

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Robert Kalechman,

Complainant

against

Docket #FIC 2017-0225

Board of Selectmen, Town of Simsbury;  
and Town of Simsbury,

Respondents

March 28, 2018

The above-captioned matter was heard as a contested case on June 1, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After the hearing on this matter, and at the request of the hearing officer over the objections of the complainant at the hearing, the respondents filed two after-filed exhibits. The exhibits are: a video recording of the respondent Board's April 24, 2017 regular meeting on a flash drive; and the affidavit of the chairperson of the respondent Board, Lisa L. Heavner attesting to her statements informing the public of the nature of the meeting that is the subject of this complaint. However, by letters received by this Commission on June 12 and 13, 2017, the complainant reiterated his objections to the admission of the video recording and affidavit as evidence in this matter claiming, in part, that the "meeting tapes can be doctored with and that the tape has not been attested to." The exhibits have been marked for identification purposes only as Respondents Exhibit 6 and Respondents Exhibit 7, respectively.

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 April 24, 2017 and filed on April 26, 2017, the complainant appealed to this Commission alleging that the respondent board, violated the open meetings provisions of the Freedom of Information ("FOI") Act by convening in a back room and holding a meeting that was not open to the public after its April 24, 2017, regular meeting.

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

“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 . . . . intended for the purpose of discussing matters relating to official business.

4. Section 1-210(a), G.S., provides in relevant part that “[e]ach such agency shall make, keep and maintain a record of the proceedings of its meetings.”

5. Section 1-225, G.S., provides in relevant part that:

(a) the meetings of all public agencies . . . shall be open to the public . . . .

(c) The agenda of the regular meeting of every public agency. . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer, (1) in such agency’s regular office or place of business, and (2) . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitown district or agency . . . 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 . . . .

(d) 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 . . . . The . . . 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; 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 . . . the clerk

of such political subdivision...not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted.

6. It is found that, in November of 2016, the respondent town voted to have a town manager serve in the position of its chief administrative officer instead of the First Selectman. It is found that the change will become effective on December 4, 2017 and that a town manager will have to be appointed before that date in order to start working in this position on that date.

7. It is found that at the respondent board's regular meeting of February 27, 2017, it appointed all the members of the board, and both the director and deputy director of administrative services, as members of the executive search committee for the town manager position.

8. It is found that, on April 24, 2017, the respondent board held a regular meeting which the complainant attended.

9. It is found that the respondent board voted to adjourn the April 24, 2017 meeting and then convened a meeting of the executive search committee for town manager.

10. It is found that there is conflicting testimony as to whether the chairperson of the respondent board explained that the meeting was an executive search committee for the new town manager position and that it was not a meeting subject to the FOI Act's open meetings requirements. The respondents testified at the hearing on this matter that such a statement was made and that there is a video recording of the meeting that would show it. However, the complainant, at the hearing on this matter, stated that he did not hear any such explanation and contended that the meeting was a secret meeting held in violation of the FOI Act.

11. Section 1-200(2), G.S., provides that "[m]eeting" does not include . . . [a]ny meeting of a personnel search committee for executive level employment candidates . . .

12. Section 1-200(7), G.S., provides that "[p]ersonnel search committee" means a body appointed by a public agency, whose sole purpose is to recommend to the appointing agency a candidate or candidates for an executive-level employment position. Members of a "personnel search committee" shall not be considered in determining whether there is a quorum of the appointing or any other public agency.

13. It is found that the position of town manager is an executive level employment position within the meaning of §1-200(7), G.S.

14. It is also found that the individual members of the respondent board were acting as members of a personnel search committee, within the meaning of §1-200(7),

G.S., and that the committee's discussions at its April 24, 2017 meeting pertained to the development of interview questions to be asked of potential candidates for the town manager position.

15. It is therefore concluded that the meeting following the respondent board's April 24, 2017 regular meeting was a meeting of a personnel search committee within the meaning of §1-200(2), G.S., and was not subject to the provisions found in §1-225(a), G.S.

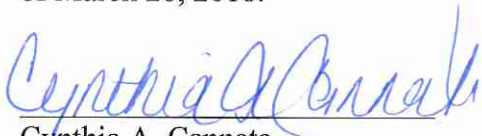
16. Consequently, it is concluded that the respondents did not violate the open meetings provisions of the FOI Act by conducting the meeting outside of the public purview.

17. In addition, there is nothing in the FOI Act that requires notice of, or any other form of an announcement regarding, the meetings of a personnel search committee as such committees are not subject to the notice requirements of §1-225, G.S.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 28, 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:

**ROBERT KALECHMAN**, 971 Hopmeadow Street, Simsbury, CT 06070

**BOARD OF SELECTMEN, TOWN OF SIMSBURY; AND TOWN OF SIMSBURY** c/o Attorney Robert M. DeCrescenzo, Updike, Kelly & Spellacy, P.C., PO Box 231277, 100 Pearl Street, Hartford, CT 06123-1277



Cynthia A. Cannata  
Acting Clerk of the Commission