitol improvements are not preliminary drafts or notes within the meaning of §1-19(b) (1), G.S. and only an extremely limited portion of the papers would be exempt under §1-19(b) (7), G.S., the only portions of the executive sessions which would have been held for proper purposes were those which would have disclosed the specifics of the contents of real estate appraisals and/or engineering feasibility estimates made for or by the respondent board relative to the acquisition of property or public supply and construction contracts.

45. The complainant further claimed that improper executive sessions were held on June 18 and June 23 for the purposes of discussion of personnel.

46. The respondent board claimed the aforesaid discussions were proper within the meaning of §1-18a(e)(1), G.S. which provides that a proper purpose for 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 discussion be held at an open meeting;"

47. The respondent board failed to prove that any person had been notified that his or her appointment, employment, performance, evaluation, health or dismissal would be discussed at the aforesaid executive sessions.

48. The motion for executive session on June 18 was "to discuss the case for change and its effect on personnel."

49. the June 19 discussion of personnel was a discussion of performance in the general sense; the discussion had to do with management implications and the adequacy of present programs.

50. The motion to go into executive session on June 23 was "for the personal health of the staff."

51. It is found that the respondent board failed to prove that the discussions on personnel which were held on June 18 and June 23 were held for a proper purpose within the meaning of §1-18a(e)(1), G.S.

52. Finally the respondent argues that the complainant lacks standing to claim violations of the public records and meetings provisions set forth at §1-15, §1-19(a) and §1-21, G.S. because (1) she failed to make her request for copies of documents in writing and (2) she attended the meetings and therefore was not prejudiced by the failure of the respondent board to comply with the notice provisions.

53. It is found that the standing to complain of violations of the open records provisions set forth at §1-15 and §1-19(a), G.S. do not depend upon submitting a request for copies in writing.

54. It is further found that standing to complain of violations of the notice provisions set forth at §1-21, G.S. does not depend upon actual prejudice to the party asserting the violation.

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 the notice and minutes provisions of §1-21, G.S. with respect to its meetings.

2. The respondent board shall henceforth comply with the provisions of §1-18a(e) by limiting its executive sessions to proper purposes.

3. The respondent board shall henceforth comply with §1-15 and §1-19(a) concerning the rights of the public to inspect and to obtain copies of public records.

4. The respondent board has been charged with a very important task: proposing a restructuring of the system of public higher education. During its deliberations on the subject, however, it has violated several major sections of the Freedom of Information Act. Such disregard of the Freedom of Information Act not only places the violating agency in a bad light but also diminishes the value of its recommendations and its work product. Furthermore, in the future, such indifference to the law may provide a bases for finding the respondent board has followed a pattern of wilful misconduct with respect to which penalties should be imposed.

Approved by order of the Freedom
of Information Commission on
January 16, 1980.



Leslie Ann McGuire
Clerk of the Commission