



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Rhudean Bull,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-062

Mary Lou Rinaldi, Ernie Orgera, Christina Andreana,
Tim Curtin, Donald Huppert, Mitchell Kaufman, Fred
Flynn, Members, Water Pollution Control Authority, City
of Stamford; and City of Stamford,
Respondent(s)

October 23, 2012

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, November 14, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE November 2, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE November 2, 2012**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE November 2, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Rhudean Bull
James M. Sconzo, Esq. and Michael G. Petrie, Esq.
Burt Rosenberg, Esq., Chris Dellaselva, Esq. and Michael Toma, Esq.

10/23/12/FIC# 2012-062/Trans/wrbp/VDH/TCB

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Rhudean Bull,

Complainant

against

Docket #FIC 2012-062

Mary Lou Rinaldi, Member, Water Pollution
Control Authority, City of Stamford;
Ernie Orgera, Member, Water Pollution
Control Authority, City of Stamford,
Christina Andreana, Member, Water Pollution
Control Authority, City of Stamford;
Tim Curtin, Member, Water Pollution
Control Authority, City of Stamford;
Donald Huppert, Member, Water Pollution
Control Authority, City of Stamford;
Mitchell Kaufman, Member, Water Pollution
Control Authority, City of Stamford;
Fred Flynn, Member, Water Pollution
Control Authority, City of Stamford;
and City of Stamford,

Respondents

October 23, 2012

The above-captioned matter was heard as a contested case on August 16, 2012 and October 2, 2012, at which times the complainant and the respondents appeared, stipulated to certain facts 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 letter dated and filed February 3, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI

Act”) in the following ways:

- a. The respondents convened in an executive session at the January 4, 2012 regular meeting of the Water Pollution Control Authority (“WPCA”) and discussed a conversation that took place between the complainant and another public agency, without properly listing this matter on the meeting’s agenda;
- b. The respondents discussed the complainant’s job performance and made derogatory remarks about her during the January 4th executive session, and did so without listing this matter on the meeting’s agenda and without giving the complainant notice of said discussion and the opportunity to request that the discussion occur at an open meeting;
- c. The respondents failed to post, in a timely fashion, the minutes and the record of votes from the WPCA’s January 4, 2012 meeting;
- d. The respondents failed to post, in a timely fashion, the minutes and the record of votes from the WPCA’s January 18, 2012 special meeting;
- e. The respondents failed to post, in a timely fashion, a notice and agenda, and the minutes and the record of votes for the WPCA’s February 1, 2012 regular meeting; and
- f. The respondents convened in an executive session at the February 1, 2012 regular meeting of the WPCA and discussed the complainant’s job performance and made derogatory remarks about her, and did so without listing this matter on the meeting’s agenda and without giving the complainant notice of said discussion and the opportunity to request that the discussion occur at an open meeting.

3. The complainant requested that the Commission impose a civil penalty against the respondents, order that the members of the respondent agency attend a FOI training session, and order that the respondents become up-to-date with the posting of the WPCA’s notices and agendas, and minutes and records of votes. In addition, the complainant requested that the Commission order the respondents to “hold the improper discussion in public.”

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

“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. Section 1-225(a), G.S., provides, in relevant part, as follows:

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection

6. Section 1-225(c), G.S., provides, in relevant part, as follows:

The agenda of the regular meeting of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting 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. . . .

7. Section 1-225(d), G.S., provides, in relevant part, as follows:

Notice of each special meeting of every public agency . . . shall be . . . given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof. . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state The notice shall specify . . . the business to be transacted.

8. Section 1-225(f), G.S., provides as follows:

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.

9. Section 1-225(g), G.S., provides as follows:

In determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under this section, Saturdays, Sundays, legal holidays and any day on which the office of the agency, the Secretary of the State or the clerk of the applicable political subdivision or the clerk of each municipal member of any multitown district or agency, as the case may be, is closed, shall be excluded.

10. At the start of the contested case hearing, counsel for the City of Stamford (the “city” noted that, while the Commission had named the city as a respondent in this case, the complainant had not raised any allegations against the city and, as such, counsel requested that the city be dismissed from the case. The complainant did not object to the city’s motion, and the motion was granted.

