

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

NOTICE OF FINAL DECISION

Ann Rubin,

Complainant

against

Docket #FIC 2016-0307

Chairman, Board of Directors, State of
Connecticut, Connecticut Airport
Authority; and Board of Directors, State of
Connecticut, Connecticut Airport
Authority,

Respondents

August 26, 2016

TO: Attorneys Ann Rubin and James K. Robertson, Jr., for the complainants; Attorney Paul K. Pernerewski, Jr., for the respondents.

This will serve as notice of the Final Decision of the Freedom of Information Commission in the above matter as provided by §4-183(c), G.S. The Commission adopted the Final Decision in the above-captioned case at its regular meeting of August 24, 2016.

By Order of the Freedom of
Information Commission



Cynthia A. Cannata

Acting Clerk of the Commission

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August 24, 2016

The above-captioned matter was heard as a contested case on June 10, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This case was consolidated for hearing with Docket #FIC 2016-0207, Ann Rubin v. Chairman, Board of Directors, State of Connecticut, Connecticut Airport Authority; and Board of Directors, State of Connecticut, Connecticut Airport Authority.

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 letter filed April 20, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by holding an executive session on April 11, 2016, for a reason not permitted by §1-200(6), G.S.
3. Section 1-225(a), G.S., provides: “The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.”
4. 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.

5. It is found that the respondents held a meeting on April 11, 2016, at which they voted to go into executive session for "Discussion of Potential Casino Development (Negotiating Strategy)."

6. The respondents claimed that the executive session was permissible pursuant to subsection (D) of §1-200(6), G.S.

7. It is found that the respondent Connecticut Airport Authority ("CAA") is a political subdivision of the state pursuant to §15-120bb, G.S., which provides in relevant part: "There is hereby established and created a ... political subdivision of the state of Connecticut ... to be known as the Connecticut Airport Authority."

8. It is found that the CAA is responsible for operating Bradley International Airport ("Bradley") and five general aviation airports. It is found that CAA is a quasi-public authority with the duty and power to generate economic growth of the airports, particularly by maximizing non-airline revenues at Bradley.

9. In 2015, the Connecticut legislature enacted Special Act 2015-7, which authorizes the Mohegan Tribes of Indians of Connecticut and the Mashantucket Pequot Indian tribe ("MMCT") to engage in negotiations and to enter into a casino development agreement with a municipality.

10. It is found that MMCT subsequently issued a Request for Proposals ("RFP") relating to a commercial gaming facility to be located in Connecticut.

11. It is found that on October 27, 2015, the CAA authorized its executive director to submit a proposal in response to the RFP in conjunction with the town of Windsor Locks. It is found that the respondents and the town of Windsor Locks submitted their proposal to MMCT shortly thereafter.

12. It is found that negotiations ensued with MMCT after the respondents and the town of Windsor Locks submitted their proposal, and such negotiations were ongoing at the time of the respondents' meeting on April 11, 2016.

13. It is found that the respondents' proposal for a gaming facility at Bradley anticipated a lease agreement between the respondents and MMCT, whereby MMCT would lease property from the respondents.

14. It is found that in their executive session, the respondents discussed financial provisions of the lease they would enter into with MMCT, how that lease would be structured, and concerns about new or restructured leases with third-party partners in the gaming facility operation.

15. The CAA's executive director testified, and it is found, that having such information in the public domain during the competitive process would reveal the respondents' negotiating strategy and would harm the respondents' ability to obtain optimal rental terms and conditions.

16. It is found that the proceedings and transactions are ongoing, and have not been terminated or abandoned. (By letter dated June 30, 2016, the respondents informed the Commission that they decided to withdraw their proposal to MMCT for one of the three lease locations proposed in the RFP. However, the respondents stated that they continue to pursue other potential sites for lease at Bradley, and that proceedings and transactions with respect to those sites are ongoing. The Commission takes administrative notice of such letter. Moreover, it is found that at the time of the respondents' executive session, proceedings and transactions were ongoing with respect to all potential sites.)

17. It is found that the respondents discussed the lease of real estate by a political subdivision of the state when publicity regarding such lease would adversely impact the price of such lease, within the meaning of §1-200(6)(D), G.S.

18. The respondents also claimed that the executive session was proper pursuant to §1-210(6)(E), G.S., as a 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.

19. The Commission takes administrative notice of the record and Final Decision in Docket #FIC2016-0035, in which portions of the respondents' submission in response to the MMCT RFP were found to be exempt as trade secrets, pursuant to §1-210(b)(6), G.S.

20. It is found that the respondents discussed such records and the information contained therein during the executive session on April 11, 2016.

21. It is concluded, therefore, that the respondents' executive session during their meeting of April 11, 2016, was proper, pursuant to §§1-200(6)(D) and (E), G.S.

22. It is concluded, therefore, that the respondents did not violate §1-225(a), G.S., as alleged.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 24, 2016.



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:

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