

Freedom of Information Commission
of the State of Connecticut

In the Matter of a Complaint by)
Victor J. Suarez, Complainant) Report of Hearing Officer
against) Docket #FIC 76-63
City of Groton and the Zoning) June 3 , 1976
Board of Appeals of the City of)
Groton, Respondents)

The above captioned matter was heard as a contested case on May 3, 1976, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The hearing was continued to May 21, 1976 but by agreement of the parties hereto, such continued hearing was cancelled.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies as they are the City of Groton and the Zoning Board of Appeals of the City of Groton.
2. On April 6, 1976, the respondent board reconvened its meeting of March 30, 1976 to act upon six applications before it.
3. During the public session of the April 6, 1976 meeting, the respondent board acted upon five applications and stated reasons for its actions. Thereupon the board voted upon the application of the Dry Dock Cafeteria.
4. Upon the recommendation of the City Attorney, the respondent board then unanimously voted to convene in executive session to consult with the City Attorney regarding the legal aspects of the reasons for its decision in the Dry Dock Cafeteria matter.
5. Upon completion of the executive session, the respondent board reconvened in public session and adopted a resolution stating the reasons for its action on the Dry Dock Cafeteria application.
6. The complainant having been excluded from the executive session on April 6, 1976, filed the present complaint with this Commission on April 9, 1976.
7. Subsequent to the meeting on April 6, 1976, an appeal was brought to the Court of Common Pleas from the action of the respondent board concerning the Dry Dock Cafeteria.

8. The respondents contend that the executive session was properly convened pursuant to §1(e)(2) of P.A. 75-342 in that strategy and negotiations with respect to pending claims and litigation were discussed.

9. It is concluded that as of April 6, 1976, there were no pending claims and litigation within the meaning of §1(e)(2) of P.A. 75-342 concerning the subject discussed at the executive session in question.

10. The respondents further contend that the executive session was properly convened pursuant to §§1(e)(5) and 2(b)(a) of P.A. 75-342 in that there were discussions of matters which would result in the disclosure of communications privileged by the attorney-client relationship.

11. While §§1(e)(5) and 2(b)(9) of P.A. 75-342 permit public agencies to convene in executive session to discuss matters which would otherwise result in the disclosure of communications privileged by the attorney-client relationship, it was not proved in this case that there would be disclosure of such privileged communications. The respondent board voted upon the application which was the subject of the executive session at its public meeting. Furthermore, the respondent board voted in public session to adopt a resolution stating the reasons for its action on such application. In the absence of evidence of the confidential nature of the attorney-client communications at the executive session, it may not be presumed that such privileged communication occurred.

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

1. Henceforth the respondent board shall strictly comply with the provisions of P.A. 75-342, as interpreted by these findings and order, concerning the convening and conduct of executive sessions.


2. There is no need for this Commission to take any action concerning the April 6, 1976 executive session of the respondent board since the substance of that session has already been disclosed and all votes relating thereto were taken in public session and recorded in the minutes thereof.



Commissioner Judith A. Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on
June 9, 1976.



Louis J. Tapogna
Clerk of the Commission