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FREEDOM OF INFORMATION



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Elizabeth Wassmundt,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-714

Chairman, Board of Education, Mansfield Public Schools;
and Board of Education, Mansfield Public Schools,
Respondent(s)

April 27, 2016

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, May 25, 2016**. 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 May 13, 2016**. 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 May 13, 2016**. **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 May 13, 2016**, 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: Elizabeth Wassmundt
Attorney Kevin M. Roy

2016-04-27/FIC# 2015-714/Trans/wrbp/VB//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Elizabeth Wassmundt,

Complainant

against

Docket #FIC 2015-714

Chairman, Board of Education,
Mansfield Public Schools; and Board of
Education, Mansfield Public Schools,

Respondents

April 18, 2016

The above-captioned matter was heard as a contested case on January 8, 2016, at which time the complainant and 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 letter of complaint filed on October 22, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act during the respondent Mansfield Board of Education (the "Board") regular meetings held on September 24, 2015 and October 8, 2015 by: (a) failing to adequately describe the business to be conducted on the agendas for those meetings and prior to convening in executive session; (b) convening in both executive sessions for an impermissible purpose; and (c) failing to provide proper notice to the superintendent who was the subject of such executive sessions.¹
3. 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."
4. Section 1-200(6), G.S., provides, in relevant part, that:

¹The Commission notes that in her post-hearing brief, the complainant argues for the first time that the minutes for the Board of Education's September 24, 2015 regular meeting were inaccurate. However, that issue was neither included in the complainant's October 22, 2015 appeal to this Commission, nor was it argued during the hearing in this matter. Therefore, the Commission declines to make any findings regarding this newly added claim.

‘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 . . .

5. Section 1-225(f), G.S., provides that “[a] public agency may hold an executive session as defined in subsection (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.”

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

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

7. With respect to the allegations described in paragraph 2(a) above, at the hearing in this matter, the respondents contended that they properly added certain business to be conducted to the agenda for the September 24, 2015 meeting by two-thirds vote and that the October 8, 2015 agenda adequately described the business to be conducted at that meeting. The respondents further contended that they provided an adequate statement of the reason for both executive sessions prior to convening in those executive sessions.

8. It is found that the respondents issued an agenda for the Board’s regular meeting to be held on September 24, 2015 at 7:30 p.m., which agenda did not include a discussion of the appointment and employment of the superintendent.

9. It is found that the respondents convened in public session on September 24, 2015, and by an affirmative vote of two-thirds of the members present and voting, added the appointment and employment of the new superintendent to the agenda to be discussed in executive session. Based on credible testimony proffered by the respondents and supported by the minutes of such meeting, it is found that the motion to add such discussion to the agenda was prefaced with the following statement: “to discuss the appointment and employment of the superintendent. Possible action to approve and confirm contract entered in on June 23, 2015.” It is further found that prior to convening in executive session, the respondents stated that the reason for the executive session was to discuss “the appointment and employment of the superintendent.”

10. It is found that the respondents issued an agenda for the Board of Education’s regular meeting to be held on October 8, 2015 at 7:30 p.m., which agenda stated that it would convene in executive session “to discuss the appointment of the superintendent. Possible action to affirm

contract entered in on June 23, 2015.” It is further found that the respondents convened in public session on October 8, 2015, and that prior to convening in executive session, stated that the reason for the executive session was to discuss “the appointment of the superintendent.”

11. The Commission has determined that “all matters on an agency’s agenda must be sufficiently specific so that the public is fairly apprised of the matters to be considered at the meeting in question.” Sherry Disbury and the Terryville/Plymouth Community News v. Police Commission, Town of Plymouth, Docket #FIC 2004-091 (Sept. 8, 2004); Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Judicial District of New Britain, Docket No. 99-0497917-S (May 3, 2000, *Satter, J.*), reversed on other grounds, 66 Conn. App. 279 (2001) (the purpose of a meeting agenda “is that the public and interested parties be apprised of matters 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”).

12. As this Commission has acknowledged, “§1-225(f), G.S., requires an agency only to state the reason for the executive session within the meaning of §1-200(6), G.S. This requirement is separate from an agency’s obligation under §1-225(d), G.S., to apprise the public of the business to be transacted, a more specific requirement than that of §1-225(f), G.S.” David A. LeBlanc v. Elaine Adams, Chairman, Town Council, Town of Watertown, et al., Docket #FIC 2009-038 (December 16, 2009) (“respondents adequately apprised the public that the reason for its executive session was to discuss the ‘employment, performance, evaluation, health or dismissal of a public officer or employee,’ by stating before the executive session that the reason for the executive session was a personnel matter”).²

13. With respect to the September 24, 2015 regular meeting, it is found that after the respondents took a proper vote to add the discussion of the appointment and employment of the superintendent to the agenda during the meeting in accordance with §1-225(c), G.S., they then provided an adequate statement of the reason for the executive session prior to convening in executive session in accordance with §1-225(f), G.S.

