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FREEDOM OF INFORMATION



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Marissa Lowthert,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-246

Chairman, Board of Education, Wilton Public Schools;
and Board of Education, Wilton Public Schools,
Respondent(s)

March 2, 2015

Transmittal of Amended Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, March 11, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE February 27, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE February 27, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE February 27, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Marissa Lowthert
Anne Littlefield, Esq.

2015-03-02/FIC# 2014-246/Trans/wrbp/LFS//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Marissa Lowthert,

Complainant

against

Docket #FIC 2014-246

Chairman, Board of Education, Wilton
Public Schools; and Board of Education,
Wilton Public Schools,

Respondents

February 10, 2015

The above-captioned matter was heard as a contested case on January 22, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2014-171; Marissa Lowthert v. Bruce Likly, Chairman, Board of Education, Wilton Public Schools; and Board of Education, Wilton Public Schools; and Docket #FIC 2014-416; Marissa Lowthert v. Bruce Likly, Chairman, Board of Education, Wilton Public Schools; and Board of Education, Wilton Public Schools.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter filed April 28, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to adequately describe the reason for convening in executive session on the agenda for their April 10, 2014 regular meeting (“meeting”), by failing to identify in the minutes of such meeting all persons who attended such executive session, and by failing “to amend the notice despite a written request the day before the meeting.”
3. Section 1-225, G.S., provides, in relevant part:
 - (a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.
4. Section 1-200(6), G.S., in relevant part, provides:

(6) “Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: ... (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.”

5. It is found that the respondents convened a regular meeting on April 10, 2014. It is further found that the agenda for such meeting stated: “Discussion of Confidential Attorney-Client privileged memorandum. Proposed to be held in Executive Session.”

6. It is found that the respondents voted to go into executive session at the April 10, 2014 meeting, in order to discuss a memorandum prepared by their attorneys.

7. The respondents claim that the memorandum is exempt from disclosure pursuant to §1-210(b)(10), G.S. In relevant part, §1-210(b)(10), G.S., permits an agency to withhold from disclosure “communications privileged by the attorney-client relationship.”

8. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. Maxwell v. FOI Commission, 260 Conn. 143 (2002). In Maxwell, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

9. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

10. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

11. It is found that the memorandum that the respondents discussed in their executive session contained legal advice previously sought from their counsel.

12. It is also found that memorandum is a written communications transmitted in confidence between the respondents and their counsel.

13. It is found that the respondents have not waived their claim of privilege with respect to the memorandum.

14. It is found that §1-210(b)(10), G.S., exempts the memorandum described in paragraph 5, above, from mandatory disclosure, and it is concluded that §1-200(6) permitted the respondents to discuss the memorandum in executive session.

15. With respect to the complainant's claim that the respondents agenda failed to describe the executive session with sufficient specificity, §1-225(c), G.S., provides in relevant part:

The agenda of the regular meetings of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, in such agency's regular office or place of business . . .

16. The complainant alleges that §1-225(d), G.S., required the respondents to identify in public the subject matter of the memorandum with greater particularity. The complainant relies on Durham Middlefield Interlocal Agreement Advisory Board v. FOI Commission, CV960080435, 1997 Conn. Super. LEXIS 2164 (August 12, 1997) (henceforth "Durham"), which concerned an agenda referencing an executive session to discuss "possible litigation." The agency in Durham argued, as do the respondents in this matter, that disclosing greater detail about the executive session would destroy the confidentiality that was the purpose of the closed session. The court rejected the agency's argument, in large part because the litigation discussed in executive session was a state environmental order that was a matter of public record. Although Durham held that the agenda at issue failed to state the business to be transacted with sufficient specificity, the court noted that the extent of public detail concerning notice of executive sessions turns on the facts of each case and the reason for the executive session at issue.

17. It is found that the respondents in this matter did not disclose the subject matter of the memorandum because to do so would reveal the substance of their confidential communications with their attorney, within the meaning of §52-146r(2), G.S.

18. It is found, in light of §§1-210(b)(10) and 52-142r(2), and the facts and circumstances of this case, that the agenda referenced in paragraph 5, above, adequately described the business to be transacted, within the meaning of §1-225(d), G.S.

19. It is concluded, therefore, the respondents did not violate the notice provisions of §1-225(d), G.S. See also Docket #FIC 2006-560; Barbara Breor v. Board of Education, Regional School District 6 (executive session to discuss "attorney-client privileged communication" adequately described business to be transacted).

20. With respect to the complainant's claim that the respondents failed to identify all persons who attended the executive session, §1-231 (a), G.S., provides:

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

21. It is found that no one attended the executive session other than the respondents present at the meeting, and the meeting minutes identified each such respondent individually by name. It is also found that the minutes stated the respondents' vote to convene in executive session and then to adjourn to open session.

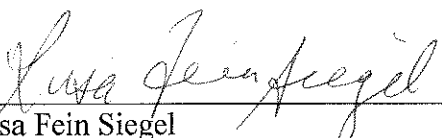
22. It is found that the respondents did not take any votes in executive session.

23. It is concluded, therefore, that the respondents did not violate the provisions of §1-231, G.S.

24. With respect to the complainant's claim that the respondents failed to amend their notice, it is found that the agenda was not improper, and, in any event, the FOI Act does not impose on the respondents a duty to amend the agenda after a written request to do so.

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.



Lisa Fein Siegel
as Hearing Officer