



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Diane Cece,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-434

Police Commission, City of Norwalk; and  
City of Norwalk,  
Respondent(s)

March 21, 2013

### 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, April 10, 2013**. 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 March 29, 2013**. 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 March 29, 2013**. **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 March 29, 2013**, 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: Diane Cece  
M. Jeffry Spahr, Esq.

3/21/13/FIC# 2012-434/Trans/wrbp/KKR/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Diane Cece,

Complainant

against

Docket #FIC 2012-434

Police Commission, City of Norwalk; and  
City of Norwalk,

Respondents

March 21, 2013

The above-captioned matter was scheduled to be heard as a contested case on January 8, 2013, at which time the complainant appeared but the respondents failed to appear. The matter was rescheduled for hearing on March 7, 2013, 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 letter of complaint, dated and filed August 2, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the requirements of §1-225, G.S., in connection with the July 6 and July 11, 2012 special meetings of the Norwalk Police Commission ("police commission"). The complainant further alleged that the respondents' failure to post the minutes of those meetings on their website, and that the online description of the police commission's July 30, 2012 regular meeting as a special meeting, also violated the FOI Act.

3. Section 1-225 G.S., provides, in relevant part:

(a) The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public....Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public agency shall make, keep and

maintain a record of the proceedings of its meetings.  
(Emphasis added).

(d) Notice of each special meeting of every public agency... shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting... The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency....

4. It is found that the police commission held special meetings on July 7 and July 11, 2012. It is found that the notice and agenda for the July 7<sup>th</sup> special meeting notes the location, time and date of the meeting, and lists the only item, as follows: "Personnel Matters and Executive Session." It is found that the complainant attended the July 7<sup>th</sup> special meeting and that the respondents voted to enter into executive session and asked the complainant to leave the room at that time. It is further found that, after the police commission returned to public session, the members voted unanimously to appoint Thomas Kulhawik as Chief of Police, and David Wrinn as Deputy Chief of Police. It is found that the purpose of such executive session was to discuss these appointments.

5. Since the superior court's decision 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), this Commission has consistently held that a meeting agenda must be sufficiently specific to fairly apprise the public of the business to be transacted at such meeting. See Denise Gallucci v. Chairman, Governing Board, Great Path Academy at Manchester Community College et al., Docket #FIC 2012-008 (September 27, 2012); George Schober v. Janet Tyler, Superintendent, Lebanon Public Schools, et al., Docket #FIC 2011-471 (July 13, 2012); Richard Stone et al. v. David Palmer, Chairman, Board of Education, Somers Public Schools, et al., Docket #FIC 2012-741 (September 14, 2011); David A. LeBlanc v. Elaine Adams, Chairman, Town Council, Town of Watertown, et al., Docket #FIC 2009-038 (December 16, 2009); Preston D. Schultz, et al. v. Board of Education, Woodstock Public Schools, Docket #FIC 2008-236 (February 25, 2009); Jay Kronfeld v. Board of Education, Regional School District #12, Docket #FIC 2007-249 (November 28, 2007); John Voket and the Newtown Bee v. Board of Education, Newtown Public Schools, Docket #FIC 2006-013 (October 11, 2006); Michael Doody v. Mayor, Town of North Branford, Docket #FIC 2005-490 (September 27, 2006).

6. It is found that the notice and agenda for the July 7<sup>th</sup> special meeting, described in paragraph 4, above, did not fairly apprise the public that the police commission intended to discuss at such meeting the appointment of a new police chief and deputy police chief.

7. Accordingly, it is concluded that the respondents violated the notice requirements of §1-225(d), G.S., with respect to the July 7<sup>th</sup> special meeting.

8. With regard to the July 11<sup>th</sup> special meeting, it is found that such meeting directly preceded the “swearing in” ceremony for the new police chief and deputy police chief, and that the members of the police commission, the police chief, deputy police chief, the mayor and counsel, were present at the meeting. Based upon the testimony of the police chief at the hearing in this matter, it is found that the respondents were not certain that substantive matters would be discussed during this pre-ceremonial gathering; however, they decided to notice such gathering as a special meeting in an effort to comply with the FOI Act. It is found that the notice and agenda for such meeting notes the location, time and date of the meeting, and lists the only item, as follows: “Personnel Matters.” It is found that the complainant attended the July 11<sup>th</sup> special meeting, and that the respondents voted to enter into executive session and asked the complainant to leave the room at that time. It is found that, during the executive session, the respondents discussed the final details of the employments contracts between the newly appointed police chief and deputy police chief and the police commission.

9. It is found that the notice and agenda for the July 11<sup>th</sup> special meeting, described in paragraph 8, above, did not fairly apprise the public that the contracts between the newly appointed police chief and deputy police chief and the police commission might be discussed.

10. Accordingly, it is concluded that the respondents violated the notice requirements of §1-225(d), G.S., with respect to the July 11<sup>th</sup> special meeting.

11. At the hearing in this matter, the complainant also suggested that the respondents violated the FOI Act when they refused to permit her to speak at both the July 7<sup>th</sup> and July 11<sup>th</sup> special meetings. However, as noted in paragraphs 4 and 8, above, “public comment” was not listed as an agenda item, and further, the Commission notes that while the meetings of a public agency are required to be open to the public, a public agency is not required to permit members of the public to speak or comment at its meetings. Accordingly, it is concluded that the respondents did not violate the FOI Act when they refused to allow the complainant to speak at the July 7<sup>th</sup> and July 11<sup>th</sup> special meetings.

12. With regard to the complainant’s allegation that the respondents violated the FOI Act by failing to post the minutes of their meetings on their website, it is concluded that since October 1, 2010, municipalities are not required to post the minutes of their meetings on their websites.<sup>1</sup>

13. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act, when they did not post the minutes of their meetings on their website.

14. With regard to the July 30<sup>th</sup> meeting, it is found that the respondents’ online calendar lists the July 30<sup>th</sup> meeting as a special meeting. It is found, however, that the meeting was a regular meeting of the police commission. Nonetheless, based upon the testimony of the police

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<sup>1</sup> See P.A. 10-171, which amended §1-225(a), G.S.

chief, it is found that the mislabeling of the July 30<sup>th</sup> meeting online was simply a mistake made by an administrative assistant that does not rise to the level of a violation of the FOI Act.

15. In her complaint, the complainant requested the imposition of civil penalties, as well as an order declaring null and void the actions taken at the special meetings on July 7<sup>th</sup> and July 11<sup>th</sup>. The Commission declines to consider the imposition of such civil penalties or to declare the actions of the respondents null and void.

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 notice requirements of §1-225, G.S.

  
Kathleen K. Ross  
as Hearing Officer