14. With respect to the October 8, 2015 regular meeting, it is found that the respondents provided an adequate statement of the business to be conducted on the agenda and also prior to convening in executive session in accordance with §1-225(f), G.S.

15. It is therefore concluded that the respondents did not violate the notice provisions of §1-225(c), G.S., during its regular meetings held on September 24, 2015 and October 8, 2015.

16. With respect to the complainant’s allegations described in paragraph 2(b), above, the complainant bases her claim that the September 24, 2015 and October 8, 2015 executive sessions were improper on the undisputed fact that the respondents had already voted to approve the appointment of the superintendent on June 23, 2015, and that the respondent Chairperson

²The Commission notes that the notice requirement with respect to the specificity of the agenda for a *special* meeting, §1-225(d), G.S., is the same for a *regular* meeting, §1-225(c), G.S.

executed an employment contract between the respondent Board and the superintendent on that same date (“hereinafter referred to as the “Contract”). The respondents contended that the executive sessions were properly held to discuss the terms and conditions of the Contract.

17. While the respondents voted on the appointment of the superintendent at the Board’s June 23, 2015 meeting, it is found that the Board members did not have the Contract at that meeting and consequently did not vote to approve the terms and conditions of the Contract as is required pursuant to §10-157, G.S.³

18. It is further found that although the respondent Chairman executed the Contract on June 23, 2015, he subsequently became aware that he needed the full Board to vote on the terms and conditions of the Contract.

19. Despite the arguments advanced by the complainant that the respondents merely discussed the procedural irregularities with respect to the execution of the Contract, rather than the actual terms and conditions of the Contract, it is found that during the September 24, 2015 executive session, the Contract was distributed to Board members for consideration, and members asked for time to review the terms and conditions of the Contract. It is further found that during the October 8, 2015 executive session, the Board members again met to discuss the Contract after conducting their review, were aware that changes could be made to the terms and conditions of the Contract, and subsequently voted during public session to approve the Contract.

20. In consideration of the Board members’ requests for additional time to review the Contract, which additional time was provided, the ability to change the terms of the Contract and subsequent public vote on the Contract, it is found that the discussion of the Contract during the September 24, 2015 and October 8, 2015 executive sessions included the Board’s consideration of the terms and conditions of that Contract.

21. It is found that the executive sessions convened during the regular meetings held on September 24, 2015 and October 8, 2015 were to discuss the Contract, which included consideration of the terms and conditions of the employment and appointment of the superintendent, which is permissible in accordance with §1-200(6)(A), G.S.

22. It is concluded, therefore, that the respondents did not violate the Freedom of Information Act as alleged in paragraph 2(b), above.

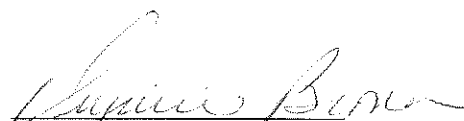
23. With respect to the complainant’s claim described in paragraph 2(c), above, that the superintendent who was being discussed during the executive session was not given notice in accordance with §1-200(6)(A), G.S., it is found that the complainant was not the individual being discussed. As this Commission has previously stated, “the right to prior notification and the right to request that an executive session discussion pursuant to §1-200(6)(A), G.S., be conducted as part of an open meeting is the right of the individual who is slated for discussion during executive session.” Ellen Andrews v. Director, State of Connecticut, Office of the

³Section 10-157 provides, in relevant part, that: “[e]mployment of a superintendent shall be by election of the board of education . . . A majority vote of all members of the board shall be necessary to an election, and the board shall fix the salary of the superintendent and the term of office, which shall not exceed three years.”

Healthcare Advocate; and State of Connecticut Office of the Healthcare Advocate, Docket #FIC 2014-791 (August 18, 2015). Consequently, it is concluded that the complainant does not have standing to file a complaint alleging a violation of other individual's right under the Freedom of Information Act.⁴

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

1. The complaint is hereby dismissed.


Virginia Brown
as Hearing Officer

FIC2015-714/HOR/VB/04182016

⁴Because the respondents did not violate any of the complainant's rights under the Freedom of Information Act with respect to providing notice to the superintendent, the Commission declines to make any findings with respect to whether the superintendent was properly notified as alleged in paragraph 2(c), above.