11. It is found that the complainant is employed as the Administrative Manager of the WPCA.

12. It is found that the individual respondents are the members of the WPCA.

13. It is found that when the complainant was hired by the WPCA in 2001 it was her responsibility to prepare the agency’s meeting minutes, records of votes, and agendas, as well as ensure that these documents were filed with the town¹ clerk.²

14. It is found that, on July 18, 2011, WPCA Board Member Fred Flynn assumed the responsibility to prepare the agency’s meeting minutes and records of votes, and to file these records with the town clerk. It is found that, on or about January 9, 2012, Mr. Flynn resigned from city employment and, from the record in this case, it is unclear whether the duties to prepare the agency’s meeting minutes and records of votes were ever formally reassigned to another individual. However, it is found that, upon Mr. Flynn’s departure, the complainant reassumed responsibility for filing these documents with the town clerk once she received them. Finally, it is found that, throughout her employment, the complainant has been the

¹ The Commission refers to the clerk in this report as the “town” clerk because many of the records in this case are acknowledged received with a stamp stating “Town Clerk, Stamford, CT”.

² While the FOI Act does not obligate a public agency to file its meeting minutes and records of votes with the town clerk, it does require that an agency make such records available for public inspection in an accessible location, such as in the agency’s business office, within specific timeframes. See §1-225(a), G.S. It is found that it is the practice of the WPCA to make its meeting minutes and records of votes available for public inspection by filing them with the town clerk, which is a perfectly acceptable practice if completed within the requisite timeframes, set forth in the law. See Borough of Woodmont v. FOIC, CV 06401-811, 2007 Conn. Super. LEXIS 2450 at *17 (Sept. 20, 2007) (affirming commission’s decision that “the [FOI] act requires access to public records during regular business hours at an agency’s regular place of business or, if this is deemed to be too burdensome, the agency may choose to maintain their records at the office of the town clerk”).

individual responsible for preparing the WPCA's meeting agendas.

15. If is found that, on January 4, 2012, the WPCA held a regular public meeting. It is further found that minutes and the record of votes for this particular meeting were made available for public inspection in the town clerk's office on February 15, 2012.

16. Based on the findings in paragraph 15, it is concluded that the respondents violated the provisions §1-225(a), G.S., by failing to make the record of votes and the minutes for their January 4, 2012 meeting available for public inspection within the timeframes set forth in the FOI Act, as alleged in paragraph 2.c, above.

17. It is found that, on January 18, 2012, the WPCA held a special public meeting. It is further found that the minutes and the record of votes for this particular meeting were made available for public inspection in the town clerk's office on February 10, 2012.

18. Based on the findings in paragraph 17, it is concluded that the respondents violated the provisions §1-225(a), G.S., by failing to make the record of votes and the minutes for their January 18, 2012 meeting available for public inspection within the timeframes set forth in the FOI Act, as alleged in paragraph 2.d, above.

19. Finally, it is found that, on February 1, 2012, the WPCA held a regular public meeting. It is found that the minutes and the record of votes for this particular meeting were made available for public inspection in the town clerk's office on March 6, 2012. It is further found that the agenda for the February 1, 2012 meeting was filed in the town clerk's office on February 27, 2012. With regard to this latter finding, it is also found that the record in this case is devoid of evidence that would tend to show that the agenda, while not filed with the town clerk prior to the February 1, 2012 meeting, was, at the very least, available to the public in the WPCA's office or in some other place of business pursuant to the provisions of §1-225(c), G.S. ("The agenda of the regular meeting of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer, (1) in such agency's regular office or place of business and (2) . . . in the office of the clerk. . . .").

20. Based on the findings in paragraph 19, it is concluded that the respondents violated the provisions §1-225(c), G.S., by failing to make the record of votes and the minutes for their February 1, 2012 meeting available for public inspection within the timeframes set forth in the FOI Act, as alleged in paragraph 2.e, above.

21. Moreover, in Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Docket No. 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views," and that "[a] notice is proper only if

it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.”

22. With respect to the findings in paragraph 19, above, that the respondents filed the agenda for the February 1, 2012 twenty-six days after the meeting had already taken place, it is concluded that the respondents violated the provisions of §1-225(c), G.S.

23. With regard to the complainant’s allegations concerning the January 4, 2012 executive session, which allegations are described in paragraphs 2.a, and 2.b, above, it is found that, in December 2011, the complainant attended a public meeting of the Board of Representatives Operations Committee (the “Operations Committee”). It is further found that, at this meeting, the complainant addressed the Operations Committee about issues concerning the WPCA.

24. It is found that, on January 4, 2012, the WPCA properly convened in executive session to discuss seven specifically identified “legal matters.” It is found that, once the discussion of these issues had concluded and while the board members were still in executive session, one of the board members commented on the complainant’s statements to the Operations Committee meeting. It is found that the board member criticized the complainant’s exchange with the Operations Committee as being too long and stated that she believed the complainant was “highly incompetent.” It is further found that another board member commented back that she agreed, at which time the executive session was adjourned. It is found that the comment and the response lasted approximately ten seconds. It is further found these were spontaneous comments initiated by one board member, which did not rise to the level of a separate discussion “concerning the appointment, employment, performance, evaluation, health or dismissal” of the complainant pursuant to §1-200(6)(A), G.S., and did not constitute the purpose or the focus of the January 4, 2012 executive session.

