

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Len Besthoff and NBC Connecticut,

Complainant

against

Docket #FIC 2017-0571

Ariel Marzouca-Jaunai, Chairman,  
Blue Hills Fire District Commission;  
Jacqueline Massey-Greene, Vice Chair,  
Blue Hills Fire District Commission; and  
Blue Hills Fire District Commission,

Respondents

May 23, 2018

The above-captioned matter was heard as a contested case on March 23, 2018, at which time the complainants 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 and filed September 22, 2017, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act in the following ways:
  - a. By failing to state the purpose of their September 21, 2017 executive session on the meeting agenda with sufficient specificity; and
  - b. By engaging in an impermissible discussion during the September 21, 2017 executive session.

3. The complainants have requested that the Commission impose the maximum civil penalty against Chairwoman Ariel Marzouca-Jaunai and Vice Chairwoman Jacqueline Massey-Greene of the respondent Commission as well as require both of these individuals to attend a FOI training session.

4. 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. . . .

5. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. . . .”

6. Section 1-200(6), G.S., provides, in relevant part, as follows:

“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.

7. Section 1-225(d), G.S., provides, in relevant part, that “[n]otice of each special meeting of every public agency . . . shall specify . . . the business to be transacted.”

8. Section 1-231(b), G.S., provides as follows:

An executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless the executive session is for a purpose explicitly permitted pursuant to subdivision (6) of section 1-200.

9. It is found that the Blue Hills Fire District Commission is comprised of the following three members: Chairwoman Marzouca-Jaunai, Vice Chairwoman Massey-Greene, and Commissioner Tanya A. Farmer.

10. It is found that the respondents held a special meeting on September 21, 2017. It is further found that the agenda for the September 21<sup>st</sup> meeting contained the following

action item: “Anticipated Executive Session for the purposes of receiving and discussing confidential attorney-client privileged communications in accordance with Connecticut General Statutes Sections 1-200(6) and 1-210(b)(10).<sup>1</sup>”

11. The complainants’ first contention is that the description of the executive session was insufficient. In this regard, the complainants contend that, based on controlling law, the respondents were required to give some description about the subject matter for which the public agency required legal advice. The complainants’ second contention is that, once the respondents adjourned the meeting into executive session, two of the members of the respondent commission discussed a matter that was outside the four corners of their attorney’s written legal advice.

12. With regard to the complainants’ first contention, it is found that, in their official capacities, Chairwoman Marzouca-Jaunai and Vice Chairwoman Massey-Greene requested that their attorney provide them with legal advice on a variety of subject matters.<sup>2</sup> It is further found that the attorney properly committed his legal advice to writing. Furthermore, in order to receive the legal advice from, and discuss the legal advice with, their attorney, it is found that the respondents noticed the September 21<sup>st</sup> special meeting and issued the agenda, referred to in paragraph 10, above. It is found that, up to this point, the respondents correctly followed the requirements of the FOI Act.

13. However, the Commission agrees with the complainants that the stated purpose of the executive session, as set forth on the September 21<sup>st</sup> special meeting agenda, was legally insufficient.

14. When examining a contention that the description of an agenda item is insufficient, this Commission has repeatedly looked to the reasoning in Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., No. 99-0497917-S, 2000 WL 765186, \*3-4 (Conn. Super. Ct. May 3, 2000), reversed on other grounds, 66 Conn. App. 279 (2001) (“Zoning Board”). In Zoning Board, the court observed that one purpose of a meeting agenda “is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views,” and that “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.”

15. In this regard, the Connecticut Superior Court has recently stated the following:

Courts have consistently held that the general subject matter of clients’ representations are not privileged. . . . [Accordingly], an agency should provide an agenda and notice that, absent some overriding concern, has at least

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<sup>1</sup> Section 1-210(b)(10), G.S., provides, in relevant part that, nothing in the FOI Act shall be construed to require the disclosure of “communications privileged by the attorney-client relationship.”

<sup>2</sup> The Commission knows that the respondents’ attorney provided advice on various legal matters because the actual, written legal opinions were disclosed by Commissioner Farmer to the complainants. See Complainants’ Ex. F.

some significance to the public and that provides at least some level of meaningful disclosure about the subject matter of a public meeting. Merely stating that an executive session will involve ‘Discussion of Confidential Attorney-Client Memorandum,’ as did the [public agency] here, does not meet this standard. . . . [internal citations omitted].

