

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Chris Ehlert,

Complainant

against

Docket #FIC 2016-0030

First Selectman, Town of Westbrook;  
Board of Selectman, Town of Westbrook;  
and Town of Westbrook,

Respondents

August 10, 2016

The above-captioned matter was heard as a contested case on June 7, 2016, at which time the complainant and the respondents appeared 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. By email dated and filed January 13, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by:
  - (a) convening in executive session for an improper purpose during the respondent board's January 11, 2016 regular meeting; and
  - (b) inaccurately describing the subject of the executive session on the agenda for the respondent board's January 11, 2016 regular meeting.
3. Section 1-225(a), G.S., provides, in relevant part:

[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....
4. Section 1-200(6), G.S., provides, in relevant part:

'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....

5. It is found that item 2 on the agenda for the respondent board's January 11, 2016 regular meeting (the "meeting") stated: "Executive Session -- Personnel Matter -- Agent of Health."

6. It is found that, until January 2015, Richard Leighton worked for many years for the respondent town performing various services for several departments, including the health department. Although the respondents offered no evidence that Mr. Leighton was ever officially appointed "agent of the director of health," as that position is described in the town's Code of Ordinances, it is found that Mr. Leighton was known as the "agent of health," in the community.

7. It is found that, in January 2015, the respondent town appointed a new full-time director of health, and that the duties of the agent of health were subsumed into the position of director of health. It is found, therefore, that at the time of the executive session, there was no "agent of health" employed by, or working for, the respondent town.

8. It is found that Mr. Leighton also performed work in another town during the time he was working for the respondent town. It is found that, in February 2014, a resident of the other town filed a complaint against Mr. Leighton with the state's attorney's office, and that the state's attorney initiated an investigation into the complaint (the "investigation"). It is found that the investigation related to the work performed by Mr. Leighton for the other town.

9. It is found that, during the meeting, the respondent board convened in executive session under item 2 on the agenda to discuss developments in the investigation.

10. It is found that, although the respondent board discussed Mr. Leighton in executive session, such discussion, described in paragraph 9, above, did not concern the "appointment, employment, performance, evaluation, health or dismissal, of a public officer or employee," because Mr. Leighton was no longer employed by or performing work for the respondent town at the time of the executive session.

11. Accordingly, it is concluded that the discussion of the investigation was not permitted in executive session under §1-200(6)(A), G.S., and that the respondents violated §1-225(a), G.S., by conducting such discussion in executive session.

12. With regard to the allegation described in paragraph 2(b), above, §1-225(c), G.S., provides in relevant part that:

[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....

13. 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).

14. It is found that the respondent board’s discussion in executive session did not concern a “personnel matter.” It is further found that the agenda was confusing and did not fairly and sufficiently apprise the public of the nature of the executive session.

15. Accordingly, it is concluded that the respondents violated §1-225(c), G.S., by failing to fairly apprise the public of the nature of the executive session.

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

1. Forthwith, the respondents shall create minutes of the discussion that occurred during the January 11, 2016 executive session, and shall keep such minutes in an accessible place in accordance with the requirements of §1-210(a), G.S.

2. Henceforth, the respondents shall strictly comply with the requirements of §§1-225(a) and 1-225(c), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 10, 2016.



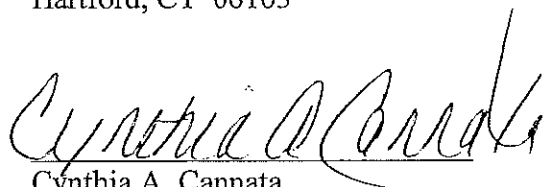
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

Chris Ehlert  
96 Ken Rose Terrace  
Westbrook, CT 06498

First Selectman, Town of Westbrook;  
Board of Selectman, Town of Westbrook;  
and Town of Westbrook  
c/o Henry J. Zaccardi, Esq.  
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission