

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Christopher Peak and
New Haven Independent,

Complainants

against

Docket #FIC 2018-0390

Darnell Goldson, President,
Board of Education, New Haven
Public Schools; and Board of
Education, New Haven Public
Schools,

Respondents

May 22, 2019

The above-captioned matter was heard as a contested case on January 24, 2019, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

For purposes of hearing, the above captioned matter was consolidated with Docket # FIC 2018-386; Christopher Peak and New Haven Independent v. Darnell Goldson, President, Board of Education, New Haven Public Schools; and Board of Education, New Haven Public Schools.

Subsequent to the hearing in this matter, the complainants submitted, without objection, an after-filed exhibit, which has been marked as Complainants' Exhibit C (after-filed): Video, Portion of July 2, 2018 Press Conference. In addition, the respondents submitted, without objection, three after-filed exhibits, which have been marked as: Respondents' Exhibit 1 (after-filed): Affidavit of Darnell Goldson, dated April 26, 2019 (with 2 page attachment); Respondents' Exhibit 2 (after-filed): Press Release, dated July 1, 2018; and Respondents' Exhibit 3 (after-filed): Voter Registration Records and Letter to Hearing Officer, dated April 17, 2019.

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 July 19, 2018, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by holding an “improper executive session on June 25, 2018, and [an] unnoticed special meeting on July 2, 2018 [i.e., press conference], both to discuss laying off part-time employees.” Specifically, with respect to the executive session, the complainants alleged that:

- a. the Board “inadequately described” the “reasons for an executive session [o]n the agenda...and before voting to go behind closed doors”; and
- b. the stated “purpose” for the executive session was “unlawful.”

With respect to the press conference, the complainants alleged that:

- a. “emails working out a statement that could be delivered at [the July 2, 2018] press conference were held in private”; and
- b. the July 2, 2018 press conference constituted a special meeting for which “no notice was posted to the website” and “no actions were recorded.”

The complainants also requested that the Commission “order minutes to be filed for the June 22nd executive session¹ with the same degree of detail about what transpired as would have been revealed by holding the session in public”; “order the board to strictly comply with the requirements of state law”; order the Board “to stop holding illegal meetings by email”; and impose civil penalties against the respondents.

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

¹ The Commission notes that the complainants, in their request for remedies, mistakenly referenced the date of the executive session as “June 22,” and not June 25, 2018.

the public agency has supervision, control, jurisdiction or advisory power... 'Meeting' does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.

4. Section 1-225, G.S., states, in relevant parts, that :

(a) [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...

(c) [t]he 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, (1) in such agency's regular office or place of business, and (2) in the ... office of the clerk of such subdivision for any public agency of a political subdivision of the state.... Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

(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.

5. Section 1-200(6), G.S., defines "executive session" as

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.

6. With respect to the complainants' allegations regarding the executive session, it is found that the respondent Board of Education ("Board") held a regular meeting on June 25, 2018. It is found that, among other items, the following item was listed on the agenda: "X. Executive Session (If needed)."

7. It is found that, as reflected in the Board's June 25th meeting minutes, the Board went into executive session "to discuss personnel and contractual issues."

8. It is found that during the executive session the respondents discussed layoff notices that were sent out by the Superintendent of the New Haven Public Schools to approximately 1100 part-time New Haven Public School employees on June 22, 2018. In addition, the respondents discussed at least one other matter (i.e., leasing contract renewals) while in executive session.

9. At the hearing, the respondents stipulated that the description of the matter to be taken up by the Board in executive session was inadequate, and that those individuals who received layoff notices were not notified of the Board's intention to discuss their employment or layoffs.

10. It is found that the agenda for the June 25th meeting did not reasonably apprise the public of the business to be transacted in the executive session at issue. It is also found that, prior to entering into executive session, the Board failed to identify with sufficient particularity the business to be transacted during the executive session.

11. It is further found that the respondents did not enter into executive session for a purpose permitted under §1-200(6), G.S.

12. It is concluded, therefore, that the respondents violated §§1-225(a), 1-225(c) and 1-225(f), G.S., as alleged in the complaint regarding the executive session.

13. With respect to the complainants' allegations regarding the July 2nd press conference, the complainants contend that there was "secret planning" ("communications") prior to the press conference during which Board members reached a consensus to direct the Superintendent to rescind the layoff notices sent out on June 22, 2018, as described in paragraph 8, above. The complainants also contend that the press conference itself was a meeting subject to the meetings provisions of the FOI Act, because the Board members who were present at such event "directed" the Superintendent to rescind the layoff notices.

14. 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.

15. It is found that the complainants first learned of the alleged communications, described in paragraph 13, above, after reading a comment posted by the respondent Board President in response to an article in the New Haven Independent, which article was posted online on July 2, 2018. The Board President's comment was posted on July 3, 2018. It is found that the complainants received actual or constructive notice within the meaning of §1-206(b)(1), G.S., of the alleged communications on July 3, 2018. It is concluded that the Commission has jurisdiction to adjudicate the merits of the complainants' allegations regarding such communications and the July 2nd press conference.

