

Since 1975



# 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

John Bromer,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-376

Thomas Herrmann, Scott Centrella and Robert Lessler, as members, Board of Selectmen, Town of Easton; and Board of Selectmen, Town of Easton,

Respondent(s)

February 3, 2014

### 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, February 26, 2014**. 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 February 11, 2014**. 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 February 11, 2014**. **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 February 11, 2014**, 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: John Bromer  
Mark J. Kovack, Esq.

2/3/14/FIC# 2013-376/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

John Bromer,

Complainant

against

Docket #FIC 2013-376

Thomas Herrmann, Scott Centrella, and  
Robert Lessler, as Members, Board of  
Selectmen, Town of Easton; and  
Board of Selectmen, Town of Easton,

Respondents

January 31, 2014

The above-captioned matter was heard as a contested case on December 13, 2013, 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 email, dated and filed June 26, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act when they “convened and participated in an illegal meeting...sometime between May 28, 2013 and June 11, 2013, in order to compose, sign, and agree to send as selectmen a[n] Op-Ed document for publication in the Easton Courier on June 13, 2013.”

3. Section 1-225(a), G.S., provides, in relevant part:

[t]he meetings of all public agencies...shall be open to the public. The votes of each member of any 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. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public

agency shall make, keep and maintain a record of the proceedings of its meetings.

4. Section 1-200(2), G.S., defines “meeting,” in relevant part, as:

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.

5. It is found that, on June 13, 2013, a local newspaper published an Op-Ed piece entitled “Selectmen respond to CRG mailing” (letter), and listed as its authors “Tom Herrmann, Scott Centrella and Bob Lessler, Board of Selectmen.” It is found that the letter is a response to a flyer distributed town-wide by a political action committee, and that the flyer commented negatively on certain actions of the town, the first selectman, and the Board of Selectmen, with regard to certain town projects and initiatives (flyer).

6. It is found that the respondent Tom Herrmann, who is no longer the first selectman, decided on his own to write the letter and send it to the newspaper. It is found that no public meeting or private gathering of the respondents was held to discuss whether or how to respond to the flyer. Mr. Herrmann testified that although he originally intended to sign only his own name to the letter, he later decided that the letter would be stronger if the other selectmen signed it as well. Accordingly, he testified, and it is found, that prior to sending the letter to the newspaper, he sent it, via email, to each of the other selectman with the comment, “[t]ake a look.”

7. It is further found that the email, described in paragraph 6, above, was not a “group email” from Mr. Herrmann to both of the other selectmen. Rather, it is found that Mr. Herrmann emailed the letter to Mr. Centrella and Mr. Lessler separately. It is found that Mr. Centrella’s response, via email, was “looks good,” or words to that effect. It is found that Mr. Lessler responded to Mr. Herrmann with more substantive comments, but that he did not “cc” his response to Mr. Centrella. It is found that Mr. Herrmann did not respond via email to either of the other selectman’s comments.

8. In Mal Leichter v. Board of Finance, Town of Hebron, Docket #FIC 2001-263 (April 24, 2002), members of the respondent Board of Finance discussed, in emails and in telephone conversations outside of the public’s view, a proposed letter to the editor from the Board suggesting that the town’s required contribution to the budget of Regional School District #8 be reduced, because it would be for the “good of the town,” in view of the fact that such contribution factors into the town’s final mill rate. The Commission found that the emails and phone conversations were “communications” within the meaning of §1-200(2), G.S., and concluded therefore that the respondent Board violated the FOI Act.

9. Implicit in the Commission’s finding that the emails and phone conversations in Leichter were “communications,” within the meaning of §1-200(2), G.S., is the further finding

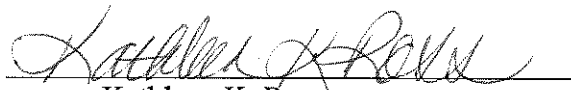
that those communications pertained to “matters over which the public agency has supervision, control, jurisdiction, or advisory power.”

10. Unlike the communications at issue in Leichter, it is found that the emails at issue in the present case relate to *political action* taken by the respondents, as they sought to refute statements made by political adversaries. As such, it is found that such emails do not constitute communications regarding a matter over which the respondents had supervision, control, jurisdiction or advisory power.

11. Accordingly, it is concluded, based upon the facts and circumstances of this case, that the emails described in paragraphs 6 and 7 above, did not constitute “communications” within the meaning of §1-200(2), G.S., and that therefore, the respondents did not violate the open meeting requirements of §1-225(a), G.S.

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  
as Hearing Officer