

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Carmen Lopez,

Complainant

against

Docket #FIC 2018-0219

Denise Taylor-Moye, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Maria Zambrano-Viggiano, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Jeannette Herron, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Mary McBride-Lee, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Thomas McCarthy, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Christina C. Smith, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Nessah Smith, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Budget and Appropriations Committee, City Council, City of Bridgeport; and City of Bridgeport,

Respondents

November 14, 2018

The above-captioned matter was heard as a contested case on August 8, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For the purposes of hearing, the above captioned matter was consolidated with Docket #FIC 2018-0221; Maria Pereira v. Denise Taylor-Moye, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Maria Zambrano-Viggiano, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Jeannette Herron, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Mary McBride-Lee, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Thomas McCarthy, as member, Budget and Appropriations Committee, City

Council, City of Bridgeport; Christina C. Smith, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Nessah Smith, as member, Budget and Appropriations Committee, City Council, City of Bridgeport; Budget and Appropriations Committee, City Council, City of Bridgeport; and City of Bridgeport.

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 May 4, 2018 and filed on May 7, 2018, the complainant appealed to this Commission alleging that the respondent Budget and Appropriations Committee of the City of Bridgeport's City Council (hereinafter "BAC") violated the Freedom of Information ("FOI") Act by improperly convening an executive session during its May 2, 2018 meeting. The complainant specifically alleged that the respondent BAC:

- a. violated §1-225(a), G.S., by failing to notice the executive session on its agenda;
- b. violated §1-225(c), G.S., by failing to obtain a two-thirds vote of the members to add the executive session to the agenda;
- c. violated §1-225(f), G.S., by failing to vote to go into executive session and for failing to state the reason for such executive session;
- d. violated §1-231, G.S., by failing to limit attendance at the executive session in accordance with that provision;
- e. violated §1-200(6), G.S., by convening in executive session for an impermissible purpose; and
- f. violated §1-206(b)(1), G.S., by denying her the right to attend that portion of the meeting that was held in executive session.

The complainant requested that this Commission impose a civil penalty against the respondents.

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

- (2) "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.

4. Section 1-200(6), G.S., defines “Executive Sessions” to mean a meeting of a public agency at which the public is excluded for one or more of the following purposes:

(A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member’s conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (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.

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

(a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.

...

(f) A public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and

stating the reasons for such executive session, as defined in section 1-200.

6. In addition, §1-231(a), G.S., states in relevant part:

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

7. It is found that the respondent BAC is a seven member committee of the City Council of the City of Bridgeport and that such members are:

- Denise Taylor-Moye;
- Maria Zambrano-Viffiano;
- Jeannette Herron;
- Mary McBride-Lee;
- Thomas McCarthy;
- Christina C. Smith; and
- Nessah Smith.

8. It is found that the respondent BAC originally posted a notice and agenda for its May 2, 2018 meeting as one of 18 meetings of the respondent BAC listed on a single sheet of paper captioned "Budget and Appropriations Committee Official Budget Hearing Schedule for FY 2018-2019." It is found that the May 2, 2018 meeting was the 14th meeting on the list and the notice and agenda read as follows:

<u>Date</u>	<u>Time</u>	<u>Subject/Dept</u>	<u>Location</u>
...			
Wednesday, May 2	6:00 pm	City Attorney's Office	Wheeler Rooms
...			

9. It is found that the list was posted on April 3, 2018 and revised on April 24, 2018, however, the revision to the list did not affect the May 2, 2018 meeting except that it became the 15th meeting on a list of 19 meetings on the sheet.

10. It is found that the respondent BAC held a meeting on May 2, 2018 during which it convened in executive session. It is found that members of the City Council who were not members of the respondent BAC as well as the Director of Finance, the

Director of the Office of Policy and Management, and four attorneys from the City Attorney's Office were invited to attend, and did attend, the entire executive session.

