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# FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2012-690

Lucy McConologue, Chairman, Police Commission, Town of  
Seymour; Stephen Chucta, Frank Conroy, as Members, Police  
Commission, Town of Seymour; and Police Commission,  
Town of Seymour,  
Respondent(s)

August 14, 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, September 11, 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 August 30, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 30, 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 August 30, 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: Ronald Goodmaster  
William S. Palmieri, Esq.  
Warren L. Holcomb, Esq.

8/14/13/FIC# 2012-690/Trans/wrbp/VDH/TAH

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

Ronald Goodmaster,

Complainant

against

Docket #FIC 2012-690

Lucy McConologue, Chairman,  
Police Commission, Town of Seymour;  
Stephen Chueta, Member,  
Police Commission, Town of Seymour;  
Frank Conroy, Member,  
Police Commission, Town of Seymour;  
and Police Commission, Town of Seymour.

Respondents

August 9, 2013

The above-captioned matter was heard as a contested case on May 9, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

Prior to the contested case hearing, and by motion received and filed on January 22, 2013, the respondents moved to dismiss the complaint. The respondents contended that the appeal to the Commission was not filed in a timely manner. The hearing officer entertained oral argument from both sides. It is found that the executive session about which the complainant appeals in this case took place on November 8, 2012. It is further found that, while the appeal was received by the Commission on December 11, 2012, because the appeal was postmarked on December 7, 2012, it is deemed filed as of December 7, 2012. See §1-206(b)(1) (stating, in part, "For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken."). Accordingly, it was concluded that the appeal in this matter was timely filed and the motion to dismiss was denied.

In addition, at the commencement of the contested case hearing, the respondents moved to dismiss the three named individuals from the case based on §1-21j-28(b)(2), Reg.

of Conn. State Agencies.<sup>1</sup> The respondents contended that the complainant should only have named the agency itself, not the agency's members. In addition, because the agency respondent is comprised of five members, the respondents contended that the complainant should not be permitted to select only three of the members and name them as respondents. The complainant countered that it was premature, without having heard the evidence, to decide whether the three named individual respondents were properly named. The complainant represented that evidence would show that the named individuals contributed to the alleged violation. Based on the representation, the motion to dismiss was denied without prejudice.

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 deemed filed December 7, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") in the following way: The respondents convened in an executive session at the November 8, 2012 regular meeting of the Seymour Board of Police Commissioners to conduct interviews for the impending vacancy of a detective sergeant position. During the interview process, the chief of police and a lieutenant were invited into the executive session, and remained in the executive session for the entire interview process.
3. In addition to requesting a finding that all of the respondents in violation of the executive session provisions, the complainant requested that the Commission impose a civil penalty against the three named respondents, and declare the executive session and the interviews conducted therein null and void.
4. 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. . . ."
5. 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

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<sup>1</sup> See §1-21j-28(b)(2), Reg. of Conn. State Agencies (providing that all complaints to the Freedom of Information Commission shall be in writing and shall include the following components, "(b) A concise statement of the relevant facts, including but not limited to the items that follow: . . . (2) The name, title, address, and telephone and fax numbers, if known, of the public agency and any public agency official alleged to have denied the complainant a right conferred by the Freedom of Information Act.").

require that discussion be held at an open meeting . . . .

6. 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.

7. Section 1-231(a), G.S., provides as follows:

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

8. It is found that the respondent police commission is comprised of five commissioners.

9. It is found that, on November 8, 2012, the respondents held a regular meeting of the Seymour Board of Police Commissioners, at which all commissioners were present.

10. It is found that, at approximately 7:45 P.M., the respondents properly convened in executive session to interview three candidates for an anticipated vacancy of a detective sergeant position. It is found that the detective sergeant position was a promotional position, as opposed to a new hire.

11. It is found that, at the commencement of the executive session, the respondents invited the chief of police and a lieutenant into the executive session. It is found that these two individuals entered into the executive session at 7:45 P.M. and exited the executive session at 7:47 P.M.

12. It is found that, at 8:20 P.M., the respondents invited the chief of police and the lieutenant back into the executive session. It is further found that, at the time the chief of police and the lieutenant were called back into the executive session, the interviews had not yet commenced.

13. It is found that the respondents interviewed each candidate separately during the executive session. It is found that the chief of police and the lieutenant remained in the

executive session for all three interviews.

14. It is found that the first candidate was called into executive session at 8:20 P.M., and departed the executive session at 8:50 P.M.; it is found that the second candidate was called into the executive session at 8:55 P.M., and departed the executive session at 9:15 P.M.; and it is found that the third candidate was called into the executive session at 9:20 P.M., and departed the executive session at 9:33 P.M. It is further found that the chief of police and the lieutenant exited the session when the respondents concluded the executive session at 9:45 P.M.

15. It is found that the chief of police and the lieutenant are not members of the respondent commission.

16. It is found that the Seymour Police Commission is the sole decision maker with regard to personnel issues, such as the interviewing and hiring of candidates within the Seymour Police Department. However, it is found that the Seymour Police Commission does, from time-to-time, seek out the chief of police's recommendation with regard to the hiring and the promotion of police personnel.

17. It is found that, with regard to the second and third candidates interviewed on November 8, 2012, one commissioner had a question for the chief of police and the lieutenant concerning the existence of any disciplinary history that would be detrimental to awarding the promotion. It is further found that this question was posed by the commissioner because he was unfamiliar with the second and the third candidates' background. It is further found that the question was asked and answered in a matter of a minute or two.

18. Furthermore, it is noted that while one respondent expressed the view that it is helpful in a general sense to have the chief of police in the executive session during interviews because he knows the candidates' backgrounds, another respondent expressed the view that it would be preferable to hear from the chief, but to not have him present during the interviews themselves.

19. It is found that, while the respondents are certainly permitted to invite the chief or the lieutenant into an executive session either at the commencement of the session or prior to (or after) each interview in order to receive certain information concerning a candidate's history or experience, the respondents failed to prove that both the chief's and the lieutenant's attendance at the executive session in question was limited to the period for which their presence was necessary to present testimony or opinion within the meaning of §1-231(a), G.S.

20. It is therefore concluded that the respondents violated §1-231(a), G.S., when they permitted the chief of police and a lieutenant to remain in attendance at the executive session describe in paragraph 10, above, for the duration of the session.

21. However, while the complainant alleges in his appeal that the facts of this case merit the imposition of various remedies, see ¶ 3, above, because, in the context of a previous matter, “[t]he Town of Seymour had to hold a FOI workshop on 3/4/10 to educate all its public officials of FOI rules and regulations,” the fact that the town engaged in a general FOI training session over three years ago should not be construed to mean that the respondents in the instant case were familiar with the requirements and limitations of the executive session provisions discussed herein. In fact, based on the testimony, it is found that, at the time of the November 8, 2012 executive session, the respondents were not aware of the limitations of §1-231(a), G.S.

22. Based on the facts and circumstances of this case, it is found that civil penalties or other remedial remedies are not merited. Specifically, it is found that declaring the executive session and the interviews conducted therein null and void would be unnecessarily punitive and would serve no remedial purpose.

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 §1-231(a), G.S., by limiting the attendance of individuals providing testimony or opinion in an executive session to the time period necessary for presenting the same.



Valicia Dee Harmon  
as Hearing Officer