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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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Bradshaw Smith,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-291

Doreen Richardson, Member, Board of Education,  
Windsor Public Schools; Darleen Klass, Member, Board of  
Education, Windsor Public Schools; Jeffrey Villars, Member,  
Board of Education, Windsor Public Schools; Craig Cook,  
Member, Board of Education, Windsor Public Schools; and  
Board of Education, Windsor Public Schools,  
Respondent(s)

March 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, March 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 March 14, 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 March 14, 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 March 14, 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: Bradshaw Smith  
Gary R. Brochu, Esq.

2014-03-03/FIC# 2013-291/Trans/wrbp/VDH//PSP

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Bradshaw Smith,

Complainant

against

Docket #FIC 2013-291

Doreen Richardson, Member Board of Education, Windsor Public Schools; Darleen Klass, Member, Board of Education, Windsor Public Schools; Jeffrey Villars, Superintendent of Schools, Windsor Public Schools; Craig Cook, Assistant Superintendent of Human Resources, Windsor Public Schools; and Board of Education, Windsor Public Schools,

Respondents

March 3, 2014

The above-captioned matter was heard as a contested case on November 20, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The case caption has been amended to reflect that, during the relevant time period, Jeffrey Villars was the Superintendent of Windsor Public Schools, and Craig Cook was the Assistant Superintendent of Human Resources of Windsor Public Schools.

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 May 9, 2013 and filed May 13, 2013, 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 an April 9, 2013 meeting which failed to indicate that the meeting would include an executive session;

- b. Entering into an execution session at the April 9, 2013 meeting without first adding the executive session to the agenda by a proper motion; and
- c. Failing to state the purpose of the executive session with sufficient specificity.

3. In his complaint, the complainant requested that the Commission consider the imposition of a civil penalty, issue an order declaring the executive session improper and instruct the respondents that they strictly comply with the FOI Act in the future.

4. Section 1-200(6), G.S., provides, in relevant part, 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 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. Section 1-225(c), G.S., provides, in relevant part, as follows:

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.

6. Section 1-225(f), G.S., provides as follows:

A public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an 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.

7. It is found that the Windsor Board of Education held a regular meeting on April 9, 2013.

8. It is found that the agenda for the April 9, 2013 regular meeting included the following item of business: “8. Consent Agenda: . . . d. Human Resources Report.”

9. It is found that the matters to be discussed as part of the Human Resources Report were further explained in a supplemental, one-page document entitled, “Agenda Item.” It is found that the supplemental Agenda Item clarified that the Human Resources Report would be discussed in six separate segments or action items, as follows:

1) Resignations/Separations; 2) Retirements; 3) Transfers/Reassignments; 4) Personal Leaves; 5) Hires; and 6) Non-Renewals.

10. It is found that the agenda and the supplemental Agenda Item concerning the Human Resources Report were both available to the public prior to the April 9, 2013 meeting, within the timeframes set forth in §1-225(c), G.S.

11. It is found that, at the commencement of the April 9, 2013 meeting, a second supplemental document was distributed to the members of the Board of Education. It is found that this document included a list of the individuals who were going to be discussed under the “Non-Renewal” segment of the Human Resources report.

12. It is found that this second supplemental document was not made available to the public or to the respondent board members when the agenda and the supplemental Agenda Item were made available because the individuals listed on the document and who were going to be discussed as candidates for potential non-renewal were still being notified of such fact.

13. It is found that the Board of Education voted to move into executive session at the April 9, 2013 meeting to discuss the non-renewal of contracts pertaining to the individuals listed in the second supplemental document, and did so under the action item of “Non-Renewal.” It is found that the Board’s oral motion did not identify which individuals’ contracts, or which group of individuals, were going to be discussed. It is found that, after the executive session discussion, the Board of Education reconvened in public session, at which time it voted as follows: “move that the contract of employment of those employees listed in the Superintendent’s Human Resources Report – Addendum not be renewed for the following year upon its expiration at the end of the 2012-2016 school year. . . .” It is found that the motion passed.

14. With regard to the complainant’s contentions described in paragraphs 2.a and 2.b, above, it is found that an “executive session” is a manner in which to discuss agency business; it is not an item of business in and of itself. It is therefore found that the April 9, 2013 regular meeting agenda did not have to indicate that the meeting would include an executive session. It is further found that the Board did not have to add the executive session to its agenda before it could conduct such session. Rather, under §1-225(f), G.S., a public agency must vote by two-thirds to enter executive session, stating the reason for the executive session.

15. It is therefore concluded that the respondents did not violate the FOI act as alleged in paragraphs 2.a and 2.b, above.

16. With regard to the complainant's contentions described in paragraph 2.c, above, 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. See Joseph Tarzia v. Ernie Orgera, Chairman, Water Pollution Control Authority, City of Stamford, et al., Docket #FIC 2012-513 (Aug. 14, 2013).

17. In addition, 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."


18. Based on the evidence in this case, it is found that the agenda for the April 9, 2013 meeting, combined with the supplemental Agenda Item, as well as the motion raised at the meeting to convene the session, were insufficient to apprise the public of the matters the Board intended to consider during the executive session.

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

20. Based on the facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties

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

1. Henceforth, the respondents shall strictly comply with the requirements of §§1-225(c) and 1-225(f), G.S.

  
Valicia Dee Harmon  
as Hearing Officer