



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Joseph Tarzia,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-513

Ernie Orgera, Chairman, Water Pollution Control Authority, City of Stamford; Christina Andreana, Daniel Capano, Tim Curtin, Donald Huppert, Mitchell Kaufman, Mary Lou Rinaldi, Donald Rullman, Members, Water Pollution Control Authority, City of Stamford; and Water Pollution Control Authority, 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 Tarzia
James M. Sconzo, Esq.

7/19/13/FIC# 2012-513/Trans/wrbp/VDH/TAH

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 2012-513

Ernie Orgera, Chairman, Water Pollution Control Authority, City of Stamford; Christina Andreana, Member, Water Pollution Control Authority, City of Stamford; Daniel Capano, Member, Water Pollution Control Authority, City of Stamford; Tim Curtin, Member, Water Pollution Control Authority, City of Stamford; Donald Huppert; Member, Water Pollution Control Authority, City of Stamford; Mitchell Kaufman, Member, Water Pollution Control Authority, City of Stamford; Mary Lou Rinaldi, Member, Water Pollution Control Authority, City of Stamford; Donald Rullman, Member, Water Pollution Control Authority, City of Stamford; and Water Pollution Control Authority, City of Stamford,

Respondents

June 7, 2013

The above-captioned matter was heard as a contested case on April 25, 2013, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint, 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 dated September 19, 2012 and filed September 20, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom

of Information Act (“FOI Act”) in the following ways:

- a. Publishing an agenda for a September 6, 2012 meeting which failed to state the purpose of an executive session with sufficient specificity; and
- b. Entering into an execution session at the September 6, 2012 meeting by way of a motion which failed to state the purpose of the executive session with sufficient specificity;
- c. Because of the insufficient agenda and the insufficient motion to move into executive session, conducted an improper executive session.

3. In the complaint, the complainant requested that the Commission consider the imposition of a civil penalty and requested that such penalty be paid by the “individual board members” of the Stamford Water Pollution Control Authority (“SWPCA”).

4. It is found that by written notice dated October 17, 2012, the Commission informed the complainant that, if he intended to seek the imposition of civil penalties against the members of the SWPCA, he needed to provide the members’ names and business addresses.

5. It is found that, by email dated October 21, 2012, the complainant supplemented his original complaint by providing the names and business addresses of the members of the SWPCA. It is found that none of the allegations in the original complaint dated September 19, 2012 changed in any manner. It is found that, subsequent to the complainant providing the names and businesses addresses of the individual members of the WPCA, the Commission amended the case caption to include the individual board members as respondents in the case.

6. It is found that, by letter dated April 3, 2012, counsel for the WPCA filed the following motion with the Commission: “please correct the caption of this matter, and your records, to reflect that the proper Respondent is only the SWPCA. The complaint is against only the SWPCA, and not against any member of its board.” (the “April 3rd Motion”).

7. At the start of the contested case hearing, the hearing officer heard argument on the April 3rd Motion. Counsel for the SWPCA contended that, because the complainant amended his complaint more than thirty days from the incidents giving rise to the underlying allegations, the Commission did not have jurisdiction over the individual board members and thus improperly amended the case caption to name the board members. The complainant contended that he provided the Commission with the information it requested as soon as he was asked to, and he reminded the hearing officer that he was not an attorney.

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

(b)(1) 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.

...

9. Section 1-206(b)(2), G.S., provides, in relevant part, as follows:

[U]pon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars. . . .

10. In this case, while the complainant did state that he was “filing the following complaint against the [SWPCA],” he requested a civil penalty and specifically requested the following: “I therefore respectfully request that the Commission order that the individual Board members pay the civil fine.” Accordingly, reading the complaint as a whole, it is found that the complainant sufficiently alleged that the board members themselves should be held responsible for the violations alleged in the complaint. See Perkins v. Freedom of Information Commission, 228 Conn. 158, 166-68, 635 A.2d 783 (1993) (noting that, “[a]s a practical matter, the FOIA is used repeatedly by members of the public who are unschooled in technical, legalistic language distinctions,” and that, in light of the public policy expressed by the FOIA, the act should be construed so as to avoid overly formal and legalistic requirements). It is therefore found that the Commission properly requested the additional information from the complainant, and it is concluded that, upon the provision of such information, the case caption was properly amended to name the individual board members.

