FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Mike Savino, Leigh Tauss
and Record Journal,

Complainants

against

Mayor, City of Meriden;
Common Council, City of
Meriden; and City of Meriden,

Respondents

FINAL DECISION

Docket #FIC 2018-0230

January 9, 2019

The above-captioned matter was heard as a contested case on July 2, 2018, and August 20, 2018, at which times the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After the August 20, 2018 hearing, the complainants submitted, without objection, an after-filed exhibit, which has been marked as Complainants' Exhibit F: Newspaper Article Printout, Journal Inquirer, dated May 4, 2018.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.

2. By email received on May 9, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information Act ("FOIA") by improperly discussing budgetary matters and the performance of the City Finance Director[1] in an executive session held during a January 17, 2017 City Council meeting.

3. It is found that the respondent City Council held a regular meeting on January 17, 2017 ("January 17th meeting"). It is found that the agenda for the January 17th meeting included the following item:

[1] In the complaint, the complainants alleged that "[n]either the agenda for the meeting nor the vote to enter the executive session included a discussion on the *city manager's* performance...." [Emphasis added]. However, at the July 2, 2018 hearing, the complainants clarified that the allegation concerned the improper discussion of the City Finance Director's performance.

Executive Session.
15. Interim Performance Evaluation of the City Manager.
16. Update on Covanta Negotiation.
17. Update on Human Society/Sawing Paws Inc.

4. It is found that at the January 17th meeting, the City Council voted and entered into executive session.

5. It is found that complainant Leigh Tauss was present at the January 17th meeting.

6. It is found that on December 18, 2017, the respondent City Council voted to terminate Guy Scaife, the former City Manager for the City of Meriden. Subsequently, on May 2, 2018, Mr. Scaife filed a federal lawsuit against the City for wrongful termination. Among other allegations, Mr. Scaife alleges that the respondents used the executive session at the January 17th meeting to discuss the performance of several city employees (e.g., the City's Finance Director).

7. Section 1-206(b)(1), G.S., provides in relevant part:

> 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 actual or constructive notice that such meeting was held.

8. At the hearings and in their post-hearing brief, the complainants argued that the respondents held an improper executive session at their January 17th meeting, by improperly discussing budgetary matters, as well as the performance of the Finance Director and other City employees, without proper notice. The complainants claimed that they received notice of such discussion only after Mr. Scaife filed his May 2nd lawsuit, described in paragraph 6, above.

9. At the hearings and in their post-hearing brief, the respondents argued that the complainants personally knew or should have known about the former City Manager's claims regarding such executive session from their review of certain documents provided to the complainants prior to March 2018.

10. It is found that, based on the notice of the January 17th meeting and Ms. Tauss' presence at the meeting, the January 17th meeting was neither "an unnoticed or secret meeting," as the term is used in §1-206(b)(1), G.S.

11. It is concluded that because the January 17th meeting was neither "an unnoticed or secret meeting," and because the denials of FOIA rights alleged in connection with this meeting occurred more than thirty days before May 9, 2018, when the complaint was filed, the Commission does not have jurisdiction concerning the allegations of the complaint.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 9, 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:

MIKE SAVINO, LEIGH TAUSS AND RECORD JOURNAL, 500 South Broad Street, Meriden, CT 06450

MAYOR, CITY OF MERIDEN; **COMMON COUNCIL, CITY OF MERIDEN; AND CITY OF MERIDEN**, c/o Attorney Deborah L. Moore, City of Meriden, Office of the Corporation Counsel, 142 East Main Street, Suite 240, Meriden, CT 06450

Cynthia A. Cannata
Acting Clerk of the Commission

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