



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2012-253

Edwin S. Greenberg, Chairman, State of Connecticut, State Properties Review Board; Bennett Millstein, Vice-Chairman, State State of Connecticut, State Properties Review Board; Bruce Josephy, Secretary, State of Connecticut, State Properties Review Board; Mark A. Norman, Pasquale A. Pepe, John P. Valengavich, as members, State of Connecticut, State Properties Review Board; and State of Connecticut, State Properties Review Board,

Respondent(s)

December 20, 2012

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, January 23, 2013**. 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 January 11, 2013**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE January 11, 2013**. **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 **fourteen (14) copies** be filed **ON OR BEFORE January 11, 2013**, 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: Robert Fromer
Erin O'Brien Choquette, Esq.

2012-12-20/FIC# 2012-253/Trans/wrbp/LFS//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Robert Fromer,

Complainant

against

Docket #FIC 2012-253

Edwin S. Greenberg, Chairman, State of Connecticut, State Properties Review Board; Bennett Millstein, Vice-Chairman, State of Connecticut, State Properties Review Board; Bruce Josephy, Secretary, State of Connecticut, State Properties Review Board; Mark A. Norman, Pasquale A. Pepe, John P. Valengavich, as members, State of Connecticut, State Properties Review Board; and State of Connecticut, State Properties Review Board,

Respondents

December 19, 2012

The above-captioned matter was heard as a contested case on November 27, 2012, 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 letter filed May 9, 2012, the complainant appealed to the Commission, alleging that the respondents held an executive session for an improper purpose during their meeting of April 26, 2012. The complainant also alleged violations of the Freedom of Information ("FOI") Act's requirements concerning the specificity of the meeting's agenda and the posting of the meeting's minutes. The complainant requested the imposition of civil penalties.
3. It is found that the Connecticut Department of Administrative Services entered into an agreement to lease property for use by the Judicial Department. It is found that the agreement required the approval of the respondent board pursuant to §4b-3(f), G.S., which provides, in relevant part:

The State Properties Review Board shall review real estate acquisitions, sales, leases and subleases proposed by the Commissioner of Administrative Services ... Such review shall consider all aspects of the proposed actions, including feasibility and method of acquisition and the prudence of the business method proposed...

4. It is found that, pursuant to §4b-3, G.S., the respondent board held a regular meeting on April 26, 2012, the agenda for which provided, in relevant part, as follows:

EXECUTIVE SESSION

3. REAL ESTATE – UNFINISHED BUSINESS

PRB# 12-105 **Transaction/Contract Type:** RE/Lease Agreement

Origin/Client: DAS/JUD

Statutory Disclosure Exemptions: 4b-23(e); 1-200(6) & 1-210(b)(7)

5. It is found that the respondents convened in executive session during the April 26, 2012 meeting to discuss the lease agreement under the agenda item described in paragraph 4, above.

6. The complainant alleged that (a) the respondents' agenda did not fairly apprise the public of the purpose of the executive session, in violation of §1-225(f), G.S.; and (b) the subject of the discussion was not a permissible reason for entering executive session.

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

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.

8. Section 1-200(6)(E), G.S., permits a public agency to meet in executive session for "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."

9. Section 1-210(b)(10), G.S., exempts from disclosure "[r]ecords ... exempted by ... the general statutes."

10. The respondents claim that §4b-23(e), G.S., prohibited them from disclosing certain records and operated through §1-200(6)(E), G.S., to permit them to meet in executive session.

11. It is found that the Department of Administrative Services entered into the proposed lease agreement in furtherance of the state facility plan, pursuant to §4b-23, G.S.

12. Section 4b-23, G.S., defines “facility” as “buildings and real property owned or leased by the state,” and requires the creation of a “state facility plan” that includes long-term and short-term facility needs, and other factors. Such “state facility plan shall be used as an advisory document for the leasing of property for use by state agencies and departments and for related capital projects.”

13. Section 4b-23(e), G.S., provides in relevant part as follows:

Implementation of the state facility plan shall be the responsibility of the Commissioner of Administrative Services who shall conduct a study of each proposed facility in the plan to determine: (1) The method of choice for satisfying each such facility need, (2) the geographical areas best suited to such need, (3) the feasibility and cost of such acquisition using a life-cycle cost analysis as established by subdivision (2) of subsection (b) of section 16a-38, (4) the degree to which the plan promotes the goals addressed in subsection (e) of section 4b-31, and (5) any other relevant factors. Said commissioner shall review and approve each facility plan implementation action and shall submit to the Properties Review Board a list of each such action approved and the method and plan by which it shall be accomplished ... The results of said commissioner's study along with all supportive materials shall be immediately sent to the Properties Review Board. The board shall meet to review the decision of the commissioner ... The board, within ninety days after the receipt of the decision of the Commissioner of Administrative Services, shall either accept, reject or request modification of such decision ... The decision to make public such decision shall rest solely with the Commissioner of Administrative Services both as to time and manner of disclosure, but in no event shall such period exceed one year. The commissioner shall, when he deems it to be in the public interest, authorize the disclosure of such information; however, in the absence of such authorization, any unauthorized disclosure shall be subject to the criminal provisions of section 4b-27... (Emphasis added.)

14. Section 4b-27, G.S., provides in relevant part as follows:

No person affiliated with any requesting agency shall discuss outside of that agency its real estate needs or interests prior to formal notification to the commissioner, and in no event without the authorization and supervision of the Commissioner of Public

Works¹, which authorization shall be filed with the review board; nor shall anyone with knowledge of said needs gained as a result of his employment by the state disclose any information regarding state real estate needs to anyone except as authorized by the commissioner. Anyone who discloses any such information without authority by the commissioner before said information is made public by the commissioner shall be guilty of a class A misdemeanor. (Emphasis added.)

15. It is found that the respondents reviewed the proposed real estate lease agreement as part of the facility plan for the Judicial Department.

16. It is found that the proposed lease agreement under discussion in the executive session at issue in this case was a “facility plan implementation action” that the Commissioner of Administrative Services decided to approve pursuant to §4b-23(e), G.S.

17. It is found that the purpose of the executive session was for the respondent board to review such decision of the commissioner, as §4b-23(e), G.S., required.

18. It is concluded that §§4b-23(e) and 4b-27, G.S., prohibited the respondents from disclosing the commissioner’s decision to approve the proposed lease agreement, and that preservation of the confidentiality of the commissioner’s decision by necessity required confidential discussion of the decision and of the information on which the commissioner relied.

19. It is concluded, therefore, that the respondents’ executive session was proper.

20. As for whether the agenda fairly apprised the public of the purpose of the executive session, it is found that requiring the respondents to identify the location of the leased property would defeat the confidentiality requirements of §§4b-23(e) and 4b-27, G.S.

21. It is found that the respondents’ agenda disclosed the agencies involved in the transaction, as well as the type of transaction to be discussed. Although the complainant contended that the respondents have a duty not to use acronyms to identify the state agencies involved, it is found that the acronyms used in this case are widely known or easily able to be discovered by the general public.²

22. It is concluded that the respondents’ agenda did not violate the FOI Act as alleged by the complainant.

¹ Although Public Act 2011-51 amended §4b-23 to substitute the Commissioner of Administrative Services for the Commissioner of Public Works, it did not similarly amend §4b-27, G.S.

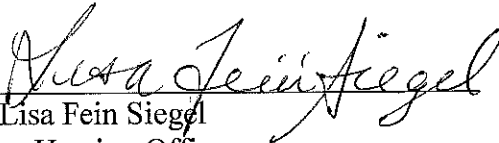
² The Commission agrees, however, that a better practice would be to avoid the use of acronyms in agendas and minutes.

23. It is also found that the respondents made minutes available to the public within seven days of the meeting, including posting such minutes on the agency website on May 3, 2012.

24. In light of the Commission's findings of fact and conclusions of law in paragraphs 9 – 19, above, it is not necessary to consider whether §1-210(b)(7), G.S. supported the respondents' executive session.

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.


Lisa Fein Siegel
as Hearing Officer