

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
The Danbury Hospital,  
Complainant

Report of Hearing Officer

against

Docket #FIC79-199

Commission on Hospitals & Health  
Care of the State of Connecticut,  
Respondent

March 12, 1980

The above captioned matter was heard as a contested case on November 20, 1979 and November 30, 1979, at which times the complainant and respondent appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondent commission is a public agency within the meaning of §1-18a(a), G.S.
2. By complaint dated September 12, 1979, the complainant hospital alleged that on September 4, 1979 the respondent commission had violated the notice and open meeting provisions of the Freedom of Information Act as codified at Chapter 3 of the Connecticut General Statutes.
3. At hearing the respondent commission moved to dismiss on the ground that the deliberations of the hearing panel which were the subject of the complaint did not constitute a meeting of a public agency within the meaning of §1-18a(b), G.S. and because the Freedom of Information Commission had failed to comply with the time requirement set forth at §1-21i(b), G.S. that the Commission schedule a hearing within twenty days of its receipt of a complaint.
4. It is found that the time requirements set forth at §1-21i(b), G.S. are directory and not mandatory.
5. The respondent Commission on Hospitals and Health Care is charged by §19-73 et seq. to review the annual budgets of the acute care general hospitals in the state.
6. §19-73 et seq. are included in Chapter 334a of the Connecticut General Statutes.
7. Any member of the respondent commission is authorized by §19-73g, G.S. to conduct an inquiry, investigation or hearing under provisions of Chapter 334a and to administer oaths and take testimony under oath relative to the matter of inquiry and investigation.

8. Pursuant to §19-73g, G.S. and in accordance with §19-73o(a), G.S., a hearing panel was appointed to conduct a hearing on the budget of the complainant hospital.

9. The complainant alleges that the aforesaid panel violated the Freedom of Information Act when it met on September 4, 1979 to deliberate upon its final decision on the budget.

10. It is further found that the convening of the panel which is the subject of the complaint constitutes a proceeding of the respondent commission to discuss or act upon a matter over which it has supervision, control or jurisdiction.

11. It is concluded therefore that the convening of the panel on September 4, 1979 constituted a meeting within the meaning of §1-18a(b), G.S.

12. For the above stated reasons the motion to dismiss is denied.

13. Shortly after convening the meeting on September 4, 1979, the hearing panel went into executive session.

14. No votes were taken in the executive session.

15. The executive session was a free and frank discussion concerning the merits and the legal issues relating to the complainant hospital's case before the respondent commission.

16. One of the panel members had made notes concerning his perception of the evidence at the hearing.

17. Some of the discussion was a discussion concerning the personal notes of the aforesaid panel member.

18. The respondent commission maintained that the entire executive session was proper.

19. The respondent claimed that the meeting was a proper purpose for an executive session under §1-18a(e)(2) because it concerned strategy and negotiations with respect to pending claims and litigation to which a public agency or a member thereof because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled.

20.. It is found that the discussion which the panel held concerning the contested case pending before it does not constitute "strategy and negotiations with respect to pending claims and litigation" within the meaning of §1-18a(e)(2), G.S.

21. The respondent commission further claimed that the executive session was proper because it fell within the meaning of §1-18a(e)(5), G.S. which permits "discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-19."

22. The respondent commission argued that §1-19(b)(1), G.S., which provides an exemption for preliminary drafts or notes applies to the notes which the member of the panel discussed during the executive session and that therefore it was held for a proper purpose under §1-18a(e)(5), G.S.

23. §1-19(b)(1), G.S. provides an exemption from disclosure of preliminary drafts or notes "provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure (emphasis provided)."

24. The minutes for the September 4, 1980 meeting contained the following statement:

The chairman had previously stated that the disclosure of the preliminary drafts and notes would result in the disclosure of the panel's thoughts regarding the evidence in this matter which were of no binding effect and therefore the public interest in their disclosure was clearly outweighed by the public interest in preserving the integrity of the deliberative process.

25. It is found that the requirement that the public agency determine whether the public interest in withholding such documents clearly outweighs the public interest in disclosure is not satisfied by the pronouncement of the chairman with respect thereto.

26. It is further found that even if the public agency had properly determined that the public interest in non-disclosure outweighed the public interest in disclosure, the executive session would only have been proper insofar as it was limited to the discussion of the preliminary notes of the panel member.

27. It is concluded therefore that the executive session of the respondent commission held on September 4, 1979 was not held for any proper purpose under §1-18a(e), G.S. and therefore that the respondent violated the open meeting requirements of §1-21, G.S.

28. The complainant requested that the final decision of the respondent concerning its budget be declared null and void.

29. The proposed final decision of the respondent commission was delivered to the complainant hospital Saturday, September 8, 1979.

30. The final decision was adopted by the respondent on September 13, 1979 with only limited discussion.

31. The complainant claims it was harmed because, not having been present at the executive session, it lacked information which was essential for it to make a persuasive presentation to the respondent on September 13, 1979.

32. It is found that the complainant failed to prove that its inability to be present at the executive session on September 4, 1979 harmed it to such an extent that this Commission should declare the final decision of the respondent commission null and void.

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

1. The respondent commission shall henceforth comply with §1-18a(e) and §1-21, G.S.

Approved by order of the Freedom of  
Information Commission on March 12,  
1980.

