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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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Wesley Lubee,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-681

Housing Authority, Town of Wallingford,
Respondent(s)

September 14, 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, October 10, 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 September 28, 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 September 28, 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 September 28, 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: Wesley Lubee
Warren L. Holcomb, Esq.

9/14/2012/FIC# 2011-681/Trans/wrbp/SDL/PSP/GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Wesley Lube,

Complainant

Docket # FIC 2011-681

against

Housing Authority,
Town of Wallingford,

Respondent

September 12, 2012

The above-captioned matter was heard as a contested case on March 21, 2012, at which time the complainant and respondent 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 respondent is a public agency within the meaning of §1-200(1), G.S.
2. By letter dated December 16, 2011, and filed on December 19, 2011, the complainant appealed to this Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act at its December 14, 2011 meeting by:
 - (a) failing to take a roll call vote before going into executive session;
 - (b) making decisions and voting in executive session; and
 - (c) failing to reduce votes to writing and to make them available for public inspection.

At the hearing, the complainant withdrew his complaint with respect to paragraph 2(a), and therefore, such allegation is no longer at issue and will not be further addressed herein.

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. The votes of each member of any such 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.

4. Section 1-200(6), G.S., provides that “executive sessions” mean:

[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. With respect to the complainant’s allegation in paragraph 2(b), above, the Commission has consistently ruled that action beyond discussion pursuant to §1-200(6), G.S., such as a vote, is not permissible in an executive session.

6. It is found that the respondent held a regular meeting on December 14, 2011.

7. It is found that the respondent voted to enter into, and conducted, an executive session at its December 14th meeting to “discuss personnel matters.”

8. The complainant maintains that the respondent acted while in executive session and authorized the increase of hours of two part-time employees to become full-time employees.

9. The respondent contends that during the executive session, the respondent addressed an operational matter concerning the need to increase the hours worked by two part-time employees and that two of the respondent’s commissioners were told to go talk to these employees and inquire as to whether they were willing to increase their hours.

10. It is further found that when the respondents came out of executive session, there was no further discussion or action taken on any matter, except to adjourn the December 14th meeting.

11. It is found that while in executive session the respondent authorized two commissioners to inquire of the two part-time employees whether they would be willing to increase their hours.

12. It is found that the respondent took action beyond discussion in executive session at its December 14th meeting, and that such action was tantamount to a vote on an issue before a public agency within the meaning of §1-225(a), G.S.

13. With respect to the complainant’s allegation in paragraph 2(c), above, it is found that the minutes do not reflect what action was taken while the respondent was in executive session.

14. It is therefore concluded that the respondent violated §1-225(a), G.S., by making decisions and voting in executive session; and by failing to reduce votes to writing and to make them available for public inspection.

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

1. Henceforth, the respondent shall strictly comply with the requirements of §1-225(a), G.S., with respect to actions taken during executive sessions and the recording of actions and votes of its members.

2. The respondent shall forthwith amend the minutes for the December 14, 2011 meeting, to reflect the actions and votes taken at such meeting.



Commissioner Sherman D. London
as Hearing Officer