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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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Elizabeth Petroni,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-222

Chairman, Board of Finance, Town of Marlborough;
and Board of Finance, Town of Marlborough,

November 20, 2013

Respondent(s)

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 **special 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, December 18, 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 November 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, an **original and fourteen (14) copies** must be filed *on or before November 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 November 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: Joseph A. LaBella, Esq.
John W. Bradley, Esq. and Jonathan R. Chappell, Esq.

11/20/13FIC# 2013-222/SpecialMtgTrans/wrbp/CH/MES/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Elizabeth Petroni,

Complainant

against

Docket #FIC 2013-222

Chairman, Board of Finance,
Town of Marlborough; and
Board of Finance, Town of
Marlborough,

Respondents

November 13, 2013

The above-captioned matter was heard as a contested case on September 5, 2013, at which time 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. It is found that the complainant is a member of the respondent board.
3. It is found that, on April 4, 2013, the respondent board conducted a special meeting.
4. By email dated April 13, 2013, and filed on April 15, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (hereinafter "FOI") Act by failing to post an agenda or notice of the April 4, 2013 special meeting of the respondent board.
5. Section 1-225(d), G.S., provides in relevant part:

[n]otice 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 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 secretary or clerk shall cause any notice received under this section to be posted in his office...The notice shall specify the time and place of the special meeting and the business to be transacted....

6. It is found that it is the practice of the respondent board to schedule several special meetings, sometimes called budget workshops, as part of the process of recommending a budget for approval at Town Meeting. It is further found that at such special meetings, various town departments may come before the respondent board and make presentations regarding their specific departments.

7. It is found that, on February 14, 2013, the respondents filed with the Town Clerk of Marlborough a notice of three special meetings described as "Budget Development Workshops" and that the dates of such special meetings were given as March 20, 2013, March 27, 2013, and April 4, 2013. It is further found that the notice set 7:00 PM as the start time of each of the meetings, and the Library Media Center at Marlborough Elementary School as the place of such meetings.

8. It is found that the notice described in paragraph 7, above, lists as agenda items:

- I. Call to Order, Alternate Appointment
- II. Acceptance of Minutes
- III. Budget Deliberations and continued review of proposed 2013/2014 Annual Budget; meet with selected offices, boards and commissions; possible action
- IV. Public Comments
- V. Adjournment.

9. It is found that the notice described in paragraphs 7 and 8, above, was transmitted via email on February 14, 2013, to the Town Clerk of Marlborough, the First Selectman of Marlborough, and the individual members of the respondent board, including the complainant. It is further found that such notice was timely posted on the website for the Town of Marlborough.

10. It is found that it is the practice of the respondents to provide further and more specific notice to the public of their budget workshops if they are apprised in advance that specific departments will be making presentations to the respondent board. It is found that the respondents filed a more specific notice for the March 20, 2013 meeting, which added "Auditing Services Contract" and "Selectman's Proposed Capitol Non-Recurring Policy" as agenda items. It is also found that the respondents filed a more specific notice for the March 27, 2013 meeting, which added "RHAM Budget" and "Local Board of Education Budget" as agenda items.

11. It is found that no specific departments or persons notified the respondents that they wished to make presentations at the April 4, 2013 meeting. It is found that, therefore, the respondents did not file a more specific notice for the April 4, 2013 meeting.

12. It is found that, although she had not notified the respondents in advance, the Library Director appeared at the April 4, 2013, meeting and gave a budget presentation for the Library.

It is also found that, although she had not notified the respondents in advance, the bookkeeper for the local school appeared at the April 4, 2013 meeting and distributed to the members of the respondent board revised calculations for health insurance costs. It is found that the First Selectman routinely attends the meetings of the respondent board, and that, at the April 4, 2013 meeting, she appeared and answered questions previously prepared by the respondent chairman regarding such matters as snow removal and engineering services costs.

13. It is found that, following the First Selectman's appearance at the April 4, 2013 meeting, the respondent board members discussed the library budget, town operations, teacher supplies, and the education budgets. It is found that, thereafter, the respondents voted: to go to Public Hearing with a local BOE budget; to accept the regional school district budget; to go to Public Hearing with the town operations budget; to go to Public Hearing with a certain amount to be put in the Contingency Account; to go to Public Hearing with a certain amount in the Debt Budget; to go to Public Hearing with a Capital Expenditures Budget of a certain amount; and to go to Public Hearing with a proposed Fiscal Year Budget of a certain amount.

14. It is found that the complainant did not attend the respondents' special meeting of April 4, 2013. In her written testimony, which was accepted as a full exhibit without objection, the complainant asked that the votes described in paragraph 13, above, be declared null and void. The complainant contends that she assumed the April 4, 2013 meeting had been cancelled since she had not received a more specific agenda for such meeting. The complainant contends that there was also confusion in the public as to whether the meeting on April 4, 2013 would go forward.

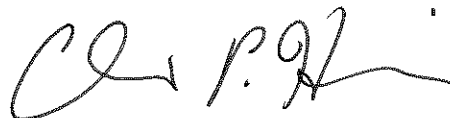
15. It is found that, on April 29, 2013, a public hearing on the proposed budget was held at which several members of the public gave their opinions on the proposed budget. It is also found that, immediately thereafter, the respondents conducted a special meeting. It is found that the complainant attended both the April 29, 2013 public hearing and the special meeting. It is found that, after receiving public comments at the public hearing, the respondents voted on the same budget options previously considered on April 4th. It is found that the vote results were the same, excepting that the complainant participated, and voted in the negative.

16. The specific allegation in this matter is that the respondents did not provide notice of the April 4, 2013 meeting pursuant to §1-225(d), G.S. It is found that the notice described in paragraphs 7 and 8, above, constituted adequate notice of the April 4, 2013 meeting of the respondents.

17. It is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

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

1. The complaint is hereby dismissed.

A handwritten signature in black ink, appearing to read 'C. P. Hankins', written over a horizontal line.

Commissioner Christopher P. Hankins
as Hearing Officer

FIC2013-222/hor/cph/mes/11132013

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