Lowthert v. FOI Comm’n, No. HHB CV15-6028902-S, 2016 WL 571077, at \*4-5 (Conn. Super. Ct. Jan. 16, 2016).

16. It is found that the respondents failed to produce evidence establishing that an “overriding concern” exists in this case and that such concern should preclude a description of the subject matter of the legal advice that was considered during the September 21<sup>st</sup> executive session.

17. Accordingly, it is concluded that the agenda item labeled as “confidential attorney-client privileged communications” was insufficient to apprise the public and interested parties of the general subject matter of the legal advice that the respondents intended to discuss with their attorney. It is further concluded that the respondents violated §1-225(d), G.S., by failing to describe sufficiently the business to be discussed in the September 21<sup>st</sup> executive session.

18. However, the more concerning matter in this case is the complainants’ second allegation. It found that, after the respondents adjourned the September 21<sup>st</sup> meeting into an executive session, and after the respondents properly received and discussed their attorney’s legal advice on a variety of matters, Chairwoman Marzouca-Jaunai asked her counsel “about how to go about giving out bonuses. More specifically, she asked if writing up a list would be public knowledge or if someone who was not [sic] a public official could make decisions without disclosing it to the public.” See Complainants’ Ex. B (Affidavit of Commissioner Farmer). It is found that Commissioner Farmer objected to this topic being discussed further in executive session, that the respondents’ counsel agreed and that the discussion was ended.

19. It is found that the spending of tax dollars is not an appropriate subject for executive session, as the public has a legitimate interest in knowing how public money is being spent.

20. It is concluded that the discussion of how to distribute bonuses without disclosing such fact to the public does not fall within the provisions of §1-200(6)(E), G.S. In fact, it is found that such a discussion would not fall within any of the provisions governing executive sessions. See §1-200(6), G.S.

21. It is concluded that any discussion with regard to the expenditure of public funds should have been conducted in public.

22. Consequently, it is concluded that, while the respondents convened in executive session to receive and discuss their attorney’s legal advice, which was a permissible purpose

for an executive session, the respondents broached a topic that was an impermissible subject for executive session.

23. In this regard, it is concluded that the respondents violated §1-225(a), G.S., as alleged in the complaint.

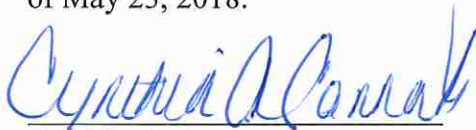
24. With regard to the complainants' request for civil penalties, it is found as follows: the respondents readily admitted at the contested case hearing that they violated §1-225(d), G.S., by using too generic a description on their agenda to apprise the public of the purpose of the September 21<sup>st</sup> executive session. It is further found that, prior to the March 23, 2018 contested case hearing, the respondents requested and attended a general FOI training session. The respondents seemed to embrace the opportunity to receive FOI training, not as a punishment, but as an opportunity to learn the law and conduct their meetings appropriately. Nonetheless, the evidence adduced at the contested case hearing reveals that the respondents are struggling with requirements of the FOI Act. Although the Commission declines to issue a civil penalty, it is concluded that the respondents are in need of an additional FOI training session that focuses on the permissible subjects for executive session and one is so ordered.

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 §§1-200(6), 1-225(a) and 1-225(d), G.S.

2. Forthwith, the respondents, or their designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session. The training session shall be conducted as part of a public meeting of the Blue Hills Fire District Commission and all three members of the Blue Hills Fire District Commission shall attend the training session.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 23, 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:

**LEN BESTHOFF AND NBC CONNECTICUT**, 1422 New Britain Avenue, West Hartford, CT 06110

**ARIEL MARZOUCA-JAUNAI, CHAIRMAN, BLUE HILLS FIRE DISTRICT COMMISSION; JACQUELINE MASSEY-GREENE, VICE CHAIR, BLUE HILLS FIRE DISTRICT COMMISSION; AND BLUE HILLS FIRE DISTRICT COMMISSION**, c/o Attorney Patrick J. McHale, Kainen, Escalera and McHale, P.C., 21 Oak Street, Suite 601, Hartford, CT 06106



Cynthia A. Cannata  
Acting Clerk of the Commission