11. In addition, at the start of the April 25, 2013 contested case hearing, counsel for the respondents handed the hearing officer a motion to dismiss, stating that such motion had been filed the previous business day (the “April 25th Motion”). A review of the file in this case indicates that the April 25th Motion was faxed to the Commission on April 24, 2013 at 4:59 PM and was processed by the Commission on April 25, 2013. In this motion, the respondents contended that, because the complaint in the instant matter was identical to the complaint filed in the matter of Kate King and The Stamford Advocate v. The Water Pollution Control Authority, Docket #FIC 2012-502 (May 8, 2013) (“King”), it is “the

position of the Respondents that they cannot be twice found in violation for the same issues. The findings in King will control and this case must be dismissed.”

12. The Commission takes administrative notice of the final decision in the King case. In King, the complainants, Kate King and the Stamford Advocate, alleged that the SWPCA failed to state the purpose of the September 6, 2012 executive session with sufficient specificity and failed to identify all persons who attended the executive session. No allegation was raised in the King case with regard to the SWPCA’s agenda concerning the November 6, 2012 executive session. In King, the Commission concluded that the SWPCA violated §1-225(f), G.S., by failing to identify with sufficient particularity the reason for the November 6, 2012 executive session; and violated §1-231(a), G.S., by failing to identify all persons who attended the September 6, 2012 executive session. In the order, the Commission required the respondents to create minutes of the executive session and further required that such minutes include the names of all persons in attendance at the executive session, the items discussed, any motions and a record of all votes, if any.

13. The respondents moved, without objection, to have the Commission incorporate the evidence in the King case into the instant matter. The respondents’ motion was granted.

14. The respondents’ claim set forth in paragraph 11, above, is a motion to dismiss the instant case based on the doctrine of preclusion. At the contested case hearing, the respondents indicated that they would be filing a brief on this legal issue, as well as on the legal matter they raised in their April 3rd Motion.

15. On May 24, 2013, the respondents filed their post hearing brief. The brief, however, did not address either the legal doctrine of issues preclusion or claim preclusion. Instead, the respondents briefed the following legal arguments: first, the instant matter has been rendered moot by the decision in the King case, and, second, the Commission lacked jurisdiction to permit the complainant to amend his complaint by naming individual respondents. The respondents’ second argument has already been addressed in this decision in paragraphs six through ten, above.

16. With regard to mootness, the respondents contend that “no actual controversy remains between the parties [in the instant case] because the FOIC resolved all of the contested issues when it issued its final decision in the King action.” However, as stated in paragraph 12, above, the complainant in this case raised an issue with regard to the respondents’ agenda, see ¶2.a, which the King complainants did not. The complainant in the instant matter also made the following claim: “It is public knowledge that the Water Pollution Control Authority Board was given a seminar by the City of Stamford’s Office of Legal Affairs in 2011, which specifically advised them that in order to go into executive session they must identify the nature of the pending claim or pending litigation that forms the basis of their vote. Notwithstanding this advice, and over the objection of a reporter at the September 6, 2012 meeting, the Board willfully and intentionally chose to ignore the law.” See Comp. at 1. Certainly, the complainants in the King case never alleged that the

respondents acted with intentional or willful disregard of the FOI Act.

17. Because it is found that the complainant in the instant case raised allegations that were not raised in King, it is concluded that the instant complaint was not rendered moot by the Commission's final decision in King.

18. With regard to the doctrine of res judicata, the Supreme Court has recently stated the following:

'Under the doctrine of res judicata, or claim preclusion, a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim. A judgment is final not only as to every matter which was offered to sustain the claim, but also as to any other admissible matter which might have been offered for that purpose. . . . The doctrine of res judicata [applies] . . . as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction The rule of claim preclusion prevents reassertion of the same claim regardless of what additional or different evidence or legal theories might be advanced in support of it.'
(Citations omitted; internal quotation marks omitted.) . . .

Mulero v. Bd. of Educ. of the City of Bridgeport, __ App. Ct. __ (2013) (No. AC 34847).

