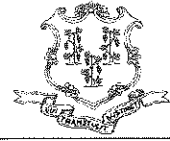


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FREEDOM OF INFORMATION



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Mark Dumas,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-099

Chariman, Town Council, Town of Stratford;
Town Council, Town of Stratford; and Town of
Stratford,

Respondent(s)

September 1, 2015

Transmittal of Corrected Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the corrected 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 Thursday, September 24, 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 September 11, 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 September 11, 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 September 11, 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

Cynthia A. Cannata
Acting Clerk of the Commission

Notice to: Mark Dumas
Michael S. Casey, Esq.

2015-09-01/FIC# 2015-099/Trans/cac/VDH/VB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Corrected Report of
Hearing Officer

Mark Dumas,

Complainant

against

Docket #FIC 2015-099

Chairman, Town Council,
Town of Stratford; Town Council,
Town of Stratford; and Town of Stratford,

Respondents

September 1, 2015

The above-captioned matter was heard as a contested case on June 26, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the matter was consolidated with the Docket #FIC 2015-079; Mark Dumas v. Joseph Kubic, Chairman, Town Council, Town of Stratford; Town Council, Town of Stratford; and Town of Stratford. 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), G.S.

2. By letter dated and filed February 6, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by insufficiently describing two agenda items scheduled to be taken up at the respondents' February 9, 2015 regular meeting¹, and for planning to discuss these same two items in executive session at this same meeting. In the complaint, the complainant requested that the Commission consider the imposition of the maximum civil penalty against the respondents, as well as consider declaring any action taken in the executive session to be null and void.

3. Section 1-200(2), G.S., provides, in relevant part, as follows:

¹ By filing his complaint three days before the February 9, 2015 meeting was scheduled, the complainant sought to obtain relief from this Commission prior to the meeting. However, the three-day window was an insufficient amount of time to allow this Commission to docket, schedule, and completely adjudicate this matter.

“Meeting” means any hearing or other proceeding of a public agency, [and] any convening or assembly of a quorum of a multimember public agency . . . to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. . . .

4. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. . . .”

5. Section 1-200(6), G.S., provides, in relevant part, as follows:

“Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: . . . (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned;

6. Section 1-225(c), G.S., provides, in relevant part:

The agenda of the regular meeting of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer. . . .

7. It is found that the Stratford Town Council held a regular meeting on February 9, 2015. It is further found that the agenda for such meeting included the following items of business:

- a. Longbrook Park Cell Tower Reconsideration – possible executive session; and
- b. 231 King Street – Initially referred to Executive Session. Placed on the table during meeting of 6/9/14.

8. With regard to the contention concerning improper executive sessions, it is found that, although the respondents’ February 9, 2015 regular meeting went forward as scheduled, the respondents never convened in executive session with regard to the items of business identified in paragraph 7, above.

9. Because the respondents did not conduct an executive session, it is concluded that the respondents did not violate the open meetings provision of §1-225(a), G.S.

10. With regard to the allegation concerning the sufficiency of the agenda descriptions, in Zoning Board of Appeals of the Town of Plainfield, the court observed that one purpose of a meeting agenda “is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views,” and that “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.” See Zoning Board of Appeals of the Town of Plainfield v. FOIC, No. CV 99-0497917-S, 2000 WL 765186, at *3-4 (Conn. Super. Ct. May 3, 2000), rev’d on other grounds, 66 Conn. App. 279 (2001).

11. Based on the evidence in this case, it is found that the agenda item referenced in paragraph 7.a, above, sufficiently apprised the public that the respondent Town Council intended to speak about a particular cell tower, where the tower is located, and that some aspect of the cell tower was being reconsidered. It is further found that such a description would permit a citizen to understand the general subject matter and properly prepare for the meeting in order to express his or her views.

12. However, it is found that the agenda item referenced in paragraph 7.b, above, did not sufficiently apprise the public of the matter the respondent Town Council intended to take up at the meeting. While it is clear that some aspect of 231 King Street would be considered at the February 9, 2015 meeting, it is found that this agenda item did not provide the kind of meaningful information that would allow a citizen to determine whether he or she had an interest in the subject matter and, thereafter, to properly prepare for the meeting in order to express his or her views.

13. It is therefore concluded that, with regard to the agenda item referenced in paragraph 7.b, above, the respondents violated the provisions of §1-225(c).

14. Based on the facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties. In addition, because the respondents did not convene in executive session, the requested penalty to declare actions taken within executive session is inapposite.

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

1. Henceforth, the respondents shall strictly comply with the requirements of §1-225(c).



Valicia Dee Harmon
as Hearing Officer