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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-790

Chairman, Park and Recreation Commission,
Town of Haddam; and Park and Recreation
Commission, Town of Haddam,
Respondent(s)

June 2, 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, June 22, 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 June 10, 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 June 10, 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 June 10, 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: Ed Schwing
Attorney Richard D. Carella

2016-06-02/FIC# 2015-790/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ed Schwing,

Complainant

against

Docket #FIC 2015-790

Chairman, Park and Recreation
Commission, Town of Haddam;
and Park and Recreation
Commission, Town of Haddam,

Respondents

June 2, 2016

The above-captioned matter was heard as a contested case on March 21, 2016, 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), G.S.
2. By letter, dated and filed November 18, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to:
 - (a) make available, in the town clerk's office, the record of votes and the minutes of the respondent commission's meetings "for at least the past two years;"
 - (b) file a yearly schedule of the respondent commission's regular meetings with the town clerk or "on an official town office bulletin board;"
 - (c) "ever" file agendas of the respondent commission's regular or special meetings in the town clerk's office, or "on an official town office bulletin board."

At the hearing in this matter, the complainant requested the imposition of a civil penalty against the individual members of the respondent commission, and also requested that this Commission order that such members attend training regarding the requirements of the FOI Act.

3. Section 1-206(b)(1), G.S., provides:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held. (Emphasis added).

4. Preliminarily, it is concluded that this Commission does not have jurisdiction to adjudicate the allegation described in paragraph 2(c), above, because the complainant failed to identify a specific meeting for which the respondents failed to post an agenda, and thus failed to file his complaint with respect to a particular violation within 30 days of such violation, as required by §1-206(b)(1), G.S. Accordingly, such allegation shall not be further addressed herein.

5. With regard to the allegation described in paragraph 2(a), above, §1-225(a), G.S., provides that:

(a)[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. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings. (Emphasis added).

6. This Commission has held that “the responsibility to create minutes and make them available for public inspection is a continuing one and that the failure to meet such responsibility is a continuing violation....” See William J. Beach v. Chairman, Winsted Zoning Board of Appeals and Winchester Building Inspector, Docket #FIC 1988-362 (December 14, 1988). Accordingly, it is concluded that the Commission has jurisdiction to adjudicate such allegation.

7. Section 1-210(a), G.S., requires a public agency to “keep and maintain all public records in its custody at its regular office or place of business in an accessible place, and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the [town] clerk...or of the Secretary of the State, as the case may be.”

8. It is found that the respondent commission does not maintain an office. It is found that, although the secretary of the respondent commission (“secretary”) created minutes of the respondent commission’s meetings in 2014 and 2015, and kept a record of the votes taken at such meetings, it is further found that neither he nor any other member of the respondent commission filed such records or votes with the town clerk, as required by §§1-225(a) and 1-210(a), G.S. It is found, instead, that the secretary kept the minutes and records of votes in a notebook in his private law office. According to the secretary, he did not understand the applicable requirements of the FOI Act. Although the secretary testified at the hearing in this matter, that he would have made the minutes “available” for inspection had someone asked him to see them, it is concluded that the respondents failed to make the minutes and votes “available for public inspection,” as required by §§1-225(a) and 1-210(a), G.S.

9. Accordingly, it is concluded that the respondents violated §§1-225(a) and 1-210(a), G.S., as alleged in paragraph 2(a), above.

10. With regard to the allegation described in paragraph 2(b), above, §1-225(b), G.S., provides in relevant part that:

...The chairperson or secretary of any such public agency of any political subdivision of the state shall file, not later than January thirty-first of each year, with the clerk of such subdivision the schedule of regular meetings of such public agency for the ensuing year, and no such meeting of any such public agency shall be held sooner than thirty days after such schedule has been filed.... (Emphasis added).

11. With regard to the allegation described in paragraph 2(b), above, it is found that the respondents approved and adopted a schedule of regular meetings for 2016. It is found that the respondents did not file such schedule with the town clerk, as required by §1-225(b), G.S., yet met, and, as of the date of the hearing in this matter, were continuing to meet, in accordance with such schedule. Because the respondents are continuing to meet in accordance with the 2016 schedule, they have a continuing duty to file such schedule with the town clerk, and it is concluded that their failure to do so is a violation of §1-225(b), G.S.

12. With regard to the request for a civil penalty, the Commission declines to impose such remedy against the respondents. With regard to the request that the respondents be ordered to attend training regarding the requirements of the FOI Act, it is found that such training session had already been scheduled as of the date of the hearing in this matter.

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

1. Forthwith, the respondents shall file the minutes of their 2014 and 2015 meetings, including the record of votes taken, as well as their schedule of regular meetings for 2016, in the office of the Haddam town clerk.

2. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-225(a), and 1-225(b), G.S.

3. The Commission strongly urges the respondents to file the minutes of all meetings of the respondent commission that occurred prior to 2014, as well as the schedules of regular meetings for all years prior to 2016, with the office of the Haddam town clerk. In addition, the Commission reminds the respondents that an agenda is required to be filed prior to each regular or special meeting, in accordance with §1-225(c), G.S.



Kathleen K. Ross
as Hearing Officer