  
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Leslie Ann McGaire  
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
The Danbury Hospital,

Complainant  
against

Final Decision

Docket #FIC79-199

Commission on Hospitals & Health  
Care of the State of Connecticut,  
Respondent

April 24, 1980

The above captioned matter was heard as a contested case on November 20, 1979 and November 30, 1979, at which times the complainant and respondent appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondent commission is a public agency within the meaning of §1-18a(a), G.S.
2. By complaint dated September 12, 1979, the complainant hospital alleged that on September 4, 1979 the respondent commission had violated the notice and open meeting provisions of the Freedom of Information Act as codified at Chapter 3 of the Connecticut General Statutes.
3. At hearing the respondent commission moved to dismiss on the ground that the deliberations of the hearing panel which were the subject of the complaint did not constitute a meeting of a public agency within the meaning of §1-18a(b), G.S. and because the Freedom of Information Commission had failed to comply with the time requirement set forth at §1-21i(b), G.S. that the Commission schedule a hearing within twenty days of its receipt of a complaint.
4. It is found that the time requirements set forth at §1-21i(b), G.S. are directory and not mandatory.
5. The respondent Commission on Hospitals and Health Care is charged by §19-73 et seq. to review the annual budgets of the acute general hospitals in the State.

6. §19-73 et seq. are included in Chapter 334a of the Connecticut General Statutes.

7. Any member of the respondent commission is authorized by §19-73g, G.S. to conduct an inquiry, investigation or hearing under provisions of Chapter 334a and to administer oaths and take testimony under oath relative to the matter of inquiry and investigation.

8. Pursuant to §19-73g, G.S. and in accordance with §19-73o(a), G.S., a hearing panel was appointed to conduct a hearing on the budget of the complainant hospital.

9. The complainant alleges that the aforesaid panel violated the Freedom of Information Act when it met on September 4, 1979 to deliberate upon its final decision on the budget.

10. It is further found that the convening of the panel which is the subject of the complaint constitutes a proceeding of the respondent commission to discuss or act upon a matter over which it has supervision, control or jurisdiction.

11. It is concluded therefore that the convening of the panel on September 4, 1979 constituted a meeting within the meaning of §1-18a(b), G.S.

12. For the above stated reasons the motion to dismiss is denied.

13. Shortly after convening the meeting on September 4, 1979, the hearing panel went into executive session.

14. No votes were taken in the executive session.

15. The executive session was a free and frank discussion concerning the merits and the legal issues relating to the complainant hospital's case before the respondent commission.

16. One of the panel members had made notes concerning his perception of the evidence at the hearing.

17. Some of the discussion was a discussion concerning the personal notes of the aforesaid panel member.

18. The respondent commission maintained that the entire executive session was proper.

19. The respondent claimed that the meeting was a proper purpose for an executive session under §1-18a(e)(2) because it concerned strategy and negotiations with respect to pending claims and litigation to which a public agency or a member thereof because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled.

20. It is found that the discussion which the panel held concerning the contested case pending before it does not constitute "strategy and negotiations with respect to pending claims and litigation" within the meaning of §1-18a(e)(2), G.S.

21. The respondent commission further claimed that the executive session was proper because it fell within the meaning of §1-18a(e)(5), G.S. which permits "discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-19."

22. The respondent commission argued that §1-19(b)(1), G.S., which provides an exemption for preliminary drafts or notes applies to the notes which the member of the panel discussed during the executive session and that therefore it was held for a proper purpose under §1-18a(e)(5), G.S.

23. §1-19(b)(1), G.S. provides an exemption from disclosure of preliminary drafts or notes "provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure (emphasis provided)."

24. The minutes for the September 4, 1979 meeting contained the following statement:

The chairman had previously stated that the disclosure of the preliminary drafts and notes would result in the disclosure of the panel's thoughts regarding the evidence in this matter which were of no binding effect and therefore the public interest in their disclosure was clearly outweighed by the public interest in preserving the integrity of the deliberative process.

25. It is found that the requirement that the public agency determine whether the public interest in withholding such documents clearly outweighs the public interest in disclosure is not satisfied by the pronouncement of the chairman with respect thereto.

26. It is concluded therefore that the executive session of the respondent commission held on September 4, 1979 was not held for any proper purpose under §1-18a(e), G.S. and therefore that the respondent violated the open meeting requirements of §1-21, G.S.

27. The complainant requested that the final decision of the respondent concerning its budget be declared null and void.

28. The proposed final decision of the respondent commission was delivered to the complainant hospital Saturday, September 8, 1979.

29. The final decision was adopted by the respondent on September 13, 1979 with only limited discussion.


30. The complainant claims it was harmed because, not having been present at the executive session, it lacked information which was essential for it to make a persuasive presentation to the respondent on September 13, 1979.

31. It is found that the complainant failed to prove that its inability to be present at the executive session on September 4, 1979 harmed it to such an extent that this Commission should declare the final decision of the respondent commission null and void.

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

1. The respondent commission shall henceforth comply with §1-18a(e) and §1-21, G.S.

Approved by order of the Freedom  
of Information Commission on April 24,  
1980.

  
Wendy Rae Briggs  
Acting Clerk of the Commission