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FREEDOM OF INFORMATION



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John Benicewicz,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-087

Ronald Walker, President, Candlewood Hills
Tax District; Board of Directors, Candlewood
Hills Tax District; and Candlewood Hills Tax
District,

Respondent(s)

September 10, 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 24, 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 September 16, 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 September 16, 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 September 16, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Adam J. Cohen, Esq.
Christopher M. Harrington, Esq.
James F. Sullivan, Esq.

2014-09-10/FIC# 2014-087/Trans/wrbp/VDH/TCB

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

John Benicewicz,

Complainant

against

Docket #FIC 2014-087

Ronald Walker, President,
Candlewood Hills Tax District;
Board of Directors, Candlewood
Hills Tax District; and Candlewood
Hills Tax District,

Respondents

September 10, 2014

The above-captioned matter was heard as a contested case on August 12, 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 letter received and filed on February 11, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") in the following ways:
 - a. By conducting a secret telephone discussion and vote on November 8, 2013, regarding the purchase and installation of a padlocked, chained fence across Carola Lane;
 - b. By failing to post an agenda, or to prepare minutes and a record of votes for the November 8, 2013 meeting;
 - c. By continuously failing to keep their public records in a publicly accessible place, and instead storing their public

records at the private homes of individual board members;
and

- d. By failing to provide copies of public records relating to the purchase and installation of the fence referred to in paragraph 1.a, above.

3. The complainant has requested that the Commission impose the following remedies and sanctions against the respondents: declare the actions with regard to purchase and installation of the fence null and void; order full compliance with the complainant's request for records; impose a civil penalty; and take any other action that the Commission deems appropriate.

4. Section 1-206(b)(1), G.S., provides, in relevant part, as follows:

Any 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 Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held. . . .

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

The meetings of all public agencies . . . 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 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 web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

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

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 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. . . .

7. It is found that the complainant is a resident homeowner in New Fairfield. It is further found that the complainant's home was formerly part of the Candlewood Hills Tax District (referred to also as the "respondent district" and the "district").

8. It is found that Candlewood Hills Tax District is a special taxing district and a municipal entity under the provisions of §§7-324 through 7-329, G.S. It is further found that Candlewood Hills Tax District is governed by a nine member board of directors, whose members are elected from the residents of the district. It is further found that the Candlewood Hills Tax District is located within the Town of New Fairfield.

9. It is found that Respondent Ronald Walker is the President of the board of directors of the respondent district.

10. With regard to the allegations concerning the requirements for public meetings, (see ¶¶2.a, and 2.b, above), it is found that, in August 2008, the complainant and several other residents (referred to collectively as the "residents") in the Candlewood Hills Tax District followed the statutory mandates to "vote themselves out" of the district. It is further found that the residents' decision and subsequent steps to opt out of the district lead to litigation between the residents and the district itself. It is found that the Appellate Court ultimately decided such matter in favor of the residents, finding that they had followed the proper statutory procedures to reduce the respondent district's boundaries, thereby removing their properties from the district's authority. See Candlewood Hills Tax Dist. v. Medina, 143 Conn. App. 230 (2013).

11. Thereafter, it is found that, on December 24, 2013, the respondents installed a padlocked, metal fence across Carola Lane.

12. It is found that many of the residents that had opted out of the district, including the complainant, resided on Squantz View Drive, which is a cul-de-sac off of Carola Lane. It is further found that by installing the padlocked fence across Carola Lane, the respondents blocked the complainant and others from accessing their residential properties via Carola Lane--the only paved access to their homes. It is further found that, once the padlocked fence was installed, the only other access that the complainant and others had to reach their residential properties was via Oak Street, a private and extremely rugged dirt road.¹

13. It is found that the decision to purchase the padlocked fence and to install it across Carola Lane was a result of an email communication amongst and between the members of the respondent board of directors. It is found that, on January 18, 2014, the complainant,

¹ For clarity's sake, it is found that, by way of a subsequent litigation in 2014, the respondents were ordered to remove the fence.

upon reviewing the respondent district's website, realized that the respondents had conducted a "[p]hone and email vote" on or about November 8, 2013. It is found that the substance of the phone and email vote was summarized as follows: "Motion to spend up to \$2,000 to install Carola gate, buy a Knox lock, our own lock, and signs saying 'emergency access only.'" It is further found that the summary also stated that the motion passed unanimously.

14. It is found that the summary referred to in paragraph 13, above, was discovered by the complainant on the respondents' website in the district's meeting minutes. Specifically, it is found that the respondents inserted the notations concerning a November 8, 2013 telephone conference and vote into minutes pertaining to their *October 17, 2013* board of directors' special meeting. It is found that, while the respondents refer to a November 8, 2013 telephonic conference and subsequent email exchange vote, the actual date of the telephonic conference and vote is November 7, 2013. See ¶ 27, below.

15. It is found that the November 7, 2013 meeting occurred on the telephone amongst and between the respondent district's board members, and no member of the public was able to attend or witness the telephonic proceedings. It is found that the respondents failed to post a notice and an agenda for such meeting. It is further found that the vote that followed the telephonic meeting occurred by way of email amongst and between the respondent district's board members, and that no record of the vote was created within forty-eight hours of the meeting.

16. It is found that the respondent district only conducts special meetings, as opposed to regular meetings.

17. With regard to the timeliness of the filing of the complaint in this case, it is found that the complainant had notice in fact that the November 7, 2013 meeting had occurred on January 18, 2014. It is therefore concluded that the complaint was timely filed within the meaning of §1-206(b)(1), G.S.

18. It is further concluded that the respondents violated the provisions of §1-225(d), G.S., by failing to post a notice and an agenda for the November 7, 2013 special meeting twenty-four hours in advance of the meeting. It is further concluded that the respondents violated the provisions of §1-225(a), G.S., by conducting a secret meeting and a secret vote, and by failing to prepare a record of vote for public inspection within forty-eight hours of the meeting in question.

19. In addition, it is concluded that the respondents also violated the provision of §1-225(a), G.S., which requires a public agency to prepare meeting minutes within seven days after the date of the session to which such minutes refer. In this regard, it is found that inserting notations about the November 7, 2013 meeting into minutes pertaining to the October 17, 2013 special meeting—a meeting that actually preceded the respondents' secret meeting—is insufficient to satisfy the requirements of §1-225(a), G.S.

20. With regard to the allegations concerning public records, (see ¶¶2.c, and 2.d, above), it is found that, by letter dated January 7, 2014, the complainant requested copies of the following records:

- a. All invoices and agreements relating to the fence installed on Carola Lane and its signage, padlock, and chain;
- b. All correspondence and notices from or to any person relating to the fence installed on Carola Lane and its signage, padlock, and chain;
- c. All minutes, vote tallies, and any other records relating to every meeting of the District's Board, voters, and subcommittee relating to the fence installed on Carola Lane and its signage, padlock, and chain;
- d. All other documents and records of any kind which relate to the fence installed on Carola Lane and its signage, padlock, and chain; and
- e. The receipt or invoice showing the actual cost of photocopying the documents requested in this letter.

21. By letter dated February 10, 2014 and filed February 11, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him a copy of the records described in paragraph 20, above.

22. Section 1-200(5), G.S., provides as follows:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

23. Section 1-210(a), G.S., provides, in relevant part, as follows:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records . . . , or (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or

place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located . . .

. (Emphasis supplied).

24. Section 1-212(a), G.S., provides, in relevant part, that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

25. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

26. Initially, it is found that the complainant in this case desired to inspect the records described in paragraph 20, above, rather than obtain copies of them. It is found, however, that the respondent district’s public records are maintained in various board members’ private homes, as well as in a private storage facility. It is found that neither the board members’ homes, nor the storage facility have regular business hours, during which members of the public can access public records. It is further found that the respondents do not have any other established office or place of business. Based on his knowledge with regard to how and where the district maintains its public records, it is found that the complainant requested copies of the records described in paragraph 20, above.

