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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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Brian Laubstein,

Complainant(s)

against

Chairman, Board of Education, Bethany Public
Schools; and Board of Education, Bethany
Public Schools,

Respondent(s)

Notice of Meeting

Docket #FIC 2013-706

August 19, 2014

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 10, 2014**. 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 27, 2014**. 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 27, 2014**. **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 27, 2014**, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: Brian Laubstein
Henry J. Zaccardi, Esq.

2014-08-19/FIC# 2013-706/Trans/wrbp/CPH/VDH/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Brian Laubstein,

Complainant

against

Docket #FIC 2013-706

Chairman, Board of Education,
Bethany Public Schools; and
Board of Education, Bethany
Public Schools,

Respondents

August 8, 2014

The above-captioned matter was heard as a contested case on July 16, 2014, 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. By email dated and filed November 13, 2014, the complainant appealed to the Commission, alleging that the respondents violated the open meeting requirements of the Freedom of Information Act ("FOI Act") in the following two ways: first, certain Board of Education ("BOE") members joined a Parent Ambassador Group ("PAG"), and communicated with each other and the other PAG group members by email, and, second, as part of the PAG, these same BOE members met with the other PAG members at one of the PAG's member's homes.
3. Section 1-206(b)(1), G.S., provides in relevant part that:

[a]ny person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the [FOI] Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. . . .

4. Section 1-200(2), G.S., defines meeting as follows:

. . . any hearing or other proceeding of a public agency. . . to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

5. Section 1-225(a), G.S., provides in relevant part that:

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. . . .

6. It is found that, on January 9, 2013, at a regular meeting of the Bethany Board of Education, the Superintendent of Bethany Public Schools presented a proposal for a building project. It is found that the building project proposed to replace two separate school classroom annex buildings with an eight room addition and a corridor attaching the new addition to the main school building. It is found that, after the Superintendent presented the proposal to the BOE, a motion was made by a BOE member to move the project forward to the Board of Selectman (“BOS”). It is found that the motion was seconded and passed.

7. It is found that, upon the passage of the motion discussed in paragraph 6, above, the building project moved from the BOE to the BOS for official action. It is further found that, after January 9, 2013, the BOE had no further official involvement with the building project, and that the BOS was then responsible for taking all of the steps necessary to move the project forward, including conducting a public referendum on the project.

8. It is found that, in or around September 2013, certain members of the BOE, who were parents with children in or soon to be in the school discussed in paragraph 6, above, joined with other parents who either had or were soon to have children attending this same school, and formed the PAG. It is found that the PAG was formed after the BOS had scheduled the referendum on the building project. It is further found that the PAG had approximately fifteen members, and that four of the members were also members of the BOE.¹ Overall, it is found that the PAG was comprised of parents who were in favor of the building project, and that the group’s purpose was to motivate other parents who were also in favor of the building project to vote in the referendum.

9. It is found, however, that the referendum on the building project ultimately failed.

10. It is found that the members of the PAG communicated with each other by email between October 23, 2013 and November 2, 2013, regarding strategies for mobilizing other parents to vote in the referendum. It is further found that the PAG members met together as a group on October 28, 2013 at the home of one of the group’s members (the “home gathering”).

11. The complainant contends that the email communications and the home gathering referred to in paragraph 10, above, were both illegal meetings because four BOE members were part of the

¹ It is found that the Bethany BOE is comprised of nine members.

PAG, because none of the BOE members should be allowed to advocate privately for something that their public agency was considering publicly, and because he suspects that BOE business was discussed at the home gathering.

12. It is found that at the time of the email communications and the home gathering, referred to in paragraph 10, above, the BOE no longer had "supervision, control, jurisdiction or advisory power," as such terms are used in §1-200(2), G.S., over the building project.

13. It is found that none of the BOE members who joined in the activities of the PAG did so in their official capacities, and that the BOE itself never sanctioned the activities of the PAG.

14. It is therefore found that neither the PAG members' email communications, nor their home gathering was a "meeting," pursuant to §1-200(2), G.S., of the FOI Act.

15. Finally, at the hearing in this matter, the complainant raised an issue with regard to a PDF record which was circulated by the PAG members in one of their email communications. It is found, however, that the complaint in the case is limited to allegations with regard to illegal meetings.² Accordingly, the Commission lacks jurisdiction to consider the complainant's allegation with regard to the PDF record.

16. Based on the foregoing facts above, 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.



Commissioner Christopher P. Hankins
as Hearing Officer

² The complainant in this case raised the following allegations: "I would like to file 2 complaints about the Bethany Board of Education having illegal meetings. The first was on Monday night 10/28. The next was this thread of emails I believe are a virtual meeting. Please look into [this]."