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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Bradshaw Smith,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-834

Christina Santos, President, Board of Education, Windsor
Public Schools; and Board of Education, Windsor Public
Schools,

Respondent(s)

June 30, 2015

Transmittal of 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, July 22, 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 July 10, 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 July 10, 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 **fifteen (15) copies** be filed **ON OR BEFORE July 10, 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: Bradshaw Smith
Gary Brochu, Esq.

2015-06-30/FIC# 2014-834/Trans/wrbp/CAL/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Bradshaw Smith,

Complainant

against

Docket #FIC 2014-834

Christina Santos, President, Board of Education,
Windsor Public Schools; and Board of Education,
Windsor Public Schools,

Respondents

June 19, 2015

The above-captioned matter was consolidated for hearing with Docket #FIC 2014-857; Bradshaw Smith v. Anna Christina Santos, Chairperson, Executive Committee, Board of Education, Windsor Public Schools; Executive Committee, Board of Education, Windsor Public Schools; and Windsor Public Schools. Both matters were heard as contested cases on May 20, 2015, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondents are public agencies within the meaning of §1-200(1)(A), G.S.
2. It is found that, by letter dated November 4, 2014, the complainant made a request to respondent Santos for a copy of the “tentative agenda for the November 18, 2014 Board meeting, as was distributed at the Executive Committee meeting of November 3, 2014.”
3. It is found that, by letter dated and filed with the Commission on November 14, 2014, the complainant appealed to the Commission, alleging that the failure of the respondents to provide requested records violated the Freedom of Information Act (“FOIA”). The complaint also requested the imposition of civil penalties against four named public officials.
4. Section 1-200(5), G.S., provides:

“Public records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public

agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

5. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

6. It is concluded that the requested records are “public records” within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

7. It is found that the Executive Committee of the respondent Board of Education held a publicly noticed meeting on November 3, 2014 for the purpose of determining the agenda for the meeting of the respondent Board on November 18, 2014. At the November 3, 2014 meeting of the Executive Committee, copies of a tentative agenda for the November 18, 2014 meeting of the full Board of Education were distributed for discussion. (There was some evidence that the complainant attended this November 3, 2014 meeting.)

8. It is also found that the respondents never acknowledged the complainant’s November 4, 2014 request. The complainant testified that he was never provided with a copy of the tentative agenda that was considered at the November 3, 2014 meeting of the Executive Committee. Respondents’ counsel argued, to the contrary, that the complainant was provided with a copy of the tentative agenda at the November 3, 2014 meeting. (Respondents’ counsel further argued that the electronic copy of the draft agenda might have been overwritten when the final agenda was prepared.)

9. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide to the complainant, in response to his November 4, 2014 request, a copy of the tentative agenda which they maintained, at least in the form of a paper copy. “There is nothing in the Connecticut FOIA that bars repeating a request to a public agency.” Mayor, City of Torrington v. Freedom of Information Commission, CV 01 0511803S, March 19, 2002, p. 8. As Judge Cohn noted, “a complainant may have lost the

document after the first request.” In the present case, it would have been an exceedingly simple matter to mail the tentative agenda to the complainant.

10. The Commission declines to order the imposition of a civil penalty.

11. The complainant testified at the hearing that the Executive Committee, following its November 3, 2014 meeting, has been providing copies of the tentative agendas to members of the public at their meetings. The Commission commends the respondents for making public records available promptly.

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

1. The respondents shall forthwith provide to the complainant a copy of the tentative agenda considered at the November 3, 2014 meeting of the Executive Committee, if a copy is still available. If a copy is not still maintained, the respondents shall write a letter to the complainant so stating.



Clifton A. Leonhardt
as Hearing Officer