

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Deanna Bouchard,

Complainant

against

Docket #FIC 2017-0293

Arthur Shilosky, First Selectman,
Town of Colchester; Board of
Selectmen, Town of Colchester;
Robert Tarlov, Chairman, Board
of Finance, Town of Colchester;
Board of Finance, Town of Colchester;
and Town of Colchester,

Respondents

April 25, 2018

The above-captioned matter was heard as a contested case on August 1, 2017, at which time the complainant and the respondent 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. It is found that by letter dated and filed May 30, 2017, the complainant alleged that the Board of Selectmen (“BOS”) violated the Freedom of Information (“FOI”) Act by conducting an unnoticed meeting when it became part of a meeting of the Board of Finance (“BOF”). The complainant further alleged that the BOF violated the FOI Act when the acting chairman failed to identify a board member and a selectman who both attended the BOF’s meeting telephonically, and when he failed to ensure that the individuals in attendance at the BOF’s meeting could hear all of the proceedings.

3. Section 1-200 (2), G.S., provides, in relevant part, as follows:

‘Meeting’ means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a

multimember public agency, and 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.

'Meeting' does not include: . . . A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.

4. Section 1-225(a), G.S., provides, in relevant part, that "[t]he meetings of all public agencies . . . shall be open to the public. . . ."

5. It is found that the BOF held a properly noticed, special meeting on May 25, 2017. It is found that the BOF is comprised of six members. It is found that the acting chairman, who was physically present at the meeting, called the meeting to order. It is further found that four other members of the BOF were physically present at the meeting, while Robert Tarlov, the BOF's chairman, attended the meeting telephonically.

6. In addition, it is found that the entire BOS attended the May 25th meeting. It is found that the First Selectman and three other selectmen were physically present at the meeting, while Selectman Stan Soby was permitted to attend the BOF's meeting telephonically.

7. The complainant contends that the First Selectman improperly participated in the BOF's meeting by addressing the public at the start of the meeting. She also contends that the comments of the First Selectman, Selectman Soby, and Selectwoman Rosemary Coyle, converted the BOF's May 25th meeting into a joint meeting, which should have been noticed by the BOS. The complainant further contends that the acting chairman of the BOF should have announced to the public that the chairman of the BOF was attending telephonically, and that Selectman Soby was also attending telephonically, so that when these individuals spoke the public would understand who was speaking. Finally, the complainant contends that, at times, so many people were speaking at once it was impossible to hear what was being said; while, at other times, the voices coming from the speakers were so faint and mixed with the sound of a dog barking that none of what was said was audible.

8. With regard to the selectmen's comments, it is found that, once the BOF's meeting was called to order, the BOF allowed the First Selectman to speak. It is found that the complainant described the First Selectman's addressing the public at a BOF meeting "highly unusual." It is found, however, that Selectman Soby and Selectwoman Coyle also made comments during the meeting.

9. The FOI Act neither explicitly mandates nor prohibits public comments at meetings and, thus, such practice is entirely within the discretion of each agency. See Advisory Opinion #35 (1978).¹ Moreover, it is found that, according to the town's charter, the First Selectman is a nonvoting ex-officio member of all town departments and town boards. Therefore, it is found that the selectmen providing comment during a BOF meeting did not transform such meeting into a joint meeting of the BOF and the BOS.

10. It is concluded that the BOS did not conduct an unnoticed meeting, as alleged in the complaint.

11. With regard to the contention that the BOF did not sufficiently identify who was participating in or attending the meeting telephonically (so that it was clear to the public who was speaking) and the contention that, at times, the public could not hear the speakers' comments, it is found that, in order for a public meeting to be considered "open to the public" within the meaning of §1-225, G.S., "all those in attendance at the meeting. . . must be able to hear and identify adequately all participants in the proceedings, including their individual remarks and votes." See Advisory Opinion 41 (1980); see also Saluga v. Chairman, Board of Assessment Appeals, Town of Brookfield, et al., Docket #FIC 2013-221 (Jan. 8, 2014).

12. The complainant submitted a video of the May 25th meeting. After reviewing the video, it is found that the BOF's May 25th meeting was not chaotic. It is further found that everyone present at the meeting, whether telephonically or physically, spoke loudly and clearly, and that no member of the public ever informed the BOF that they could not hear what was being said.

13. Accordingly, it is concluded that the BOF did not violate the FOI Act by failing to ensure that members of the public attending the meeting could hear the proceedings.

14. It is found, however, that the acting chairman of the BOF referred to the persons at the meeting telephonically as "Rob" and "Stan" (and, on one occasion "he"). It is found that it was not readily apparent that "Rob" was Robert Tarlov, the chairman of the BOF, and that "Stan" was Selectman Stan Soby. It is further found that, with Chairman Tarlov and Selectman Soby speaking intermittently and not identifying themselves before doing so, it was not clear at any given time whether the person

¹ The complainant also testified that, after the First Selectman was permitted to speak, a member of the public wanted to ask the BOF a question, but the board would not entertain the question. The complainant expressed that this was unfair and should be considered a violation of the FOI Act. However, whether and to what extent a public agency allows public comment is entirely within the discretion of the public agency. Accordingly, it is concluded that the BOF did not violate the FOI Act by refusing to allow a citizen to pose a question and/or to answer such question. In addition, the Commission notes that this allegation was not fairly raised in the complaint.

speaking was Chairman Tarlov or Selectman Soby.

15. Based on the foregoing, it is concluded that the BOF and the Chairman of the BOF violated the FOI Act by failing to ensure that the public could adequately identify who was speaking during the May 25th meeting.

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

1. Henceforth, the BOF and the Chairman of the BOF shall strictly comply with the requirements of §1-225(a), G.S.

2. The complaint is dismissed against the First Selectman and the Board of Selectmen.

3. Forthwith, the respondent BOF, or its designee, shall arrange for a FOI Act training session to be conducted by the staff of the FOI Commission. All members of the BOF shall attend such training session. In addition, the members of the BOS are strongly encouraged to attend the training session.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 25, 2018.



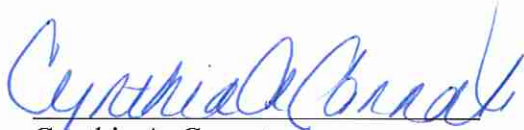
Cynthia A. Cannata
Acting Clerk of the Commission

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:

DEANNA BOUCHARD, 16 Meadow Drive, #3, Colchester, CT 06415

ARTHUR SHILOSKY, FIRST SELECTMAN, TOWN OF COLCHESTER; BOARD OF SELECTMEN, TOWN OF COLCHESTER; ROBERT TARLOV, CHAIRMAN, BOARD OF FINANCE, TOWN OF COLCHESTER; BOARD OF FINANCE, TOWN OF COLCHESTER; AND TOWN OF COLCHESTER, c/o Attorney Matthew Ritter, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission