



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2014-884

Chairman, South District Fire Commission,
City of Middletown; and South District Fire
Commission, City of Middletown,
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: Daniel Penney
Chairman, South District Fire Commission, City of Middletown
South District Fire Commission, City of Middletown

2015-09-16/FIC# 2014-884/Trans/wrbp/CAL//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Daniel Penney,

Complainant

against

Docket #FIC 2014-884

Chairman, South District Fire Commission,
City of Middletown; and South District Fire
Commission, City of Middletown,

Respondents

September 16, 2015

The above-captioned matter was heard as contested case on September 2, 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. By email dated and filed with the Freedom of Information Commission ("FOIC") on December 9, 2014, the complainant appealed to the FOIC, alleging that:
 - a. the respondents "did not fully state the reason" for the executive session held at the respondent Commission's December 8, 2014 meeting; did not "disclose who would be invited to be in attendance"; and did not "reveal the identity of employee #37 or if said employee was noticed of the option to have said executive session conducted in public....";
 - b. the respondents charged \$10.00 for a CD copy of the monthly meeting minutes; and
 - c. the policy of not allowing "a chair provided and facing the commission to be moved" may have been made by the respondent Commission at an illegal executive session or an illegal meeting.
3. Section 1-200, G.S., states in relevant parts:

(2) "Meeting" means any 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.

...

(6) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting;

4. Section 1-225, G.S., states in relevant parts:

(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.

...

(f) A public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

5. Section 1-231(a), G.S., states in relevant part:

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body..., 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.

6. It is found that, by letter sent about a week before the respondent Commission's December 8, 2014 meeting, the individual to be discussed at the proposed executive session was offered the opportunity to require that the discussion be held at an open meeting, and that acting orally through her union representative, she declined to require an open meeting.

7. It is found that, at the respondent Commission's December 8, 2014 meeting, the reasons for the executive session were stated to be "for the purpose of discussing a

personnel issue as it relates to Employee #37". Thirty seven also represents the number of employees at the Fire Department. It is also found that the minutes of the December 8, 2014 meeting stated the names and positions of the ten individuals who attended the executive session.

8. It is found that the respondent Commission has changed its billing policy for CD copies of records to charge \$2.00 per CD. At the hearing, the complainant withdrew the portion of his complaint addressing this issue (see paragraph 2.b., above).

9. Based on the credible testimony of Vice Chairman William Gregorio, it is found that there was no discussion by the respondent Commission, either in executive session or at an unnoticed gathering, of the decision to remove the chair for members of the public addressing the Commission, and instead, to provide a podium for this purpose. Vice Chairman Gregorio testified that this change in furniture in the Commission's meeting room was his decision, which he substantively discussed only with the Fire Chief, Robert Ross. He further testified that he informed Commission Chairman David Gallitto, without additional discussion, of the change.

10. The FOIC determined long ago, in contested case Docket #FIC 1990-048; Trenton Wright, Jr. v. First Selectman, Town of Windham, that the phrase "executive session – personnel matters" was too vague to communicate to the public the business to be transacted. In the intervening years, the FOIC has repeatedly stated that in order for the public to be fairly apprised of the reason for an executive session, the public agency must give some indication of the specific topic to be addressed, prior to convening such session. Therefore, descriptions such as "personnel", "personnel matters," "legal" or even "the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee" are inadequate and do not state the reason for convening in executive session, within the meaning of §1-225(f), G.S. Docket #FIC 2007-003; Smith v. Peck, Board of Education, Windsor Public Schools; Docket #FIC 2013-291; Smith v. Richardson, Board of Education, Windsor Public Schools. See also Docket #FIC 2014-417; Lowthert v. Brennan, first Selectman, Town of Wilton.

11. It is concluded that discussion of "a personnel issue as it relates to Employee #37" does not add any information beyond a bare statement of "personnel" or "personnel matters", except that the personnel issue focuses on a single, unidentified employee. This very minor additional information does not justify distinguishing away the long line of cases discussed at paragraph 10, above. The name of the employee may not need to be identified. Perhaps the nature of the personnel matter would suffice. But, in any case, the FOIC holds that identifying a personnel issue only by a number assigned to an employee, without any information to determine personal identity from the number, is not sufficient. Therefore, the statement that the reason for the executive session was "for the purpose of discussing a personnel issue as it relates to Employee #37" violates the requirements of §1-225(f), G.S.

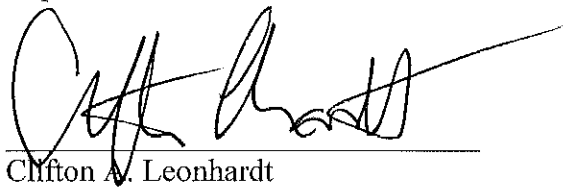
12. It is concluded that there is no statutory requirement to "disclose who would be invited to be in attendance" at an executive session or to disclose that an individual to

be discussed at a proposed executive session was offered the opportunity to require that the discussion be held at an open meeting. Nor, based on a finding at paragraph 7, above, was there a violation of the requirement of §1-231(a), G.S., to disclose in the minutes all persons who attended the executive session. (The complaint did not directly allege that there was no lawful purpose for the December 8, 2014 executive session, but it should be noted that, in fact, there was a lawful purpose for the executive session. Section 1-200(6)(A), G.S.)

13. Based on the finding at paragraph 9, above, it is concluded that there was no violation of §1-225(a), G.S., because there was no discussion by the respondent Commission, either in executive session or at an unnoticed gathering, of the decision to remove the chair for members of the public addressing the respondent Commission.

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

1. Henceforth, the respondents shall state the reasons for any executive session, as required by §1-225(f), G.S., and longstanding FOIC precedent.



Clifton A. Leonhardt
as Hearing Officer