11. It is found that the respondent BAC convened the May 2, 2018 meeting at approximately 6:00 p.m. and moved to go into executive session as the first order of business. The transcript of the meeting states the manner in which the executive session was convened as follows:

Council Member Herron: Okay, everybody out.
Council Member Taylor-Moye: Uhm, everyone that's not part of the Committee or the Council or the City Attorney's Office, can you –
Council Member Herron: Motion.
Council President Nieves: Make a motion.
Council Member Taylor-Moye: - please leave. I need a motion.
[Cross talk]
Atty. Anastasi: [inaudible] to discuss major pending litigation.
Council Member Newton: That's what he said –
Ms. Soltes: Thank you.
Council Member Smith: I make a motion to go into Executive Session for whatever he said.
Council Member Herron: Second.
Council Member Taylor-Moye: All in favor?
Voices: Aye.
Voice: Okay. Thank you.
Council Member Taylor-Moye: Aidee, we're all to –

[Audio stops due to the Committee, Council Members present, City Attorney Meyer, Atty. Toms, Atty. Anastasi, Atty. Ouellette, Ret. Judge Levin, Mr. Flatto, and Mr. Nkwo entering into Executive Session at 6:13 p.m. to discuss pending litigation. The audio resumed at 7:12 when the Committee, Council Members, staff and attorneys returned to public session.]

12. It is found that five of the respondent BAC members were present during the vote to convene the May 2, 2018 executive session. It is also found that the minutes for the respondent BAC's May 2, 2018 meeting state that the motion to convene in executive session passed unanimously.

13. At the hearing in this matter, the respondents' witness testified, and it is found, that the executive session was convened to discuss strategy and negotiations with respect to pending claims and litigation. The respondents' witness testified, and it is found, that the discussion was specifically centered on what was described as the City's major pending litigation cases and the City Attorney's Office's strategy and negotiations

with respect to those cases. It is found that some of the strategies discussed included settlement offers and the potential need to hire outside counsel and expert witnesses.

14. It is found that, at the conclusion of the executive session, the respondent BAC reconvened its meeting in open session during which it heard presentations by various members of the City Attorney's Office on the work performed by that office and the cost associated with the work in support of the Office's budget request.

15. With respect to the complainant's allegation that the respondents failed to notice the executive session on its agenda, as described in paragraph 2a, above, it is found that stating "executive session," by itself, does not delineate an item of business but rather an executive session is simply a way to conduct the business of a public agency.

16. Consequently, it is concluded that the respondents did not violate §1-225, G.S., as alleged by the complainant in paragraph 2a, above.

17. With respect to the complainant's allegation that the respondents failed to obtain a two-thirds vote of the members to add the executive session to the agenda, it is found that because "executive session" does not delineate an item of business but rather an executive session is simply a way to conduct the business of a public agency, there is no provision in the Freedom of Information Act that compels a public agency to add an executive session to its agenda prior to voting to convene in executive session.

18. Consequently, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant in paragraph 2b, above.

19. With respect to the complainant's allegation that the respondents failed to vote to go into executive session and for failing to state the reason for such executive session, as described in paragraph 2c, above, it is found that the respondent BAC convened the executive session at its May 2, 2018 meeting upon an affirmative vote of two-thirds of the members of such body present and voting.

20. However, this Commission has repeatedly stated that in order for the public to be fairly apprised of the business to be transacted during an executive session, the public agency must give some indication of the specific topic to be addressed, prior to convening such session. Therefore, descriptions such as "personnel," "personnel matters," "legal" or even "strategy and negotiations with respect to pending claims or pending litigation" are inadequate and do not state the reason for convening in executive session, within the meaning of §1-225(f), G. S.

21. In Durham Middlefield Interlocal Agreement Advisory Board v. FOIC et al., Superior Court, Docket No. CV 96 0080435, Judicial District of Middletown, Memorandum of Decision dated August 12, 1997 (McWeeny, J.), the court concluded that it was reasonable for the Commission to require something more detailed than "Executive Session Re: Possible Litigation."

22. Again, in Kate King and the Stamford Advocate v. Water Pollution Control Authority, City of Stamford; and City of Stamford, Docket #FIC 2012-502 (May 8, 2013), the Commission found that the phrase "pending legal matters" failed to identify with sufficient particularity the reason for the executive session.

23. It is found that the respondent BAC's motion to convene the executive session failed to identify with sufficient particularity the reason for the executive session.

24. It is concluded, therefore, that the respondents violated §1-225(f), G.S., by failing to state the purpose of the executive session.

