

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Alyssa Peterson,

Complainant

against

Docket #FIC 2017-0769

City Council, City of Hartford;  
and City of Hartford,

Respondents

September 26, 2018

The above-captioned matter was heard as a contested case on April 5, 2018, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. On the hearing officer's own motion, the hearing was reopened for the purpose of taking additional evidence. Such reopened hearing was held on August 10, 2018, at which time the complainant and the respondents appeared and presented additional 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)(A), G.S.
2. By letter dated and filed with the Freedom of Information ("FOI") Commission on December 29, 2017, the complainant appealed to the Commission, alleging that the respondents conducted an illegal meeting at the private law office of Councilman John Gale on December 21, 2017, "to produce a Council joint statement" concerning alleged misconduct by Councilman Thomas J. Clarke, and "to induce him to resign his Council seat." The complainant alleged that the respondents failed to post any notice, votes and minutes of such meeting in violation of the FOI Act. In addition, she requested the following remedies: "a determination of an illegal meeting and an order to redo the meeting with proper notice, proper agenda, and in public..."; "at a minimum...the publication of meeting minutes detailing ALL discussion, argument, agreement, and vote upon the final joint statement produced, to which shall be attached all versions of the joint statement discussed and/or published and/or printed on a whiteboard/chalkboard, or sent via email"; and "order FOIA training for all Council members to occur within 30 days of decision."

3. Section 1-200, G.S., states in relevant parts:

(1) “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....

(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... “Meeting” does not include: ... any chance meeting... a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency....

(3) “Caucus” means (A) a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision...

4. Section 1-225(a), G.S., states, 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.”

5. It is found that the respondent City Council is comprised of nine members. It is found that the City Council consists of six members affiliated with the Democratic Party (Councilman Thomas Clarke, Councilman Julio Concepcion (Majority Leader), Councilman John Gale, Councilman James Sanchez, Councilwoman Glendowlyn Thames and Councilwoman rJo Winch), and three members affiliated with the Working Families Party (Councilwoman Wildaliz Bermudez (Minority Leader), Councilman Larry Deutsch and Councilwoman Cynthia Jennings).

6. It is found that in November 2017, a sexual harassment complaint was filed with the Commission on Human Rights and Opportunities against Councilman Clarke. A copy of such complaint was provided to the City of Hartford’s Corporation Counsel on December 13, 2017.

7. It is found that on December 21, 2017, five of the six Democratic City Council members gathered at the law offices of Councilman Gale. Present at the gathering were:

Councilman Concepcion, Councilman Gale, Councilman Sanchez, Councilwoman Thames and Councilwoman Winch. It is found that no members of the Working Families Party (“WFP”), nor members of the public, were present.

8. It is found that at the December 21<sup>st</sup> gathering, described in paragraph 6, above, council members discussed the sexual harassment allegations against Councilman Clarke, and drafted a statement calling for Councilman Clarke to resign his leadership role, and step down from the Council.

9. It is found that, during the December 21<sup>st</sup> gathering, council members utilized a whiteboard to take notes and draft the statement. It is found that Councilman Concepcion took a photo of the contents of the whiteboard, and typed up a draft of the statement. It is found that there were at least three versions of the statement. It is further found that the final draft of the statement included the names of eight Council members typed at the bottom.<sup>1</sup>

10. It is found that a copy of the final statement was released to the media after the December 21<sup>st</sup> gathering. It is unclear from the record when the gathering began and ended. It is found, however, that, at approximately 3:00 p.m., that same day, an article was posted on the Hartford Courant’s website quoting from the final statement.

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<sup>1</sup> The final version of the statement read as follows:

We on City Council have had an opportunity to discuss these matters of sexual harassment amongst ourselves:

Trust has been broken, judgement called into question, and our ability to work together has been compromised.

Based on the evidence presented to date, the conduct is unbecoming of an elected official, therefore we call for the Council President to resign from his leadership role. We further believe that it is in the best interest of the City and public trust if he steps down from Council.

These recent events require a full examination of the City’s sexual harassment policies to ensure we are not condoning or permitting conduct which is unacceptable, and to ensure an environment where every employee feels safe and has the confidence and comfort level to bring complaints to the appropriate authority.

Minority Leader Wildaliz Bermudez  
Majority Leader Julio A. Concepcion  
Councilman Larry Deutsch  
Assistant Majority Leader John Q. Gale  
Councilwoman Cynthia Jennings  
Councilman James Sanchez  
Councilwoman Glendowlyn Thames  
Councilwoman rJo Winch

11. At the hearing, the complainant maintained that the December 21<sup>st</sup> gathering constituted an illegal meeting in violation of the FOI Act. She alleged that during the gathering a Democratic council member(s) present texted and/or emailed a WFP council member(s) about the discussion, and possibly sent an image of the statement. She contended that the final product of the gathering was a joint statement that discussed the position of the Council, as a body, about a public employee, and that there had to have been a joint agreement of all Council members in order for such a “formal statement of Council” to be released. The complainant also alleged that the statement itself is an “illegal” document because the Council members had no legal means by which to execute the statement or “sign” it, or send it to the press in their official capacity.

