

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Matthew LaVecchia,

Complainant

against

Docket #FIC 2018-0191

Chairman, Board of Fire Commissioners,
City of Milford; Board of Fire Commissioners,
City of Milford; and City of Milford,

Respondents

April 10, 2019

The above-captioned matter was heard as a contested case on August 14, 2018, at which time the complainant 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. It is found that the complainant was involved in an incident outside of his place of employment which resulted in his demotion and eventual termination from his position with the Milford Fire Department.
3. It is found that the respondent commission held meetings on February 22, March 20, April 17, and April 19, 2018, during which meetings it convened in executive session.
4. By email sent and received by this Commission on April 20, 2018,¹ the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by:

¹ The administrative record shows that while the complainant's letter of appeal was stamped received and filed April 23, 2018, the letter of appeal arrived in this Commission's general email inbox on April 20, 2018 at 4:49 p.m., 11 minutes before the Commission's office closed.

- a. failing to post the agenda for their February 22, 2018 regular meeting and their April 19, 2018 special meeting;
- b. failing to adequately describe the purpose of the executive session convened at the February 22, March 20, and April 17, 2018 regular meetings and the April 19, 2018 special meeting;
- c. failing to limit attendance at the executive session convened during the February 22, and March 20, 2018 meetings in accordance with §1-231, G.S.;
- d. failing to provide him with notice that he would be discussed in executive session during their February 22, March 20, and April 19, 2018 meetings;
- e. failing to sufficiently apprise the public of the business to be conducted at their February 22, March 20, and April 17 and 19, 2018 meetings on the agenda for those meetings; and
- f. failing to post an agenda for the April 12, 2018 meeting.

The complainant requested that the Commission order the respondents to produce minutes of all the executive sessions convened during the February 22, March 20, April 17, 2018 and April 19, meetings; to declare all actions taken at those meetings null and void; to return the complainant to his full duties with back pay; to compensate him monetarily which should include attorney's fees; and to cease any further action against him.

5. With respect to the complainant's allegations regarding the February 22, 2018 meeting, the respondents contended that the complainant's appeal with respect to those meetings was not filed within thirty days of the alleged violation and therefore, were not timely filed. The respondents contended that the Commission lacks subject matter jurisdiction to adjudicate any claims made by the complainant with respect to that meeting.

6. Section 1-206, G.S., provides, in pertinent part that:

(b)(1) Any person . . . 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 actual or constructive notice that such meeting was held. [Emphasis added].

7. It is found that the February 22, 2018 meeting was neither secret nor unnoticed. Therefore, it is concluded that, in order for the Commission to have jurisdiction over the alleged violations related to the respondents' February 22, 2018 meeting, the complainant needed to have filed his appeal on or before March 22, 2018.

8. As stated in paragraph 3, above, the complainant's appeal was sent to and received by this Commission on April 20, 2018, and therefore, it is found that the complainant failed to file his complaint within thirty days after the alleged violation regarding the respondents' February 22, 2018 meeting.

9. Accordingly, it is concluded that the Commission lacks jurisdiction to adjudicate any alleged violations related to the respondent commission's February 22, 2018 meeting and no additional findings will be made with respect to such meeting herein.

10. With respect to the complainant's allegation that the respondent commission failed to post the agenda for its April 19, 2018 special meeting, as described in paragraph 4a, above, §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.

11. It is found that the respondent commission convened a special meeting on April 19, 2018 at 7:15 p.m. and that it created a notice and agenda for the meeting that was filed with the office of the town clerk on April 12, 2018. It is also found that the respondent commission does not have a website.

12. Accordingly, it is concluded that the respondents did not violate the FOI Act, as alleged by the complainant in paragraph 4a, above with regards to the April 19, 2018 meeting.

13. With respect to the complainant's allegation that the respondents failed to adequately describe the purpose of the executive sessions convened at the March 20 and April 17, 2018 regular meetings and the April 19, 2018 special meeting, as described in paragraph 4b, above, §1-225(f), G.S., provides:

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.

14. It is found that the agenda for the respondent commission's meetings held on March 20, April 17, and April 19, 2018, stated as one of the items of business as "Executive Session - Personnel Matter" or some variation thereof, but nothing more.

