

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Henry E. Buermeyer,

FINAL DECISION

Complainant

against

Docket #FIC 85-251

The Town Manager and the  
Town Council of Groton,

Respondents

July 23, 1986

The above captioned matter was heard as a contested case on May 2, 1986, at which time the complainant 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 respondents are public agencies within the meaning of §1-18a(a), G.S.

2. By letter of complaint filed with the Commission on December 16, 1985 the complainant alleged that the respondents violated various provisions of the Freedom of Information Act at meetings held on November 18, 1985 and November 19, 1985.

3. At the hearing before the Commission, the respondents made a motion to dismiss the complaint pursuant to §1-21i(b), G.S., claiming the appeal was not heard within the statutory time period.

4. This case has been validated pursuant to P.A 86-408 so that the failure of the Commission to comply with the time periods set forth at §1-21i(b), G.S., does not deprive the Commission of jurisdiction.

5. Also at the hearing, the complainant amended his complaint to include only the following alleged violations:

- a. The respondents failed to state in their agenda for the November 18, 1985 meeting the possibility of convening in executive session.

- b. The respondent council conducted an illegal executive session on November 18, 1985 when they failed to list in the minutes of that session the candidates being considered for the position of town attorney.
  - c. The respondent council failed to publish "a meaningful agenda" for its November 19, 1985 meeting, by posting an agenda which only stated old business, new business without detailing what would be discussed under the respective headings.
  - d. The respondent council improperly convened in executive session at its November 19, 1985 meeting to discuss a "land swap" between the respondent town and the U.S. Navy.
  - e. The respondent council convened in executive session at its November 19, 1985 meeting to hear reports from its attorney on "pending litigation issues, particularly the Sewer Outfall."
6. The complainant requested the imposition of a civil penalty against the respondents.
7. With respect to paragraph 5a, above, it is concluded that the respondents did not violate any provision of the Freedom of Information Act by not listing the executive session in their agenda.
8. With respect to paragraph 5b, above, it is found that the respondents convened in executive session to discuss, with the search committee that had been formed, the selection procedure being used as well as the names of those candidates that had been submitted for the position of town attorney.
9. It is found that pursuant to §1-21g, G.S., the minutes of an executive session only have to disclose those persons in attendance and do not have to disclose the names of job applicants who attend the executive session for the purpose of being interviewed or who are being considered for the respective position.

10. It is therefore concluded that the respondents did not violate any provision of the Freedom of Information Act by not disclosing the names of those candidates being considered for the position of town attorney.

11. With respect to paragraph 5c, above, it is found listing "old business and new business" is permissible provided a two-thirds vote is taken to conduct any new business in accordance with §1-21, G.S.

12. With respect to paragraph 5d, above, it is found that the respondents were negotiating and developing strategy regarding the purchase of additional property with respect to the land swap with the navy and were using the acquisition of another parcel of land as the basis for the swap.

13. It is therefore concluded that to the extent the respondents convened in executive session to discuss the selection of a site or sale or purchase of real estate the discussion was a permissible purpose for an executive session within the meaning of §1-18a(e)(4), G.S.

14. With respect to paragraph 5e, above, it is found that the Town of Groton was a party to a lawsuit known as "sewer outfall."

15. It is further found that the executive session in question was convened to discuss with the town attorney the progress of the sewer outfall litigation.

16. It is therefore concluded that to the extent the discussion focussed on strategy and negotiations with respect to the sewer outfall litigation, such discussion was a permissible purpose for an executive session within the meaning of §1-18a(e)(2), G.S.

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

1. The complaint is hereby dismissed

Approved by order of the Freedom of Information Commission at its regular meeting of July 23, 1986.

  
Karen J. Haggett  
Clerk of the Commission