19. However, the doctrine only works as a bar to subsequent litigation when both the claims and *the parties* are the same: "Under the doctrine of res judicata, a final judgment . . . is an absolute bar to a subsequent action, between the same parties . . . upon the same claim." Weiss v. Weiss, 297 Conn. 446, 472, 998 A.2d 766 (2010). Because neither the parties nor the claims in the instant matter and the King case are the same, the doctrine of res judicata does not apply.¹

20. Section 1-200(6), G.S., provides as follows:

"Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the

¹ See also State of Connecticut v. Charlotte Hungerford Hosp., 308 Conn. 140, 145-46, 60 A.3d 946 (2013) ("Collateral estoppel, or issue preclusion, is that aspect of res judicata which prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim. . . . For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment."). For the reasons set forth in paragraph 19 of this decision, the doctrine of collateral estoppel is likewise not applicable in the instant case.

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; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) 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.

21. Section 1-225(c), G.S., provides, in relevant part:

The agenda of the regular meeting of every public agency. . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer, (1) in such agency's regular office or place of business, and (2) . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency. . . . Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

22. In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Docket No. 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views," and that "[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing."

23. Section 1-225(f), G.S., provides: "A public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon 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."

24. It is found that the agenda for the respondents' November 6, 2012 regular meeting lists the following items of business to be transacted: "13. Update: WPCA Pending Legal Matter: M.L. Rinaldi."

25. It is further found that during the November 6, 2012 meeting, one member of the WPCA moved to enter into executive session to discuss "pending legal matters."

26. It is found that, upon objection to the motion raised by an individual in the audience, the member revised her motion, moving to enter into executive session to discuss "legal strategy."

27. It is found that another member then stated the reason for the executive session as "negotiations."

28. It is found that a third member suggested that the executive session was for a discussion "concerning a personal matter. A human resources matter."

29. It is found that upon assurance from counsel that the motion was "appropriate," the respondent SWPCA voted to enter into executive session.

30. This Commission has repeatedly stated that in order for the public to be fairly apprised of the business to be transacted during an executive session, the public agency must give some indication of the specific topic to be addressed, prior to convening such session. Therefore, descriptions such as "personnel," "personnel matters," "legal," or even "the appointment, employment, performance, evaluation, health or dismissal of a public officer or public employee" are inadequate and do not state the reason for convening in executive session, within the meaning of §1-225(f), G.S.

31. It is found that, while the motion to enter into executive session was under consideration, members of the audience, including the complainant from the King matter, tried to guess the reason for the executive session, and asked the respondents whether the session was to discuss "the Derby matter" or a certain employee. It is further found that the respondents told them that their guesses were not correct, but did not further elucidate the reason for the executive session.

32. Based on the evidence in this case, it is found that both the agenda for the November 6, 2012 meeting with regard to the description of the executive session, and the motion raised at the meeting to convene the executive session were insufficient to apprise the public of the matter the SWPCA intended to consider during the executive session.

33. It is therefore concluded that the respondents violated the provisions of §§1-225(c) and 1-225(f), G.S.

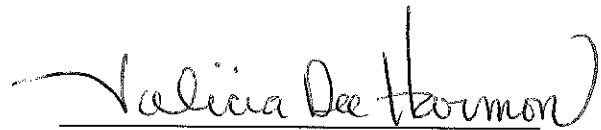
34. With regard to complainant's allegations in paragraph 2.c, above, it is found that, while the respondents failed to identify the purpose of their executive session with sufficient specificity on the September 6th meeting agenda and in the motion to convene the session, it cannot be found that the "purpose" of the executive session was improper. Based on the evidence in the King case, it is found that the purpose of the executive session was to discuss "pending claims or pending litigation to which the public agency or a member thereof. . . is a party," pursuant to the provisions of §1-200(6)(B), G.S. It is therefore concluded that the respondents did not violate the FOI Act as alleged in paragraph 2.c., above.

35. It is further found that there is insufficient evidence to find that the respondents intentionally or willfully violated the FOI Act in this case.

36. Moreover, based on the Commission's order in the King case, the imposition of civil penalties is not appropriate in the instant matter.

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

No order is recommended.



Valicia Dee Harmon
as Hearing Officer