27. It is found that, by letter dated January 30, 2014, the respondents acknowledged the complainant’s request. It is further found that, attached to the acknowledgement letter, the respondents provided the complainant with nine pages of records. It is found, however, that the many of the records were incomplete. Specifically, it is found that, while the respondents produced one page that evidences the email vote in question occurred on November 7, 2013, all of the various board members’ emails were cut off in such a way that it was impossible to see from the record what the various board members stated and subsequently voted on the issue of the purchase and the installation of the fence described in paragraph 12, above. It is further found that an attachment referred to in the email concerning the board members’ November 7, 2013 vote was not provided to the complainant.

28. It is found that, on July 10, 2014, the respondents produced a complete copy for of the emails referred to in paragraph 27, above. However, it is found that the respondents failed to produce the attachment referred to in paragraph 27, above.

29. The complainant contends that there are additional responsive records that he has yet to receive. Specifically, the complainant contends that he should have received some correspondence between the respondents and an insurance company with regard to the fence installed on Carola Lane. In addition, the complainant contends that there are a host of other public records that should exist with regard to the district’s purchase and installation of the fence on Carola Lane, such as notices, agendas, minutes, and records of votes with regard to the fence purchase, the fence installation, and vendor contracts.

30. It is found that, based on the evidence and because of the dispersed manner in which the respondents maintain the district's records, it is difficult to make a determination with regard to the extent to which records may have been overlooked.

31. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

32. In this case, one hundred and eighty-one days elapsed between the complainant's requests for records in this case, (see ¶ 20, above), and the date on which the respondents provided complete copies of some of the records, (see ¶28, above). Consequently, it is concluded that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S.

33. It is found that, in order to ensure that the complainant has received all of the records responsive to his request, the respondents will have to gather their public records from their various locations and review them.

34. In addition, the respondents should be aware of the decision in the Borough of Woodmont v. FOIC, CV064010811, 2007 Conn. Super. LEXIS 2450, at *17 (Conn. Super. Ct. Sept. 20, 2007). In the Borough of Woodmont, the court affirmed the Commission's decision in which it was held that §1-210(a), G.S., "requires access to public records during regular business hours at an agency's 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."

35. It is concluded that the respondents' current system for maintaining their public records violates the provisions of §1-210(a), G.S., as the district's records are not maintained in either the respondents' office or place of business, with regular business hours, or in the office of the New Fairfield town clerk.

36. With regard to the various remedies and sanctions requested by the complainant, it is found as follows: there is a institutional need in this case for education regarding the requirements of the FOI Act, and, at the hearing, the respondents seemed to embrace the opportunity to receive FOI training, not as a punishment, but as an opportunity to learn the law, and conduct their meetings and maintain their public records accordingly. It is concluded that the respondents are in need of a FOI training session and one is so ordered. The Commission declines to impose a civil penalty in this case. However, in order to get the respondents in compliance with the FOI Act, the Commission will require the respondents to

gather the district's public records and maintain them in a publicly accessible location. See Order, below.

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 ensuring that their meeting minutes and record of votes are available to the public within the statutory timeframes set forth in such section.


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

3. Forthwith, the respondents shall gather the district's public records from the various locations where they are currently maintained, review them and provide to the complainant without cost any responsive record that was not previously provided to him.

4. Forthwith, the respondents shall choose to establish an office and maintain regular business hours, which hours may be on any one day for any length of time not less than one hour per week, or maintain their public records, or a copy thereof, at the New Fairfield town clerk's office. If the respondents choose to establish an office and regular business hours, they shall ensure that the district's public records, or a copy thereof, are maintained at such office.

5. Henceforth, the respondents shall strictly comply with the promptness requirements of §§1-210(a) and 1-212(a), G.S.

6. Forthwith, the respondents, or their designee, shall arrange for a 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