

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Paul Baer,

Complainant

against

Docket #FIC 2013-808

Kerstin Forrester, Chairman,  
Fire Protection Advisory Committee,  
Town of Thompson; and Fire Protection  
Advisory Committee, Town of Thompson,

Respondents

October 2, 2014

The above-captioned matter was heard as a contested case on August 28, 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 December 31, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by:
  - [a] failing to "either file [a] record of voting or minutes within required time limits" for their November 13, 2013 Special Meeting;
  - [b] failing to file a "record of actions taken/motions/voting and/or minutes" for their December 18, 2013 Special Meeting; and
  - [c] holding "a discussion relating to the review and modification of the Post Incident Analysis of the February 20, 2013 Gladys Green/Pineview Terrace Fatal Fire which was not on the posted Special Meeting Agenda."

The complainant also requested the imposition of civil penalties.

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

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before 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. [Emphasis added].

4. Section 1-225(d), G.S., provides in relevant part:

Notice of each special meeting of every public agency...shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof in the office of the...clerk of such subdivision for any public agency of a political subdivision of the state and in the office of the clerk of each municipal member for any multitown district or agency. The secretary or clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting.... The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency.

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

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, 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.

6. With respect to the complainant's allegations regarding the November 13<sup>th</sup> Special Meeting, described in paragraph 2[a], above, it is found that the minutes, including the votes taken at such meeting, were filed with the town clerk's office and made available to the public on November 26, 2013.

7. It is found that §1-206(b)(1), G.S., requires that an appeal be filed within 30 calendar days of the alleged violation. It is also found that, §1-21j-15 of Regs. Conn. State Agencies provides:

Computation of any period of time referred to in sections 1-21j-1 to 1-21j-57, inclusive, of the Regulations of Connecticut State Agencies begins by first counting the day after the day on which the precipitating event occurs, and ends on the last day of the period so computed. The last day of the period is to be included unless it is a day on which the principal office of the commission is closed, in which event the period shall run until the end of the next following business day. If the period of time, including the intervening Saturdays, Sundays and legal holidays, is five (5) days or less, such Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise such days shall be included in the computation.

8. It is found that thirty days from November 26, 2013, when the record of votes and minutes were filed with the town clerk's office and made available to the public, was December 25, 2013, which was a holiday. It is therefore found that the complainant failed to file his notice of appeal by December 26, 2013.

9. It is concluded, therefore, that the Commission does not have jurisdiction over the complainant's allegations regarding the November 13<sup>th</sup> Special Meeting.

10. With respect to the complainant's allegations in paragraph 2[b], above, concerning the filing of votes and minutes, it is found that the respondents held a special meeting on December 18, 2013. It found that the votes and minutes for such meeting were not drafted until January 7, 2014. It is therefore found that the respondents failed to make such votes and minutes available for public inspection in a timely manner as required by the Act.

11. With respect to the complainant's allegations in paragraph 2[c], above, concerning the discussion of an item not on the special meeting agenda, it is found that the agenda for the December 18<sup>th</sup> Special Meeting was filed with the town clerk's office on November 26, 2013. It is found that one of the items on the agenda was "[r]eview recommended policy for post-incident analysis."

12. At the hearing, the respondents testified, and it is found, that the respondents intended to discuss the establishment of a general process for post-incident analysis by fire departments. The respondents admitted, however, that their discussion at the December 18<sup>th</sup> meeting consisted of a substantive review of a *specific* incident analysis report that was written

regarding a February 2013 fatal fire. The incident analysis report for the February 2013 fire was discussed at previous meetings of the respondents. It is also found that the December 18<sup>th</sup> special meeting minutes indicate that “[t]he Committee members discussed in detail the draft of the Incident Analysis prepared at prior meetings.”

13. It is found that, based on the facts and circumstances of this case, the respondents failed to fairly apprise the public of the discussion held at their December 18<sup>th</sup> meeting concerning the specific incident analysis report, described in paragraph 12, above.

14. It is therefore concluded that the respondents violated §1-225(a), G.S.

15. With respect to the complainant’s request for civil penalties, §1-206(b)(2), G.S., provides in relevant part:

[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.

16. The complainant contended that civil penalties are warranted because the respondents’ failure to timely post votes and minutes of meetings as well as the addition of items not included on their special meeting agendas are recurring problems. In addition, the complainant testified that even though the respondents have had several FOI training sessions and even though the Commission has previously ordered the respondents to comply with the FOI Act, they continue to violate the Act. The plaintiff specifically cited the Commission’s final decision in Docket #FIC 2013-205; Paul Baer v. John Bell, Chairman, Fire Advisory Committee, Town of Thompson; and Fire Advisory Committee, Town of Thompson where the Commission concluded that the respondents had violated the FOI Act by failing to create and maintain minutes of their meetings, and ordered the respondents to “[h]enceforth...strictly adhere to the requirements of §1-225(a), G.S.”

17. The respondent Chairman testified that she did not willfully add an item to the December 18<sup>th</sup> special meeting agenda. In addition, she testified that December 2013 was a chaotic and emotional time in her personal life. Further, it is found that, in addition to her volunteer position on the respondent Fire Protection Advisory Committee, she also serves as a member on the Town of Thompson Board of Selectmen.

18. After consideration of the record in this case, the Commission declines to consider the imposition of civil penalties against the respondents.

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(a), G.S.

---

Commissioner Matthew Streeter  
as Hearing Officer

FIC/2013-808/HOR/MS/PSP/10/02/2014