25. With respect to the complainant's allegation that the respondents failed to limit attendance at the executive session in accordance with §1-231, G.S., as described in paragraph 2d, above, the respondents contended, at the hearing in this matter, that the Director of Finance and the Director of Office of Policy and Management were permitted under the FOI Act to attend the entire executive session because those individuals possessed the financial information required to inform the respondent BAC of the funds available to meet the City Attorney's office's budget request. The respondents contended that the legal strategy and negotiations of the City Attorney's Office are directly impacted by the funds available and that those officials were essential to the discussion during that executive session. The respondents also contended that the non-committee members of the City Council attended the executive session by invitation and participated in the discussion during the executive session pursuant to City Council Rules. It is found that those rules provide in relevant part that "[a]t City Council committee meetings only members of the particular committee may first speak on any matter pending before the committee. Thereafter, any other City Council person in attendance may speak as of right."

26. It is found, however, that the respondents failed to prove that the non-committee members in attendance provided testimony or opinion on strategy and negotiations with respect to pending claims or pending litigation or that their attendance was limited to the period for which their presence was necessary. Instead, the presence and participation by so many city officials supports an inference that the discussion was not confined merely to legal strategy and negotiations of the City Attorney's Office but was instead a broad substantive discussion concerning the City Attorney's Office's budget, if not the City's budget as a whole, involving a majority of the board of the City Council and senior administration officials.

27. It is concluded, therefore, that the respondents violated §1-231, G.S., by failing to limit attendance at the executive session in accordance with that provision.

28. With respect to the complainant's allegation that the respondents denied her the right to attend that portion of the meeting that was held in executive session, it is found that the respondents offered no evidence to prove that the respondent BAC was a "party" to the pending cases discussed during the May 2, 2018 executive session, within the meaning of §1-200(6)(B), G.S. See Planning and Zoning Commission of the Town of

Monroe, et. al. v. Freedom of Information Commission, et. al., 316 Conn. 1, 13 (2015), citing Black's Law Dictionary (9th Ed. 2009) p. 1232; accord Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission, 310 Conn. 276, 288 (2013) ("An agency can be a party to the claim, but only if the claim is directed at the agency itself.")

29. It is therefore concluded that the respondent BAC violated §1-225(a), G.S., by entering into the executive session for an impermissible purpose.

30. With respect to the complainant's request for a civil penalty, the Commission declines to consider the impositions of a civil penalty against the named respondents in this case.

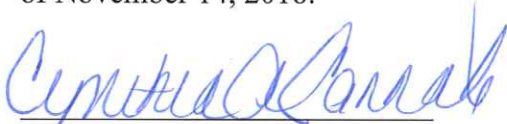
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondent BAC shall strictly comply with §§1-200(2), 1-200(6), 1-206 and 1-225, G.S.

2. The respondents shall, within 75 days of the receipt of the Final Decision in this matter, create minutes of the executive session held during its May 2, 2018 meeting, to include a detailed account of the discussions that took place, including the names of the cases discussed, and further, shall forthwith file such minutes with the town clerk and provide a copy, free of charge, to the complainant.

3. The respondents shall, within 30 days of the date of the Final Decision, contact the Commission to schedule a training session for all members of the respondent BAC specifically on the provisions of the FOI Act governing executive sessions and all members of the respondent BAC shall attend. All attorneys of the City of Bridgeport's City Attorney's Office are strongly encouraged to attend.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 14, 2018.



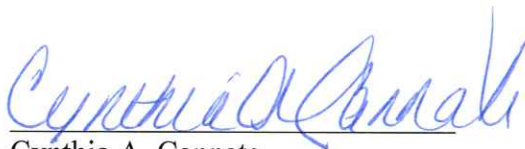
Cynthia A. Cannata
Acting Clerk of the Commission

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:

CARMEN LOPEZ, 175 Balmforth Street, Bridgeport, CT 06605

DENISE TAYOR-MOYE, AS MEMBER, BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; MARIA ZAMBRANO-VIGGIANO, AS MEMBER, BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; JEANNETTE HERRON, AS MEMBER, BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; MARY MCBRIDE-LEE, AS MEMBER, BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; THOMAS MCCARTHY, AS MEMBER, BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; CHRISTINA C. SMITH, AS MEMBER, BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; NESSAH SMITH, AS MEMBER, BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; BUDGET AND APPROPRIATIONS COMMITTEE, CITY COUNCIL, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Michael Jankovsky, City of Bridgeport, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission