

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Ilse M. Kern and Gunther Kern,

FINAL DECISION

Complainants

Docket #FIC85-27

against

July 22, 1985

Indian Cove Assn. Inc., of the
Town of Guilford,

Respondent

The above captioned matter was heard as a contested case on May 15, 1985 at which time the complainants and the respondent appeared and presented testimony, exhibits and argument on the complaint.

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

1. By letter dated January 15, 1985 the complainants made a request of the respondent for access to inspect minutes of membership and executive board meetings for the previous 25 years, specifically including membership meetings held on June 29, 1984 and August 31, 1984. The complainants also requested access to inspect all paper ballots submitted at the June 29, 1984 meeting and general correspondence to and from the executive board in the previous 6 years.

2. By letter dated January 23, 1985 the president of the respondent asked to be advised of the purpose of the complainants' January 15, 1985 request.

3. By letter dated January 30, 1985 the complainants reiterated their request for records.

4. By letter of complaint filed with the Commission on February 11, 1985 the complainants appealed the respondent's failure to provide the requested records.

5. By letter dated March 27, 1985 the complainants amended their complaint to request the imposition of a civil penalty against the respondent. Their March 27, 1985 letter also alleged that the respondent failed to comply with the Freedom of Information Act with respect to meetings of its executive committee and that procedures for record keeping were improper.

6. The complainants specifically alleged that the respondent held an unnoticed meeting, for which no minutes were made available, in response to the complainant's request for records. However, the complainants presented no evidence at hearing regarding such meeting, nor was the issue addressed. The complainants' claim with respect to such meeting is therefore considered abandoned.

7. At hearing the respondent claimed that it is not a public agency within the meaning of §1-18a(a), G.S. and is therefore not subject to the requirements of the Freedom of Information Act.

8. The respondent was, by special act number 137 of the 1969 Connecticut General Assembly, incorporated as a "body politic and corporate."

9. The purposes of the respondent, as stated in the special act, are "to provide for the improvement of the land within its limits and for the health, welfare, comfort, protection and convenience of the inhabitants thereof."

10. The respondent has the power to own and dispose of real and personal estate as its purposes require. The respondent's executive committee has the power to regulate travel over and parking along the roads and streets within the its geographical limits until such time as the roads might become public roads of the town of Guilford; to clean and improve ditches and to care for the beach area and waterfront and to build, repair and improve roads, streets and sidewalks within the limits of the association. The executive committee also has the power to collect a flat rate tax on each residence building and vacant lot within limits established by the special act.

11. It is concluded that the respondent is a public agency within the meaning of §1-18a(a), G.S.

12. It is found that the June 29, 1984 ballots requested by the complainants have been destroyed. Prior to their destruction the complainants were provided with limited access to the ballots.

13. This Commission, therefore, cannot provide the complainants with any relief with respect to the ballots in question.

14. It is found that the respondent does not in any way conduct its activities in accordance with the requirements of the Freedom of Information Act. The minutes of the respondent's August 31, 1984 meeting have not been prepared and, according to the respondent, will not be prepared until its next annual meeting. The executive committee of the respondent, which meets once or twice each year, does not take minutes of its meetings or inform anyone other than its members when a meeting is to take place. The respondent's records are kept by its former secretary in her home in Indian Cove.

15. §1-19(a), G.S. requires that each public agency shall "keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the secretary of the state, as the case may be."

16. It is found that the respondent's maintenance of its records in a private home to which the public has no access violates §1-19(a), G.S.

17. The respondent claims that even if it is a public agency, Title 33 of the Connecticut General Statutes, dealing with corporations, requires that the complainants' request be for a proper purpose.

18. It is found that nothing in Title 33 permits a public agency, as defined in §1-18a(a), G.S., to require a person requesting records to assert a proper purpose for the request.

19. The respondent claims that it does not know the meaning of "general correspondence" or "executive board," as used in the complainants' complaint, which claim the Commission finds unpersuasive.

20. The Commission notes that the respondent made no attempt to inquire into the complainants' intention, nor was there any indication that the respondent's failure to provide access was in any way based upon confusion regarding the terms of the complainants' request.

21. The respondent claims that it is required to maintain minutes for only 10 years, not 25 as requested by the complainants.

22. It is found that the complainants are entitled to access to whatever non-exempt public records are maintained by the respondent. The issue of how long records must be kept is within the jurisdiction of the State Records Administrator.

23. The respondent further claims that the complainants' complaint was the result of their involvement in a lawsuit brought by the respondent and requested the imposition of a civil penalty against the complainants pursuant to §1-21i(b), G.S., which request is hereby denied.

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

1. The respondent shall forthwith provide the complainant with access to inspect the minutes of its membership and executive committee meetings.

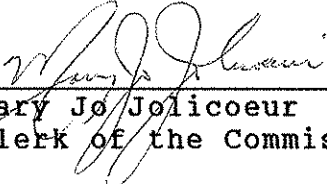
2. The respondent shall forthwith prepare and make available for inspection minutes of its membership meeting of August 31, 1984.

3. The respondent shall forthwith make its records accessible to the public either by establishing a regular office or place of business, with public accessibility and regular business hours, or by making arrangements for its records to be maintained in the office of the clerk of the Town of Guilford.

4. The respondent shall henceforth conduct its meetings in strict compliance with the requirements of the Freedom of Information Act, which requirements ensure public access to all meetings of public agencies.

5. The Commission does not deem the imposition of a civil penalty appropriate at the present time, since the respondent has apparently been unaware of the necessity of conducting itself according to the requirements of the Act. The respondent has, however, been put on notice of its obligations by this decision and will henceforth be held to the same standards of accountability as all other public agencies.

Approved by order of the Freedom of Information Commission at its regular meeting of July 22, 1985.



Mary Jo Jolicoeur
Clerk of the Commission