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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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Joseph Tarzia,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-481

Michael Pavia, Mayor, City of Stamford; Randall Skigen, Annie Summerville, Elaine Mitchell, Robert DeLuca, Gloria DePina, Eileen Heaphy, Harry Day and Mary Fedeli, as members, Board of Representatives, City of Stamford; and Leadership Committee, Board of Representatives, City of Stamford,
Respondent(s)

July 19, 2013

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, August 14, 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 August 2, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 2, 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 August 2, 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: Joseph P. Sargent, Esq.
Michael S. Toma, Esq.

7/19/13/FIC# 2012-481/Trans/wrbp/KKR/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Joseph Tarzia,

Complainant

against

Docket #FIC 2012-481

Michael Pavia, Mayor, City of Stamford;
Randall Skigen, Annie Summerville, Elaine
Mitchell, Robert DeLuca, Gloria DePina,
Mary Fedeli, Eileen Heaphy, and Harry Day,
as Members, Board of Representatives,
City of Stamford,

Respondents

July 19, 2013

The above-captioned matter was heard as a contested case on May 14, 2013, and June 28, 2013, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. At the request of the parties, the case caption has been amended to eliminate reference to a "Leadership Committee."

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 email dated and filed August 30, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by holding a private meeting on January 24, 2011 to discuss the mayor's plan to reorganize the city's volunteer and paid fire departments.¹ According to the complainant, he did not learn of the January 24, 2011 meeting until August 6, 2012, when he read an article in the Stamford Advocate that mentions such meeting.
3. Section 1-206(b)(1), G.S., provides, in relevant part:

¹ The complainant twice moved to amend his complaint during the course of these proceedings to add allegations of dozens of additional "secret" meetings, dating back to 2010. The hearing officer denied both motions. See Ruling on Motion to Amend Complaint, dated June 18, 2013. On June 21, 2013, the complainant filed an "emergency appeal" of the hearing officer's ruling, and at its June 26, 2013 regular meeting, the Commission voted unanimously to deny all requests contained in such appeal.

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. [Emphasis added].

4. By motion dated and filed July 1, 2013, the respondents moved to dismiss the complaint for lack of subject matter jurisdiction, claiming that the complaint was not timely filed.

5. This Commission has concluded that the standard for subject matter jurisdiction in the case of an allegedly secret or unnoticed meeting is thirty days after the person filing the appeal receives notice in fact that such meeting was held, and not thirty days after such person receives actual notice. See Daniel Savage, Jr., v. Board of Selectmen, Town of Hebron, Docket #FIC 2003-388 (May 12, 2004) (fact that complainant had actual notice of alleged violation after newspaper account published October 25, 2003 did not save complaint filed October 29, 2003 from jurisdictional defect because complainant had notice in fact of alleged secret meeting on September 12, 2003, the date the legal notice which was allegedly discussed at the "secret" meeting first appeared in the newspaper).

6. In the present case, it is found that the complainant served as a member of the Board of Representatives (BOR) from 1981 to 1983, and on the Board of Finance from 1987 through 2011, also serving as chairman of such board from 1991 to 1993 and from 2009 to 2011.

7. At the hearing in this matter, the complainant testified, and it is found, that during the time he served on the Board of Finance, he had "personal knowledge--going back 24 years"--that the mayor had "frequent and regular meetings" with the leadership of the BOR and that such meetings are a "common practice." The complainant further testified, and it is found, that he had discussions with Salvatore Gabriele, a member of the BOR, about this practice at the time that Mr. Gabriele filed a complaint with this Commission, alleging an illegal meeting between the mayor and leadership members of the BOR.² The Commission takes administrative notice of the fact that Mr. Gabriele's complaint in Docket #FIC 2011-491 was filed with the Commission on September 15, 2011.

8. The complainant argued at the hearing in this matter that the Commission should find jurisdiction over his complaint because he did not learn the exact date of the alleged meeting in question until the publication of the newspaper article, described in paragraph 2, above. He further claims that as a private citizen, he is unable to obtain information about the alleged

² Salvatore Gabriele v. Board of Representatives, City of Stamford; and City of Stamford, Docket #FIC 2011-491 (June 27, 2012).

“secret” meetings when there are no agendas, notices or minutes of such meetings posted in the clerk’s office.

9. It is found, however, that the characterization of the complainant as an unaware private citizen is not credible in view of the complainant’s public service, for more than a quarter of a century, on both the BOR and the Board of Finance. It is found that, according to his own testimony, the complainant had the means to make reasonable inquiry to determine specific dates of any alleged illegal meetings. It is further found that, had the complainant made reasonable inquiry in 2011, he could have known of the alleged January 24, 2011 meeting on or around the time Mr. Gabrielle filed his complaint in September, 2011, and filed his own complaint at that time. See Marc S. Ryan and the Waterbury Republican-American v. Waterbury Board of Education’s Committee on Grievances, Docket #FIC 1994-023 (January 19, 1995).

10. It is therefore found that the complainant had notice in fact of the alleged January 24, 2011 meeting on or around September 15, 2011.

11. The present case is strikingly similar to Jack Mancuso v. Town Council, Town of Enfield, Docket #FIC 2001-491 (September 25, 2002). In that case, the complainant alleged in his October 26, 2001 complaint that the majority and minority members of the town council were holding secret meetings to discuss town business. Although he did not allege specific meeting dates, he testified at the hearing in the matter that “he had been aware of such alleged meetings for several years.” The Commission therefore found that the complainant had notice in fact of the alleged illegal meetings more than 30 days before the filing of his complaint, and concluded that it lacked jurisdiction over such allegations.

12. For all of the foregoing reasons, it is found that the complainant failed to file his complaint within thirty days after he received notice in fact of the alleged January 24, 2011 meeting.

13. Accordingly, it is concluded that the Commission lacks jurisdiction to adjudicate this case.

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.



Kathleen K. Ross

Kathleen K. Ross
as Hearing Officer