



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Bradshaw Smith,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-037

Craig Cook, Superintendent of Schools, Windsor Public Schools; Ronald Eleveld, Michela Fissel, Darlene Klase, Leonard Lockart, Richard O'Reilly, Paul Panos, Melissa Rizzo Holmes, Christina Santos, Kenneth Williams, as members, Board of Education, Windsor Public Schools; and Board of Education, Windsor Public Schools,
Respondent(s)

October 7, 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 28, 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 16, 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 16, 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 16, 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.

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 2015-037

Craig Cook, Superintendent of Schools,
Windsor Public Schools; Ronald Eleveld,
Michela Fissel, Darlene Klase, Leonard
Lockart, Richard O'Reilly, Paul Panos,
Melissa Rizzo Holmes, Christina Santos,
Kenneth Williams, as members, Board of
Education, Windsor Public Schools; and
Board of Education, Windsor Public
Schools,

Respondents

October 7, 2015

The above-captioned matter was heard as a contested case on September 21, 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. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter filed January 15, 2015, 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 December 16, 2014 regular meeting ("meeting"). The complainant requested the imposition of civil penalties.
3. It is found that the agenda for the respondents' meeting stated: "Executive Session – Discussion concerning confidential attorney-client communication." The complainant challenges the specificity of the agenda description.
4. 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...
- (c) 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 . . .

5. 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.

6. It is well established that a meeting agenda must "fairly apprise the public of the action proposed," and of "matters to be taken up at the meeting in order to [permit the public] to properly prepare and be present to express their views." Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, Docket No. CV 99-047917-S, 2000 WL 765186 (superior court, judicial district of New Britain, May 3, 2000), reversed on other grounds, Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, 66 Conn. App. 279 (2001). See also Durham Middlefield Interlocal Agreement Advisory Board v. FOI Commission, CV960080435, 1997 Conn. Super. LEXIS 2164 (August 12, 1997) ("Durham").

7. The agency in Durham argued that disclosing greater detail about the executive session (described on the agenda as "possible litigation") 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. The court noted, however, that the extent of necessary public detail concerning notice of executive sessions turns on the facts of each case.

8. The respondents cite two Commission decisions: Docket #FIC 2006-560; Barbara Breor v. Board of Education, Regional School District 6 (July 25, 2007) ("Breor") and Docket #FIC 2014-246; Marissa Lowthert v. Chairman, Board of Education, Wilton Public Schools (March 11, 2015) ("Lowthert"); which found no violation in agenda items described, respectively, as "discussion/possible action of attorney client privileged communication" and "Discussion of Confidential Attorney-Client privileged memorandum."

9. However, in accordance with Durham's caution that the extent of necessary public detail concerning notice of executive session turns on the facts of each case, both Breor (paragraph 15) and Lowthert (paragraph 11) expressly base their conclusion on the particular facts and circumstances of each case.

10. It is concluded that neither Breor nor Lowthert stand for the proposition cited by the respondents – that as a general rule “discussion of attorney-client privileged communication” fairly apprises the public of the business to be transacted.

11. Moreover, paragraph 25 of Lowthert states: “Respondents are encouraged to cite the attorney client privilege exception only when there is a good faith basis that disclosure of the subject matter of the communication would itself violate the attorney client privilege.”

12. The respondents in this matter provided no evidence, either through exhibits or testimony, that disclosing greater detail about the executive session would destroy the confidentiality that was the purpose of the closed session. Although the respondents offered the memorandum that was the subject of the executive session for an in camera inspection, the privileged nature of the memorandum is not in dispute. It is found that the content of the privileged memorandum is not relevant to the issue of whether the agenda should have provided more public detail.

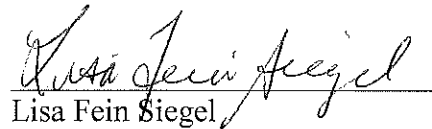
13. It is found, therefore, that the respondents failed to prove that the agenda adequately described the business to be transacted.

14. It is concluded that the respondents violated §1-225(c), G.S., as alleged.

15. The Commission in its discretion declines to impose a civil penalty on the respondents.

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 comply with the requirements of §1-225, G.S.


Lisa Fein Siegel
as Hearing Officer