16. It is found that the Board is a seven-member board consisting of five Democrats (including the Board President and Mayor of New Haven) and two unaffiliated members.²

17. It is found that on July 1, 2018, the Mayor for the City of New Haven issued a press release stating that a press conference was scheduled for July 2, 2018, at which time the Mayor would be joined by the Board President and other Board colleagues at a City Hall press event "to describe their planned, direct, and stepped-up efforts to resolve potential staffing adjustments at New Haven Public Schools."

² The Commission takes administrative notice of the Bylaws of the Board of Education for the New Haven Public Schools. See http://www.nhps.net/sites/default/files/Series_9000_-_Bylaws_of_the_Board_0.pdf. Section 9110 of the Bylaws provides, in relevant part, that "[t]he City Charter provides for an appointed Board of Education consisting of the Mayor, four members appointed by the Mayor, and two elected members serving over-lapping, four-year terms, and two (2) non-voting student members of the Board of Education serving terms as outlined in the City of New Haven Charter."

18. It is found that among those present at the July 2nd press conference were six Board members (including the Board President and the Mayor), the Mayor's spokesperson, and members of the press (including the complainant New Haven Independent). It is also found that the Board President and Mayor both spoke at such press conference, and that members of the press had the opportunity to pose questions at the press conference. There is no evidence in the record that the Board members present at the press conference discussed any matters over which it has supervision, control, jurisdiction or advisory power.

19. At the hearing, the Board President testified that after the layoff notices were sent out by the Superintendent, the Board received hundreds of emails from concerned members of the public. The Board President further testified as follows: The Board President called the Mayor, asked if they could meet regarding the incident and the public's concerns, and inquired whether they could hold a press conference "to let folks know that we're going to review this at our next Board meeting." Subsequently, the Board President and the Mayor, with assistance from the Mayor's spokesperson, drafted a statement to be issued at the press conference. Once the statement was completed, the Board President distributed such statement to the other Board members and informed them of the press conference. The other Board members did not provide any input on the statement, except for "Okay, I'll be there" and "I support this," and no changes were made to the statement. At the hearing, the Board President also maintained that the press conference was for "information purposes, only," and that the Board could not, without holding an official Board meeting, and did not, issue a directive to the Superintendent.

20. Subsequently, pursuant to an order of the hearing officer, the respondents submitted an affidavit from the Board President in which he attested:

I wrote this statement the [sic] over the course of the preceding weekend. I called the Mayor and asked her if she had received advance notice of the proposed layoffs, and whether she had approved them. She answered in the negative to both questions. I then told her that I was concerned with what I was hearing and that I do not believe that the Superintendent has the authority to hire or lay off personnel without Board approval. I also told the Mayor that I was going to put out a statement to that effect. The Mayor approved of this idea and wanted to be a part of the statement. She suggested doing a press conference. I sent my statement to her on [the] Sunday [prior to the press conference] for her review. She didn't make any changes and suggested the press conference be the next morning. I sent to [sic] the statement to all of the members of the Board that evening to review and also to invite them to the press conference.

He further attested that "[o]ther than as described above, I had no conversations or communications of any sort with any Board members prior to the press conference."

21. It is found that the statement was signed by six members of the Board.

22. With respect to the alleged communications among the Board members prior to the press conference, it is found that the respondents offered conflicting evidence regarding the extent and content of such communications. Based upon the facts and circumstances of this case, it is found that the communications described in paragraphs 19 and 20, above, constituted “communications” within the meaning of §1-200(2), G.S. It is concluded that the respondents violated §1-225(a), G.S., as alleged in the complaint regarding the communications among Board members prior to the press conference.

23. With respect to the press conference itself, it is found, based on the facts and circumstances of this case, that such event was for informational purposes, only, and not “to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.” Accordingly, it is found that the press conference did not constitute a “meeting” within the meaning of §1-200(2), G.S. It is therefore concluded that the respondents did not violate the open meetings provisions of §1-225, G.S., as alleged in the complaint regarding the press conference.

24. With regard to the various remedies and sanctions requested by the complainants, counsel for the respondents contended that such remedies are unwarranted. Counsel argued that even though a few complaints have been filed against the respondent Board in recent years, only two of those complaints were filed against the Board President, one of which was withdrawn. Respondents’ counsel also represented that the Board President has received FOI training, frequently contacts Commission staff with inquiries, and confers with counsel about the FOI open meetings requirements. In addition, there have been updates to the Board’s Bylaws regarding the requirements under the FOI Act.

25. Notwithstanding the conclusions in paragraphs 12 and 22, above, the Commission declines to order the additional remedies requested by the complainants 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 fully comply with the meetings provisions set forth in §§1-200(2) and 1-225, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 22, 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:

CHRISTOPHER PEAK AND NEW HAVEN INDEPENDENT, 51 Elm Street, #307, New Haven, CT 06510

DARNELL GOLDSON, PRESIDENT, BOARD OF EDUCATION, NEW HAVEN PUBLIC SCHOOLS; AND BOARD OF EDUCATION, NEW HAVEN PUBLIC SCHOOLS, 66 West Hills Road, New Haven, CT 06515



Cynthia A. Cannata
Acting Clerk of the Commission