

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Frank DeMaio and William
Tronosky, Jr.

FINAL DECISION

Complainants

against

Docket #FIC85-164

Newington Volunteer Fire Department
and the Town of Newington

Respondents

January 8, 1986

The above captioned matter was heard as a contested case on September 6, 1985 at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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

1. The respondent department is a volunteer fire department created by special act of the General Assembly in 1929 and currently existing under the charter of the respondent town.
2. The respondent department is under the general jurisdiction of a board of fire commissioners, an elected agency of the respondent town.
3. The board of fire commissioners is empowered to appoint and dismiss the chief and certain other high ranking officers of the respondent department. The board also approves the department's internal rules and regulations.
4. It is found that the respondent department acts as, and performs the function of, the fire department for the respondent town and that such function is governmental in nature.
5. It is found that the respondent town provides the respondent department with 100% of its funding as well as other support services.

6. It is found that the respondent department is thoroughly regulated by the respondent town through the town's charter and ordinances, through its fiscal and budgetary systems, including audits by town government, and through an elected town agency, the board of fire commissioners.

7. It is also found that the respondent department was in large measure created by government to serve a governmental function.

8. It is therefore concluded that the respondent department is a public agency within the meaning of §1-18a(a), G.S., and subject to the provisions of the Freedom of Information Act.

9. By letter of complaint filed with the Commission on July 30, 1985, the complainants alleged that a review board of the respondent department violated the Freedom of Information Act with respect to meetings held on July 16, 23 and 25, 1985.

10. Specifically, the complainants claim that the review board violated §§1-18a(e)(1), 1-21(a) and 1-21g, G.S., in that it:

- a. failed to give proper notice of these meetings;
- b. improperly convened in executive session during these meetings;
- c. failed to notify the personnel who were the subjects of the executive sessions that they had the right to have the meetings held in sessions open to the public;
- d. failed to keep or make available to the public minutes of these meetings, including a record of how each member voted; and
- e. with respect to the July 23 and 25, 1985 meetings only, failed to indicate on the record the names of the members of the review board.

11. The review board is composed of the respondent department's chief, three deputy chiefs and four captains.

12. Under the rules and regulations of the respondent department, as approved by the board of fire commissioners, the review board is convened by the chief to determine the disposition of misconduct charges against department members and to impose disciplinary action where warranted.

13. A member of the respondent department who has been disciplined by the review board has a further right to appeal to the board of fire commissioners.

14. It is found that the review board met on July 16, 1985 to discuss and act upon charges of misconduct against one Michael Cheesbro, a member of the respondent department, and again on July 23 and 25, 1985 to discuss and act upon charges of misconduct against the complainants.

15. It is concluded that the July 16, 23 and 25, 1985 meetings of the review board constituted meetings of a public agency within the meaning of §§1-18a(a) and (b), G.S.

16. It is also concluded that the meetings of July 16, 23 and 25, 1985 were held in violation of §1-21(a), G.S., in that they were held without the requisite notice and convened in executive session without the requisite vote in public session.

17. It is also concluded that the meetings of July 16, 23 and 25, 1985 were held in violation of §§1-21(a) and 1-18a(e)(1), G.S., in that the review board convened in executive session without notifying the personnel who were the subjects of those sessions that they had the right to have the meetings held in sessions open to the public.

18. It is also concluded that the meetings of July 23 and 25, 1985 were held in violation of §§1-21(a) and 1-18a(e)(1), G.S., in that the review board failed to honor the complainants' requests to have the charges against them heard and determined in public session.

19. It is further concluded that the review board failed to make available to the public the minutes of its July 16, 23 and 25, 1985 meetings, including the names of those present during executive sessions, in violation of §§1-21(a) and 1-21g, G.S.

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

1. All actions taken by the review board of the respondent department at its July 16, 1985 meeting with respect to Michael Cheesbro are hereby declared null and void.

2. All actions taken by the review board of the respondent department at its July 23 and 25, 1985 meetings with respect to the complainants are hereby declared null and void.

3. The Commission notes that the respondent department did not violate the Freedom of Information Act in bad faith, but rather in the belief that it was not a public agency. With respect to its argument that it would be administratively difficult for it to operate under the provisions of the Freedom of Information Act, the Commission notes that the Act was not passed to make the administrative duties of public agencies less difficult. It was passed to make government more open and accessible to the people whom it serves. In this regard, however, the Commission would be happy to make its staff available to advise the respondent department on the technical requirements of the Act and how it can more easily comply with them.

Approved by order of the Freedom of Information Commission at its regular meeting of January 8, 1986.


Karen J. Haggett
Clerk of the Commission