

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Bracken,

Complainant

against

Docket #FIC 2017-0082

Christopher Kervick, First Selectman,
Town of Windsor Locks; Board of
Selectmen, Town of Windsor Locks; and
Town of Windsor Locks,

Respondents

November 15, 2017

The above-captioned matter was heard as a contested case on May 2, 2017, 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 of complaint filed February 7, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act at the January 17, 2017 meeting of the respondent Board of Selectman.
3. Specifically, the complainant alleged that the respondents violated his FOI Act and constitutional rights in the following regards:
 - a. Improperly entering an executive session without just cause;
 - b. Utilizing the police to intimidate one from speaking at a town meeting;
 - c. Falsely reporting an incident;
 - d. Failure to properly re-enter a public session after having exited executive session;
 - e. Failure to wait for the public to return to the meeting room before adjourning the meeting;
 - f. Tampering with a public record as the recording of the meeting was edited; and

- g. Violating [his] constitutional rights of freedom of assembly and freedom of speech.
4. It is found that the respondents held a regular meeting on January 17, 2017.
5. It is found that the respondents added to the agenda for that meeting: "Item 13) 'Executive Session Re: A Casino Proposal in Windsor Locks.'"
6. It is found that the respondents voted unanimously to convene in executive session at the January 17, 2017 meeting for the stated purpose "regarding negotiation of a casino proposal in Windsor Locks.
7. It is found that the public was asked to leave the room during the executive session.
8. It is found that, in the executive session, the First Selectman presented terms for a casino proposal in Windsor Locks.
9. It is found that the respondents did not vote in executive session.
10. It is found that, after the respondents concluded the executive session, they reconvened in public session and adjourned without first permitting the public back in the room. (The complainant was the only person who had remained outside the meeting room.)
11. Section 1-225(a), G.S., provides in relevant part: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."
12. Section 1-200(6), G.S., provides in relevant part:

"Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: ... (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. [Emphasis added]
16. Section 1-225(c), G.S., provides in relevant part:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer 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.
17. Section 1-210(b)(1), G.S., provides that disclosure is not required of:

Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure

18. It is concluded that the claims in paragraph 3.b, 3.c., 3.f and 3.g do not allege violations of the FOI Act, and are therefore not within the jurisdiction of this Commission.

19. With respect to the complainants' allegation described in paragraph 3.a., above, the respondents contended that the executive session was permissible pursuant to §§1-200(6)(E) and 1-210(b)(1), G.S., on the grounds that the executive session was convened to discuss a preliminary draft.

20. It is found, however, that the respondents offered no evidence to prove that the respondents determined that the public interest in withholding such a document clearly outweighed the public interest in disclosure.

21. It is therefore concluded that the respondents violated the FOI Act by entering into executive session for an improper purpose.

22. With respect to the allegations described in paragraph 3.d and 3.e, above, it is found that the respondents prematurely closed the meeting before permitting the public back into the meeting room, and therefore technically violated §1-225(a), G.S., by excluding the public from that portion of the meeting.

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 open meetings requirements contained in §§1-225(a) and 1-200(6)(E), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 15, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

MICHAEL BRACKEN, JR., 12 Tinker Drive, Windsor Locks, CT 06096

CHRISTOPHER KERVICK, FIRST SELECTMAN, TOWN OF WINDSOR LOCKS; BOARD OF SELECTMEN, TOWN OF WINDSOR LOCKS; AND TOWN OF WINDSOR LOCKS, c/o Attorney Carl T. Landolina, Fahey & Landolina, Attorneys LLC, 487 Spring Street, Windsor Locks, CT 06096



Cynthia A. Cannata
Acting Clerk of the Commission