

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Douglas Fuchs,

Complainant

against

Docket #FIC 2017-0712

Julia Pemberton, as member, Board  
of Selectmen, Town of Redding;  
Margaret O'Donnell, as member,  
Board of Selectmen, Town of  
Redding; Michael Thompson, as  
member, Board of Selectmen, Town  
of Redding; Board of Selectmen,  
Town of Redding; and Town of Redding,

Respondents

June 27, 2018

The above-captioned matter was heard as a contested case on February 6, 2018, 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 dated November 28, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information Act ("FOI") by improperly holding a special "emergency" meeting on October 30, 2017. The complainant requested:
  - a. that the actions of the respondent board be declared null and void including its decision to place the complainant on administrative leave;
  - b. the imposition of civil penalties; and
  - c. an order that the respondents comply with the requirements of §1-225(d), G.S.

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

Notice of each special meeting of every public agency...shall be 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...Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency...any such special meeting may be held without complying with the foregoing requirement for the filing of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the...clerk of such political subdivision...not later than seventy-two hours following the holding of such meeting...

4. The Commission has previously addressed the issue of emergency special meetings in Stonington Education Association v. Stonington Board of Selectmen; Docket #FIC 1994-012 (July 27, 1994). In that case, the respondents needed to hold a special meeting within a 25-day period to vote on whether to reject an arbitration award. However, when a worsening snow storm required the duly-noticed special meeting's cancellation, the respondents were faced with either letting the 25-day period expire by the time they could hold a properly-noticed meeting or advancing the time of the meeting without timely notice. The Commission ruled that the respondent's "lack of foresight" in neglecting to account for the possibility of inclement weather "[did] not constitute an emergency as provided for in [§1-225(d)], G.S."

5. See also, Foran and Dunnack v. Board of Selectmen, Town of Andover, FIC Docket #2008-470 (April 22, 2008) (misunderstanding about printer's deadline to receive mill rate from town in order to avoid sending adjusted tax bills did not justify emergency meeting); Eggen v. New Milford Planning Commission; Docket #FIC1998-113 (August 26, 1998) (special meeting to make certain recommendations and approvals regarding road construction project before town meeting to approve bonding of such project not emergency, because respondent had at least two month notice of project and two week notice of town meeting); Gries v. Woodstock Board of Selectmen; Docket #FIC 1994-221 (April 26, 1995) (need for meeting to make proposed budget cuts so that bond payments could be made and tax bills be sent timely not emergency because respondent should have foreseen need to make budget cut recommendations); Burns v. Stafford Board of Education; Docket #FIC 1994-199 (March 23, 1994) (neither ignorance of fifteen day deadline nor difficulty in assembling quorum justified emergency meeting).

6. In Ridgefield v. FOIC, 294 Conn. 438, 450 (2010), the Connecticut Supreme Court ruled that the FOI Commission's time-tested interpretation of the word

“emergency” was reasonable, concluding that “for a situation to comprise an emergency, it must be unexpected or unforeseen, and it must necessitate immediate action.”

7. It is found that on or about April 11, 2016, officers of the Redding Police Department, including the complainant who is chief of the police department, arrived at the scene of a suicide (hereinafter “the scene”). It is found that two of the officers were wearing body cameras which recorded some of the activities of the officers at the scene for over an hour. It is also found that an Emergency Medical Services (“EMS”) team arrived at the scene at some time after the officers.

8. It is found that a member of the EMS team filed a complaint with the respondent town against the complainant regarding his actions at the scene. It is found that no formal action was taken against the complainant as a result of that complaint.

9. It is found that in 2017, an action was commenced in Superior Court against the Redding Police Department stemming from the officers’ conduct at the scene. It is found that as a result, on or about March 30, 2017, the respondent Julia Pemberton, who is First Selectman of the town, watched the footage from the body cameras for the first time.

10. It is found that between April 11, 2016 and October 20, 2017, the complainant had many conversations with the First Selectman and with attorneys from the town’s insurance carriers regarding the events that occurred at the scene. It is found, however, that he was not put on leave during that period nor was any other adverse action taken against him for the events that occurred at the scene.

11. It is found that on or about October 25, 2017, the First Selectman became aware that the footage from the body cameras had been released on a public website called PATCH. It is found that although it was an edited version of the original footage from the body cams, the video on PATCH was disturbing.

12. It is found that after comparing the version of the footage on PATCH with the original footage, and consulting with counsel, the First Selectman decided to place the complainant on leave.

13. At the hearing on this matter, the First Selectman testified, and it is found, that she decided to place the complainant on leave on the first business day possible because she believed that any delay would continue to undermine the public trust that apparently had begun to erode when the footage from the body cameras was released on the PATCH website. The First Selectman also testified, and it is also found, that although she did not need board approval to place the complainant on leave, she called the meeting of the respondent board of selectmen because she wanted the board to have a

firsthand account of what transpired when she informed the complainant that he was being placed on leave and handed him the letter of notice.

14. It is found, however, that in light of the various opportunities when action could have been taken against the complainant prior to the release of the footage on PATCH (i.e. after the lawsuit had been filed), the respondent First Selectman's desire to take immediate action after its release does not present the type of unexpected and unforeseen situation that necessitated immediate action within the meaning of §1-225(d), G.S.

15. It is found that the respondents' desire to hold a special meeting on October 30, 2017 to discuss and provide the complainant with notice of his suspension was not an emergency within the meaning of §1-225(d), G.S. It is concluded, therefore, that the respondents violated the FOI Act by holding such meeting without providing proper notice for a special meeting pursuant to §1-225(d), G.S.

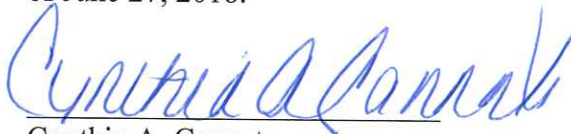
16. With respect to the complainant's requests for remedies, it is found that the board did not place the complainant on administrative leave but rather the First Selectman alone placed the complainant on leave, pursuant to her authority as chief executive officer of the town. In addition, it is found that the respondent board took no action at the October 30, 2017 special meeting. Consequently, the complainant's request that the actions of the Board be declared null and void, including its decision to place the complainant on administrative leave, is denied.

17. Notwithstanding the conclusion in paragraph 15, above, the commission declines to consider the complainant's request for the imposition of a civil penalty.

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

1. The respondents shall henceforth comply with the notice requirements of §1-225(d), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 27, 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:

**DOUGLAS FUCHS**, c/o Attorney Joseph Szerejko and Attorney Stuart M. Katz, Cohen and Wolf, P.C., 1115 Broad Street, PO Box 1821, Bridgeport, CT 06604

**JULIA PEMBERTON, AS MEMBER, BOARD OF SELECTMEN, TOWN OF REDDING; MARGARET O'DONNELL, AS MEMBER, BOARD OF SELECTMEN, TOWN OF REDDING; MICHAEL THOMPSON, AS MEMBER, BOARD OF SELECTMEN, TOWN OF REDDING; BOARD OF SELECTMEN, TOWN OF REDDING; AND TOWN OF REDDING**, c/o Attorney Michael N. LaVelle, Pullman & Comley, LLC, 850 Main Street, PO Box 7006, Bridgeport, CT 06601-7006



Cynthia A. Cannata  
Acting Clerk of the Commission