15. It is also found that when the respondent commission voted to convene in executive session on such dates, the purpose was only described as a "personnel matter."

16. The FOIC determined long ago, in contested case Trenton Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048, that the phrase "executive session – personnel matters" was too vague to communicate to the public the business to be transacted. In the intervening years, the FOIC has repeatedly stated that in order for the public to be fairly apprised of the reason for 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 "the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee" are inadequate and do not state the reason for convening in executive session, within the meaning of §1-225(f), G.S. Bradshaw Smith v. Milo W. Peck, Jr., Member, Board of Education, Windsor Public Schools, Docket #FIC 2007-003 (August 8, 2007) (agenda item "employee personnel matters," did not fairly apprise the public of the matter to be discussed in executive session). See also Smith v. Richardson, Board of Education, Windsor Public Schools, Docket #FIC 2013-291 (March 26, 2014); and Lowthert v. Brennan, First Selectman, Town of Wilton, Docket #FIC 2014-417 (June 24, 2015).

17. It is found that the respondent commission failed to identify with sufficient particularity the business to be transacted during the executive sessions convened at its March 20, April 17, and April 19, 2018 meetings. However, in regard to the April 19, 2018 special meeting, it is found that the entire meeting focused on the allegations against the complainant and the commissioners' response to those allegations. Prior to the executive session both the complainant and the respondents made presentations regarding the allegations against the complainant. At the end of the presentations, the Commissioners voted to enter executive session. When they came out of executive session, they voted to terminate the complainant. While they did not specifically mention the complainant in their motion to move executive session, the evidence shows that it was, or should have been, apparent to the complainant and anyone else present, that the complainant was the subject of the executive session. Based upon the specific facts and evidence in this case, it is concluded that the respondents did not violate §1-225(f), G.S., by failing to specifically state the reason for such executive session during the April 19, 2018 special meeting.

18. It is also concluded, however, that the respondents did violate §1-225(f), G.S., by failing to state the purpose of the executive session of the March 20 and April 17, 2018 meetings as alleged in paragraph 4b, above.

19. With respect to the complainant's allegation that the respondents failed to limit attendance at the March 20, 2018 executive session in accordance with §1-231, G.S., that section provides that:

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body..., 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.

20. It is found that, at the March 20, 2018 meeting, the respondents convened in executive session and invited the fire chief and the two assistant fire chiefs, and the respondent commission's attorney to attend. It is found that during that executive session, the fire chief gave a report to the respondent commission on the status of the legal action(s) against the complainant and his employment status as a result of the incident. It is found the executive session lasted an hour and thirty-one minutes and that all invited persons remained in the executive session during the entire time.

21. It is found that, while the respondent commission was certainly permitted to invite any of the invitees described in paragraph 20, above, into an executive session in order to receive certain information concerning the complainant, the respondents failed to prove that all those individuals' attendance at the executive session in question was limited to the period for which their presence was necessary to present testimony or opinion within the meaning of §1-231(a), G.S.

22. It is therefore concluded that the respondents violated §1-231(a), G.S., when they permitted the fire chief and the two assistant fire chiefs, and the respondent commission's attorney to remain in attendance at the March 20, 2018 executive session described in paragraph 20, above, for the duration of the session as alleged in paragraph 4c, above.

23. With respect to the complainant's allegation that the respondents failed to provide him with notice that he would be discussed in executive session during their March 20, 2018 meeting, as described in paragraph 4d, above, §1-200(6)(A), G.S., provides in relevant part that:

“Executive sessions” means 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 . . .

24. It is found that the respondent commission did not personally inform the complainant that his employment would be discussed at the March 20, 2018 meeting. As already found in paragraph 14, above, the agenda for the respondent commission's March 20, 2018 meeting only stated "Executive Session (Personnel Matter)."

25. It is found, therefore, that the respondent commission failed to provide meaningful notice to the complainant that his employment would be discussed during the March 20, 2018 executive session and to accord the complainant a meaningful opportunity to invoke his rights to a public session, as provided by §1-200(6)(A), G.S., as alleged in paragraph 4d, above.

26. Consequently, it is concluded that the respondents violated §1-200(6)(A), G.S.

27. With respect to the complainant's allegation that the respondent commission failed to sufficiently apprise the public of the business to be conducted at their March 20, April 17, and April 19, 2018 meetings on the agenda for those meetings as described in paragraph 4e, above, §1-225(c), G.S., provides, in relevant part, as follows:

The agenda of the regular meetings of every public agency...shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer....

28. Section 1-225(d), G.S., provides in relevant part that "[n]otice of each special meeting of every public agency . . . shall specify the time and place of the special meeting and *the business to be transacted.*" [Emphasis added.]

29. As already found in paragraph 14, above, the agenda for the respondent commission's meetings held on March 20 and April 17, 2018 stated as one of the items of business as "Executive Session (Personnel Matter)" or some variation thereof, but nothing more. It is found that their April 19, 2018 agenda also stated as one of the items of business as "Personnel Matter."

30. It is well established that a meeting agenda must "fairly apprise the public of the action proposed," and of the "matters to be taken up at the meeting in order to [permit the public] to properly prepare and be present to express their views." See Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, Docket No. CV 99-047917-S, 2000 WL 765186 (superior court, judicial district of New Britain, May 3, 2000), reversed on other grounds, Zoning Board of Appeals of the Town of Plainfield v. Freedom of Information Commission, 66 Conn. App. 279 (2001).

31. This Commission has repeatedly held that in order for the public to be fairly apprised of the reason for an executive session, the public agency must give some indication of the specific topic to be addressed. Descriptions such as "personnel,"

“personnel matters,” “legal,” or even “the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee,” are inadequate. See, e.g., Richard L. Stone v. Board of Selectmen, Town of Cromwell, Docket #FIC 2010-738 (August 24, 2011) (agenda item “[e]xecutive session: [p]ersonnel,” did not fairly apprise the public of proposed matter to be discussed); Preston D. Schultz and the Citizens for Prudent Spending v. Board of Education, Woodstock Public Schools, Docket #FIC 2008-236 (February 25, 2009) (agenda item “discussion of attorney/client privilege [sic] documents and pending litigation,” did not fairly apprise the public); John Voket and the Newtown Bee v. Board of Education, Newtown Public Schools, Docket #FIC 2006-013 (October 11, 2006) (agenda item “executive session – personnel,” did not fairly apprise the public); and Robert Cox v. Ridgefield Board of Education, Docket #FIC 88-165 (January 25, 1989) (the agenda item listing executive session to “receive advice from legal counsel on a legal matter,” was insufficient).

32. Based upon the foregoing, it is found that the agenda for the respondent commission’s March 20, April 17 and April 19, 2018 meetings did not fairly apprise the public of the nature of the business to be conducted at those meetings.

33. It is found that the respondents violated §1-225(c), G.S., as alleged in paragraph 4e, above, with respect to the meetings described in paragraph 32, above.

34. With respect to the complainant’s allegation described in paragraph 4f, above, that the respondents failed to post an agenda for the April 12, 2018 meeting, it is found that the April 12, 2018 meeting was rescheduled (at the complainant’s request) and therefore no agenda was required.

35. Consequently, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant in paragraph 4f, above.

36. Under the facts and circumstances of this case, this Commission, in its discretion, declines to consider the imposition of civil penalties. The complainant’s request for remedies, specifically to declare all actions taken at those meetings null and void; to return the complainant to his full duties with back pay; to compensate him monetarily which should include attorney’s fees; and to cease any further action against him is denied.

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)(A), 1-225(c), (d) and (f), and 1-231(a), G.S.

2. Forthwith, the respondents shall create minutes of the executive session held during its March 20, 2018 meeting, to include a detailed account of the discussions that took place, and further, shall forthwith file such minutes with the town clerk and provide a copy, free of charge, to the complainant.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 10, 2019.



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:

MATTHEW LAVECCHIA, c/o Mica Notz, Employee Rights Advocacy Agency, 57 State Street, North Haven, CT 06473

CHAIRMAN, BOARD OF FIRE COMMISSIONERS, CITY OF MILFORD; BOARD OF FIRE COMMISSIONERS, CITY OF MILFORD; AND CITY OF MILFORD, c/o Attorney Debra S. Kelly, Milford City Attorney's Office, 110 River Street, Milford, CT 06460



Cynthia A. Cannata
Acting Clerk of the Commission