25. Accordingly, it is concluded that the respondents did not violate the FOI Act by conducting an illegal executive session on January 4, 2012, as alleged in the complaint.

26. With regard to the complainant’s allegations concerning the February 1, 2012 executive session, which allegations are described in paragraph 2.f, above, it is found that, on February 1, 2012, the WPCA properly convened in executive session to discuss the following item: “Update and plan discussion regarding coverage as a result of long-term medical absence of WPCA personnel.” It is found that this agenda item concerned the complainant’s need for medical leave. It is further found that the complainant prepared the agenda for the February 1, 2012 meeting, and placed the discussion of her leave on the agenda as a matter to be discussed in executive session. It is therefore found that the complainant cannot be deemed to have been denied notice that this matter would be discussed, nor the opportunity to request that it be discussed at an open meeting.

27. It is found that the complainant went into executive session with the WPCA and discussed with the board members the issues surrounding her need for medical leave and the WPCA’s need for coverage during such absence. At the end of her discussion, it is found

that the complainant informed the board members that, “as a result of this medical issue, [she] had filed an EEOC³ and a CHRO² complaint against the WPCA board, the city and [her] union.” After informing the board about these legal actions, it is found that the complainant departed the executive session.

28. It is found that, when the complainant departed the executive session, many of the board members were left with questions and concerns about what they had just heard, and, as a result, many of the board members suddenly and simultaneously commented on what they had just heard. It is found that some of the board members expressed surprise about the complaints, while another board member commented that the complainant was incompetent and something had to be done about her, while yet another board member spoke up, reminding all of the board members that they were still in executive session and the legal matters presented by the complainant were not properly before them. It is further found that one board member, on being instructed that no discussion could occur at that time, became so frustrated that she suddenly left the executive session, stating as she left that she was resigning from the board. It is further found that, at this time, another board member commented that the membership should do something to prevent the resignation. It is found that, very shortly after the foregoing comments were made, the executive session was adjourned.

29. It is found that the comments referenced in paragraph 28, above, arose out of the complainant’s presentation to the WPCA in executive session. It is further found that these comments did not rise to the level of a separate discussion “concerning the appointment, employment, performance, evaluation, health or dismissal” of the complainant pursuant to §1-200(6)(A), G.S., and did not constitute the purpose or the focus of the February 1, 2012 executive session.

30. Accordingly, it is concluded that the respondents did not violate the FOI Act by conducting an illegal executive session on February 1, 2012, as alleged in the complaint.

31. With regard to the complainant’s request for civil penalties, an order requiring the respondents attend FOI training, and other requested remedies, it appears from the evidence adduced at the contested case hearing that the respondents could benefit from FOI training. The violations committed by the respondents seem to stem from a lack of knowledge⁴ and a failure to ensure that certain responsibilities, such as preparation of meeting minutes, were designated to a specific individual (see ¶ 14, above), rather than a desire to intentionally

³ In using the acronyms EEOC and CHRO, it is found that the complainant was informing the WPCA board members that she had filed complainants against them with the “Equal Employment Opportunity Commission” and “Commission on Human Rights and Opportunities.”

⁴ For example, it appears from the testimony in this case that the respondents are under the impression that their meeting minutes and records of votes cannot be considered available for public inspection unless and until they are in final form. See Ex. A. However, this is not the law. See, e.g. Trelski v. Bd. of Educ., Middletown Pub. Sch., Docket #FIC 2007-119 (Sept. 12, 2007) (dismissing complaint concerning the timely availability of meeting minutes because public agency’s draft minutes were available within seven days of the relevant meeting).


violate the FOI Act. The respondents are therefore ordered to attend an FOI training session not as a punishment, but as an opportunity to learn the law and conduct their meetings and complete their postings appropriately. It is found that none of the other remedies requested by the complainant are merited by the facts 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 strictly comply with the requirements of §1-225(a), G.S., by filing their meeting minutes and records of votes within the timeframes set forth in the law.

2. Henceforth, the respondents shall strictly comply with the requirements of §1-225(c), G.S., by ensuring their meeting agendas are available to the public at least twenty-four hours before any meeting occurs.

3. Forthwith, the respondents, or their designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.


Valicia Dee Harmon
as Hearing Officer