

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Marissa Lowthert,

Complainant

against

Bruce Hampson, Chairman,
Miller Driscoll Building Committee,
Town of Wilton; and Miller Driscoll
Building Committee, Town of Wilton

Respondents

FINAL DECISION
Upon Remand

Docket #FIC 2014-444

September 26, 2018

The above-captioned matter was heard as a contested case on April 24, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

A proposed final decision was prepared by the hearing officer and mailed to the parties on May 13, 2015. The hearing officer recommended that the case be dismissed for lack of jurisdiction because the complainant had failed to file her appeal within thirty days of receiving notice in fact of the alleged violation. At a full Commission meeting on June 10, 2015, after hearing argument from the parties, the Commission unanimously adopted the proposed decision. Notice of the final decision was mailed to the parties on June 12, 2015.

On August 24, 2015, the complainant appealed the Commission's final decision to the Superior Court. On January 17, 2017, the Superior Court issued a Memorandum of Decision. The Superior Court concluded that, based on the language of §1-206(b)(1), G.S., in effect at the time of the alleged violation, "notice in fact" meant "actual notice to the person filing the appeal." See Lowthert v. FOI Comm'n, et al., Docket No. HHB-CV-15-6030425-S, 2017 WL 950990, at *8 (Conn. Super. Ct. Jan. 17, 2017) ("Lowthert"). Because the complainant had filed her complaint within thirty days of receiving actual notice of the alleged violation, the Court determined that the Commission had erroneously dismissed the complaint's appeal. See id. On remand, the Court instructed the Commission to exercise its discretion to determine "what remedy, if any, is appropriate for any violation" it may find. See id.

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 email dated July 13, 2014, the complainant appealed to this Commission, alleging that, on February 11, 2014, the respondents violated the Freedom of Information ("FOI") Act by

conducting committee business and voting by email, and without providing notice to the public. The complainant requested the imposition of civil penalties, among other remedies.

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

“Public agency” or “agency” means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official

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 . . . shall be open to the public. . . .”

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

Notice of each special meeting of every public agency . . . shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency’s Internet web site, if available, and 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 secretary or 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. . . . The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency

7. In addition, at the time of the alleged violation in this case, section 1-206(b)(1), G.S., provided in relevant part, as follows:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held.¹

8. The complainant contends that she did not receive notice of the alleged unnoticed or secret meeting until June 17, 2014, when she received certain records in response to an unrelated records request. The complainant further contend that the records she reviewed on June 17th evidence that the respondents conducted an illegal meeting on February 11, 2014.

9. It is found that the Miller Driscoll Building Committee (the “committee”) was appointed by the board of selectmen of the Town of Wilton (the “board”) in 2013 to make recommendations about conceptual designs and costs for the renovation of the Miller Driscoll Elementary School. It is found that the committee consisted of thirteen volunteer members drawn from school leaders, municipal leaders and community members.

10. It is found that, on February 11, 2014, an impending snowstorm caused the committee to cancel a meeting scheduled for February 13, 2014. It is found that the meeting that was cancelled was one in which the committee had intended to finalize its recommendation to the board, which was to be presented at the board’s scheduled meeting on February 18, 2014.

11. It is found that, although the committee’s role was advisory and its recommendation was not binding on the board, the committee’s chairman and vice chairman believed that the committee had developed a consensus and that it would be helpful if they could present that to the board as a unanimous position.

12. It is found that, after canceling the February 13th meeting, Chairman Bruce Hampson sent an email to the committee members, asking them to vote on the two proposals to be presented to the board the following week. Based on the record in this case, it is found that the committee members did vote on the proposals by email.

13. It is found that, at the board’s meeting on February 18, 2014, the committee’s chairman presented the details of the two proposals the committee had considered and indicated

¹ Subsequent to the Court’s decision in *Lowthert*, §1-206(b)(1), G.S., was amended by Public Act 17-86, deleting the phrase “notice in fact” and substituting the phrase “actual or constructive notice.” The Commission however necessarily decides the instant matter based on the text of §1-206(b)(1), G.S., in existence at the time of the *Lowthert* decision as remanded and ordered by the Court.

that the committee unanimously recommended one of them. It is found that the board did not vote on the proposals at that meeting but continued the discussion to a subsequent meeting.

14. It is found that, on March 13, 2014, the committee's next public meeting, Chairman Hampson reported that the committee had voted unanimously by email to recommend "Option 1" to the board at its February 18th meeting. It is found that the March 13th meeting minutes specifically indicate the following: "Chairman Hampson stated that while the February 13, 2014 meeting of the building committee was cancelled because of snow, the building committee voted unanimously by e-mail to recommend Option 1 to the Board of Selectmen on February 18, 2014."

15. Based on the facts of this case and the law in effect at the time of the alleged violation, it is found that the complainant received notice in fact that the respondents may have conducted an unnoticed or secret meeting on June 17, 2014, which is the date that the complainant reviewed the records that she received in response to an unrelated request and discovered the email vote. It concluded that the complainant's appeal to the Commission was timely.

16. It is further found that, based on the facts set forth in paragraph 12, above, the committee conducted an unnoticed meeting on February 11, 2014 in violation of §§1-225(a) and 1-225(d), G.S. It is concluded that the committee violated §§1-225(a) and 1-225(d), G.S., of the FOI Act, as alleged in the complaint.

17. However, based on the facts of this case, including that fact that the committee had planned to conduct its business in a public meeting, that the scheduled public meeting was cancelled suddenly due to impending inclement weather, and that committee's chairman publicly acknowledged that the committee had conducted an email vote, none of the civil remedies requested by the complainant are appropriate 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 respondents shall strictly comply with the requirements of §§1-225(a) and 1-225(d), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 26, 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:

MARISSA LOWTHERT, 90 Keelers Ridge, Wilton, CT 06897

BRUCE HAMPSON, CHAIRMAN, MILLER DRISCOLL BUILDING COMMITTEE, TOWN OF WILTON; AND MILLER DRISCOLL BUILDING COMMITTEE, TOWN OF WILTON, c/o Patricia C. Sullivan, Esq., Cohen and Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission