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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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Salvatore Gabriele,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-491

Board of Representatives, City of Stamford; and
City of Stamford,
Respondent(s)

June 5, 2012

Transmittal of Proposed Final Decision Dated June 5, 2012

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 dated June 5, 2012, 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 27, 2012**. 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 15, 2012*. 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 June 15, 2012*. **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 June 15, 2012* 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: Joseph Sargent, Esq.
Michael S. Toma, Esq.

2012-06-05/FIC# 2011-491/Trans/wrbp/VRP//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Salvatore Gabriele,

Complainant

against

Docket #FIC 2011-491

Board of Representatives,
City of Stamford; and
City of Stamford,

Respondents

June 5, 2012

The above-captioned matter was heard as a contested case on January 30 and March 26, 2012, at which times 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. It is found that the dispute in this case arises out of a disagreement about paying for outside counsel to represent a former Board of Finance member. The Board of Finance member, accused of ethical violations, had brought suit against individual town officials, alleging, among other things, that the city's code of ethics was unconstitutional. The defendant town officials in turn brought suit against him for vexatious litigation when the Finance Board member's suit was dismissed.
3. It is found that, in August 2011, the city's Director of Legal Affairs (the "Director") indicated that the City of Stamford intended to hire outside counsel to represent the former Board of Finance member in the vexatious litigation matter.
4. It is found that the President of the respondent Board, Randall Skigen, drafted a letter to the Director, urging him to seek an outside opinion as to whether the Board of Finance member was entitled to legal representation at the City's expense.
5. It is found that, on August 15, 2011, the President circulated the draft letter among the six leadership members of the Board (the Majority Leader, two Deputy

Majority Leaders, the Minority Leader, and two Deputy Minority Leaders), suggesting that the letter would be strengthened by their support.

6. It is found that, on August 15, 2011, at least some discussion by email or telephone or both occurred among the leadership members, and that the draft was also shared by the Deputy Minority Leader with the members of his own caucus, including the complainant, asking for their opinions.

7. It is found that the six leadership members apparently agreed with the Director, and affixed their signatures to the letter. Although the decision to sign the letter was reached on August 15, the letter was not physically executed until the following day.

8. It is found that any email or telephone communications among the leadership members were not open to the public, although emails of these discussions were subsequently provided to the complainant. The respondent Board did not treat the email or telephone communications as a meeting, and therefore did not file meeting notices or minutes.

9. By letter of complaint filed by fax on September 15, 2011 and by overnight FedEx on September 19, 2011, the complainant appealed to the Commission, alleging that the majority and minority leadership members of the respondent violated the open meetings provisions of the Freedom of Information ("FOI") Act by communicating by email and telephone on August 15, 2011. The complainant alleged that those communications concerned supporting the Board's President by co-signing his letter to the City's Director of Legal Affairs, which urged the Director to reconsider his decision to pay for the defense of a former Board of Finance member.

10. It is found that the letter was not subsequently discussed by the respondent Board at any meeting, nor did the respondent Board take any action with regard to the letter or its substance.

11. Section 1-206(b)(1), G.S., provides in relevant part:

Any person ... 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. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the

date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.

12. Section 1-200(2), G.S., provides in relevant part:

“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.

13. Section 1-225(a), G.S., provides:

The 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, which minutes shall be available for public inspection within seven days of the session to which they refer.

14. The respondents contend that the complaint must be dismissed pursuant to §1-206(b)(1), G.S., because the complaint was filed more than 30 days after the complainant had notice in fact of the alleged August 15, 2011 meeting.

15. It is found that the complainant knew of the alleged August 15, 2011 meeting on August 15, 2011, because he received the August 15, 2011 email circulated by the President, which informed all members of the Republican caucus (which included the complainant) that leadership was considering signing the letter, but wanted input from the caucus members before doing so.

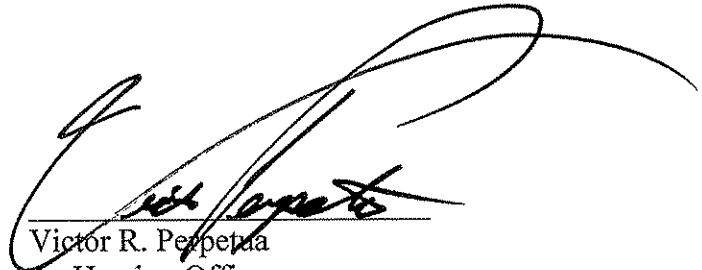
16. The complainant contends that he did not have actual notice of the alleged August 15 meeting until August 16, when he learned that the letter had been signed, and alternatively that the meeting wasn't over until at least August 16, when the letter was signed.

17. It is found, however, that while the letter was not executed until the following day, and while some communication may have continued past August 15, the heart the alleged meeting occurred on August 15, 2011. Indeed, the complaint itself alleges that the meeting took place on August 15, 2011. (The complainant sought to amend his complaint after the respondents made their motion to dismiss, in an attempt to cure any jurisdictional defect. That request was and is denied.)

18. It is therefore concluded that the complainant had actual notice of the August 15, 2011 alleged meeting on August 15, 2011, and that the Commission therefore lacks subject matter jurisdiction over the September 15, 2011 complaint.

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.



Victor R. Peppetua
As Hearing Officer