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FREEDOM OF INFORMATION



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Henry Dacey,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-882

Adam Dunsby, First Selectman, Town of Easton; Scott
Centrella, Robert Lessler, as members, Board of
Selectmen, Town of Easton; Board of Selectmen, Town of
Easton; and Town of Easton,
Respondent(s)

September 16, 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, October 14, 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 October 2, 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 October 2, 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 October 2, 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: Henry Dacey
Ira Bloom, Esq.

2015-09-16/FIC# 2014-882/Trans/wrbp/VDH/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Henry Dacey,

Complainant

against

Docket #FIC 2014-882

Adam Dunsby, First Selectman,
Town of Easton; Scott Centrella,
Member, Board of Selectmen,
Town of Easton; Robert Lessler,
Member, Board of Selectmen,
Town of Easton; Board of
Selectmen, Town of Easton;
and Town of Easton,

Respondents

September 16, 2015

The above-captioned matter was heard as a contested case on September 1, 2015, 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 and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By undated letter filed on December 8, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by creating a subcommittee of the Board of Selectmen ("BOS") and encouraging such subcommittee to hold meetings without following the requirements in the FOI Act for posting notices and agendas for public meetings and preparing meeting minutes. The complainant requested the imposition of civil penalties against each of the individual respondents.
3. Section 1-200(1)(A), G.S., provides in relevant part:

"Public agency" or "agency" means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any

state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official. . . .

4. Section 1-200(2)(A), G.S., defines “meeting” as:

[A]ny hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

5. Section 1-225(a), G.S., provides, in relevant part that “[t]he meetings of all public agencies. . . shall be open to the public.”

6. It is found that Adam Dunsby is the First Selectman for the Town of Easton. It is further found that Scott Centrella and Robert Lessler are members of the BOS.

7. It is found that, sometime in or around early 2014, the Town of Easton through its BOS became aware that there was an area in the town that consistently experienced a lack wireless coverage. As a result, it is found that the BOS, in conjunction with the town’s Planning and Zoning Commission, began to consider and investigate certain areas in town that might be appropriate for the construction of an additional cellular tower.

8. It is found that, as the BOS began to discuss the town’s need for improved wireless coverage at its public meetings and the likelihood that an additional, large cell tower would be the manner in which to address the spotty coverage issue, several residents began to speak out¹ against the construction of an additional cell tower.

9. It is further found that, at the BOS’s February 6, 2014 meeting, an informal group of concerned citizens who called themselves the “Easton Advocates for Responsible Cellular Coverage” (the “Easton Advocates”), requested that the BOS allow the group an opportunity to investigate alternative technology, namely a Distributed Antenna System (“DAS”)², and to report its findings back to the BOS at future public meetings.

¹ According to the testimony, many citizens in Easton were concerned about the health implications of constructing an additional, large cell tower within the town.

² According to the testimony and the representations of the respondents’ counsel, the DAS system uses a series of smaller nodes in lieu of the larger cell tower.

10. It is found that the BOS agreed to listen to and consider any information that the Easton Advocates gathered and brought forward to it.

11. The complainant contends that the BOS's interaction—and particularly the First Selectman's interaction—with the Easton Advocates was more than just a courteous and cooperative relationship and that, by allowing Easton Advocates to research³ and submit information about alternatives to cell tower technology to the BOS, the respondents in effect created a subcommittee of the BOS.

12. In the first instance, it is found that the Easton Advocates was a self-motivated, citizen-formed advocacy group—that is, the BOS did not create the Easton Advocates or appoint this group of citizens as a subcommittee of the BOS.

13. In fact, it is found that, when the First Selectman realized by way of a Facebook page that the members of Easton Advocates were describing the group as an “unofficial Town committee,” he immediately informed the group that such a description was inaccurate and could prove problematic down the road:

[Someone] showed me on your Facebook page that you refer to yourself as an unofficial ‘Town committee.’ Such language is potentially problematic, as someone reading this might assume you are a public agency, which you are not, and therefore subject to all state laws that govern public agencies (such as FOIA). [Selectman Centrella] made it clear that the BOS was not appointing or anointing a committee. I know that it seems like a silly thing, but the Town has landed up in Hartford on casual uses of language in the past. Could you maybe change the language to ‘unofficial advisor’ or something like that?

14. In addition, it is further found that, at several of the BOS's public meetings, the First Selectman and the other Selectmen were careful to describe the Easton Advocates as a self-created, citizen's group, that was in no way created or appointed by the BOS and to explain that such group had independently decided to research potential options to the construction of an addition cell tower.

15. Finally, it is found that almost all of the BOS's interaction (and particularly the First Selectman's interaction) with the Easton Advocates occurred during properly noticed public meetings of the BOS. While it is found that the Easton Advocates did, on a couple of occasions,

³ The complainant specifically contended that, by allowing the Easton Advocates to go out and attend private industry conferences and reported back to the BOS on what was learned, the BOS constructively made the Easton Advocates an advisory subcommittee. However, nowhere does the FOI Act prohibit public officials from listening to their constituents. Moreover, the BOS had no authority to prohibit private citizens from gathering information and submitting it to a public agency. Most importantly, it is found that almost all of the Easton Advocates' presentment of information occurred during the BOS's properly noticed public meetings.

stop by the First Selectman office to drop off the group's DAS research, these interactions did not constitute a public meeting, as the Easton Advocates was not conducting public business; rather, as a citizens advocacy group, Easton Advocates was conducting the work of private citizens.

16. Therefore, it is concluded that Easton Advocates was not a committee of, or created by the BOS, within the meaning of §1-200(1)(A), G.S. Moreover, if the BOS had created a subcommittee, such committee, not the BOS, would be responsible for complying with the FOI Act and would be held accountable for failing to do so.

17. It is concluded that the respondents did not violate any provision of the FOI Act.

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

1. The complaint is dismissed.



Valicia Dee Harmon
Valicia Dee Harmon
as Hearing Officer