12. The respondents contended that the December 21<sup>st</sup> gathering was a “caucus” of the Democratic Council members, and was therefore, excluded from the open meetings provisions of the FOI Act. They also contended that, while in caucus, council members may discuss any subject, including public business, and that any document formulated during the caucus is a “legitimate” record.

13. With respect to whether the Council statement was an “illegal” or “legitimate” document, the Commission finds that the legality of such document is not a matter over which the Commission has jurisdiction. Accordingly, such issue will not be further addressed herein.

14. With respect to whether the December 21<sup>st</sup> gathering violated the meetings provisions of the FOI Act, at the April 5, 2018 hearing in this matter, Councilman Gale testified that “to the best of my knowledge, I do not recall anybody texting anybody else in the room at that time,” “don’t have any knowledge of any emails going out during this meeting,” and “don’t have any knowledge that an image was taken and sent during the meeting.” He testified that it was “my understanding” that Councilman Concepcion, “following our caucus”, “communicated” with Councilwoman Bermudez, and then, based on that communication, Councilman Concepcion was informed that the three WFP members were happy to sign the statement. He testified that the “time frame was pretty short” and “I really don’t know how he communicated with her.” In addition, Councilman Gale testified that he did not see the final version of the statement, with the signatures of the eight council members, until after the gathering.

15. At the August 10, 2018 hearing in this matter, Councilwoman Winch testified, in no uncertain terms, that Councilman Concepcion was texting during the December 21<sup>st</sup> gathering. Councilwoman Winch testified that she did not know with whom he communicated, nor the content of such communication. She also testified that she left the meeting between 2:10pm and 2:30pm, and at that time, the final version of the statement, with the signatures of the eight council members, was not yet drafted. She did not know who contacted and disseminated a draft of the statement to the WFP members, but thought that “information was given out ahead of time.”

16. In their respective affidavits,<sup>2</sup> Councilman Concepcion, Councilman Sanchez and Councilwoman Thames attested that “[t]o the best of my knowledge and recollection,” neither they nor the other Democratic council members present at the December 21<sup>st</sup> gathering communicated electronically with any council members affiliated with the WFP during such gathering. Similarly, in their respective affidavits, Councilwoman Bermudez and Councilwoman Jennings attested that “[t]o the best of my knowledge and recollection,” they did not communicate electronically with any council members affiliated with the Democratic Party during the December 21<sup>st</sup> gathering. In addition, in his affidavit, Councilman Deutsch attested that “[t]o the best of my knowledge and recollection,” he did “communicate electronically (telephone and/or email) with a member of Council affiliated with the Democratic Party; however, whether this communication(s) was/were during the aforesaid caucus, before or after it, or whether those participating remained assembled in that Office, was not written nor said...”

17. It is found that the respondents’ testimony, as described in paragraphs 14, 15 and 16, above, was, at times, indefinite and/or conflicting.

18. Based upon the record of this case, the Commission finds that at least one Democratic member and WFP member of the City Council communicated electronically concerning the content and release of the Council statement either during or immediately following the December 21<sup>st</sup> gathering; and also that the Council members at the December 21<sup>st</sup> gathering were acting on behalf of the Council as a whole, effectively as a de facto subcommittee of the Council. Such events necessarily transpired in order for the Council as a whole to have authorized the assent to, and issuance of the joint statement, by 3:00 p.m. on December 21<sup>st</sup>.

19. It is found that the respondents failed to prove that the December 21<sup>st</sup> gathering, in its entirety, was maintained as a “caucus” within the meaning of §1-200(3), G.S., that therefore fell outside of the open meeting provisions of §1-200(2), G.S.

20. It is further found that the December 21<sup>st</sup> gathering constituted a convening or assembly of a quorum of the City Council for the purpose of discussing or acting upon matters over which it had supervision, control or advisory power.

21. It is concluded, therefore, that the December 21<sup>st</sup> gathering was a “meeting” within the meaning of §1-200(2), G.S., and that the respondents failed to comply with the requirements of §1-225, G.S., with respect to notice, minutes, and votes.

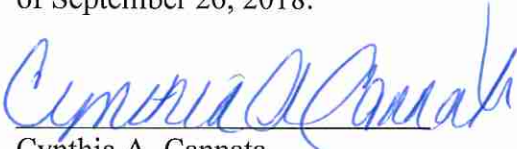
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<sup>2</sup> Pursuant to three separate orders of the hearing officer, the respondents submitted affidavits from the following council members: Councilman Concepcion, Councilman Sanchez, Councilwoman Thames, Councilwoman Bermudez, Councilman Deutsch, Councilwoman Jennings and Councilwoman Winch. Such affidavits have been marked as Respondents’ Exhibit 1 (after-filed) and Exhibit 1A (after-filed), respectively.

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

1. Henceforth, the respondents shall fully comply with the meetings provisions set forth in §§1-200(2) and 1-225, G.S.
2. The Commission declines to order the additional remedies requested by the complainant in this case.

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:

**ALYSSA PETERSON**, 297 Grandview Terrace, Hartford, CT 06114

**CITY COUNCIL, CITY OF HARTFORD; AND CITY OF HARTFORD**, c/o  
Attorney Cynthia Lauture, City of Hartford, Office of Corporation Counsel, 550 Main  
Street, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission