



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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George Schober,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-737

Chairman, Board of Finance, Town of Somers;
Board of Finance, Town of Somers; and Town
of Somers,

Respondent(s)

August 4, 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, August 27, 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 August 15, 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 August 15, 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 August 15, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: George Schober
Carl T. Landolina, Esq.

2014-08-04/FIC# 2013-737/Trans/wrbp/MS/LFS/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

George Schober,

Complainant

against

Docket #FIC 2013-737

Chairman, Board of Finance, Town of
Somers; Board of Finance, Town of
Somers; and Town of Somers,

Respondents

July 23, 2104

The above-captioned matter was heard as a contested case on June 17, 2014, 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 letter filed November 27, 2013, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to give sufficient detail in their notice of special meeting on November 3, 2013 so as to sufficiently describe the purpose of an executive session.
3. Section 1-225(d), G. S., provides in relevant part that:

Notice of each special meeting of every public agency . . . shall specify the time and place of the special meeting and the business to be transacted.
4. It is found that the respondents' notice of special meeting on November 3, 2013, stated, in relevant part: "Review of Pending Claims and Litigation (BOE related)."
5. It is found that the executive session concerned whether it made sense financially to for the Board of Education to bring a vexatious litigation action against the complainant, an attorney who has filed several pending legal actions on his clients' behalf against the town Board of Education. It is found that the complainant was surprised at the hearing in this matter to learn that the respondents were considering filing suit against him.

6. It is found that, based on the language in the notice of special meeting, the complainant reasonably believed the discussion in the executive session to concern the pending legal matters brought by his clients, not the respondents' consideration of legal action against him.

7. 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."

8. In Durham Middlefield Interlocal Agreement Advisory Board v. FOIC et al., Superior Court, Docket No. CV 96 0080435, Judicial District of Middletown, Memorandum of Decision dated August 12, 1997 (McWeeny, J.), the court concluded that it was reasonable for the Commission to require something more detailed than "Executive Session Re: Possible Litigation."

9. 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. See, for example, Docket #FIC2012-502; Kate King and the Stamford Advocate v. Water Pollution Control Authority, City of Stamford; and City of Stamford (May 8, 2013) ("legal strategy" failed to identify with sufficient particularity reason for respondents' executive session); Docket #FIC2010-741; Richard Stone and Debra Stone v. David Palmer, Chairman, Board of Education, Somers Public Schools, et al (September 14, 2011) ("legal matters" insufficient to inform public what respondents planned to discuss in executive session); Docket #FIC 2009-333; Dostaler v. Water Development Task Force, Town of East Hampton (March 24, 2010) ("pending litigation" failed to adequately apprise public of business to be transacted).

10. It is found that the notice of the respondents' special meeting of November 4, 2013, failed to sufficiently apprise the public of matters to be taken up at the meeting. It is found that the respondents could have easily provided greater detail about the business to be transacted during their executive session without disclosing the substance of their discussion.

11. It is concluded, therefore, that the respondents violated §1-225(d), G.S., as alleged.

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

1. The respondents shall forthwith amend the minutes of their special meeting of November 3, 2013, to include information as if the executive session were held in public; that is, what was discussed and any action taken.

2. Henceforth, the respondents shall strictly comply with §1-225, G.S.

A handwritten signature in black ink, appearing to read "Matthew Streeter", written in a cursive style.

Commissioner Matthew Streeter
as Hearing Officer

FIC2013-737/HOR/MS/LFS/0716014