



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2013-809

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

Respondent(s)

October 24, 2014

Transmittal of Proposed Final Decision

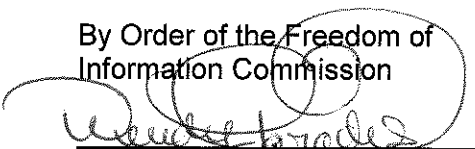
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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, November 19, 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 November 7, 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 November 7, 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 November 7, 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: Leonard Caine, III, Esq.
Chairman, Board of Finance, Town of Morris; Board of Finance, Town of Morris; and Town of Morris
Ed Dorsett

2014-10-24/FIC# 2013-809/Trans/wrbp/MS/PSP/TAH

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ann Carr,

Complainant

Docket # FIC 2013-809

against

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

Respondents

October 22, 2014

The above-captioned matter was heard as a contested case on August 6, 2014, and September 5, 2014, at which times the complainant and 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 dated and filed on December 31, 2013, the complainant appealed to this Commission, alleging that the respondent Board of Finance ("Board") failed to comply with the notice provisions of the Freedom of Information ("FOI") Act for the Board's meeting held on December 11, 2013. At the time of the December 11th meeting and filing of her complaint, the complainant was the Town Clerk of the Town of Morris.
3. Section 1-225(a), G.S., provides in relevant part that: "[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."
4. Section 1-225(c), G.S., provides, in relevant part:

The agenda of the regular meetings of every public agency...shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer...in such

agency's regular office or place of business, and...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state....

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

Notice of each special meeting of every public agency...shall be 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...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. No other business shall be considered at such meetings by such public agency. In addition, such written notice shall be delivered to the usual place of abode of each member of the public agency so that the same is received prior to such special meeting. The requirement of delivery of such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the public agency a written waiver of delivery of such notice. Such waiver may be given by telegram. The requirement of delivery of such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Nothing in this section shall be construed to prohibit any agency from adopting more stringent notice requirements. [Emphasis added].

6. It is found that, on November 14, 2013, the respondent Board filed a copy of the agenda for the Board's December 11th regular meeting with the Town Clerk's Office. It is found that such agenda was posted on the bulletin board at Town Hall and on the Town's website. It is further found that the following items were listed on the agenda:

1. Call to order
2. Introduction of Board Members present
3. Nomination of officers
4. Approval of minutes of previous meeting
5. Introduction of Mr. Zemitis to present results of audit
 - a. Treasurer Ferraro on hand
6. Old business
7. New business
8. Adjourn

7. It is found that on December 10, 2013, Barbara Burch, a member of the Board, emailed six board members (*i.e.*, Patricia Goslee, Tracy Martin, Ronald Emanuel, Edward Dorsett and Larry Sweeney) with copies of the December 11th regular meeting agenda. She also

notified Larry Sweeney, a board member, that she did not have the email addresses for the new Democratic board members and requested that Mr. Sweeney forward the agenda to such members.

8. It is found that prior to December 11, 2013, Mr. Sweeney contacted the First Selectman, who is an ex officio member of the Board of Finance, and informed her that the Democratic board members could not attend the December 11th meeting.

9. It is found that at approximately 9:57 a.m. on December 11th, per the request of the First Selectman, the complainant Carr (who was the town clerk at the time) emailed five board members (*i.e.*, Ms. Burch, Mr. Emanuel, Ms. Goslee, Mr. Sweeney and Mr. Dorsett) and informed them that the December 11th regular meeting was “cancelled” because several board members as well as the Town Treasurer, who was scheduled to be at the December 11th meeting, were unable to attend such meeting. She also indicated that she did not have the email addresses for two of the board members (*i.e.*, Ms. Martin and Jessica MacDonald). Mr. Sweeney later forwarded the complainant’s email to Ms. Martin.

10. It is found that the complainant handwrote “cancelled” across the copy of the original agenda that was posted on the bulletin board as described in paragraph 7, above. It is found that a copy of such agenda was also posted on the entry ways to the Town Hall. It is found that the December 11th meeting was never marked as “cancelled” on the Town’s website.

11. It is found that at 12:15 p.m. on December 11th, Ms. Burch emailed the complainant, as well as five board members (*i.e.*, Ms. Martin, Ms. Goslee, Mr. Sweeney, Mr. Dorsett and Mr. Emanuel), and informed them that she had learned of the complainant’s earlier email canceling the Board’s December 11th regular meeting. Ms. Burch also informed the complainant that if a quorum existed, the Board meeting should take place.

12. It is found that at 2:23 p.m. on December 11th, the complainant emailed Ms. Burch and informed her that the December 11th regular meeting was cancelled per the request of the First Selectman.

13. It is found that at 2:31 p.m. on December 11th, Ms. Burch emailed the complainant and informed her that the Board had a quorum and therefore would meet that night.

14. It is found that at 2:52 p.m. on December 11th, Ms. Burch sent another email to the complainant as well as to the First Selectman and informed them that the Board would meet that night, and that she had been informed that the First Selectman did not have the legal authority to cancel a Board meeting.

15. It is found that the respondents held a meeting on December 11, 2013, at the same time and place as noticed in the original agenda for such meeting. It is also found that a quorum of the Board and several members of the public were present at such meeting. It is found that the Board took the following action at the December 11th meeting: voted to seat new members; discussed the First Selectman’s attempt to cancel such meeting and the Town attorney’s advice regarding the procedure to follow regarding the meeting; voted to appoint Ms. Burch Clerk Pro

Tem until the election of officers; adopted the minutes for their October 9, 2013 and November 13, 2013 meetings; and scheduled the dates and agenda for their other December 2013 meetings.

16. It is found that on the morning after the December 11th meeting, the complainant discovered that the copy of the December 11th regular meeting agenda, which she had marked “cancelled,” had been removed from the bulletin board and replaced with an unmarked copy of the original agenda. It is also found that an investigation was conducted by the state police as to the alleged unauthorized removal of a public record pursuant to Conn. Gen. Stat. §53-153.¹ No testimony was provided at the hearing as to the ultimate outcome of such investigation.

17. At the hearing and in her post-hearing brief, the complainant argued that the respondent Board’s December 11th regular meeting was “cancelled,” and therefore, the Board was required to reschedule such meeting and to provide proper notice in compliance with the notice provisions of the FOI Act. The complainant also contended that the FOI Commission does not possess jurisdiction to overrule the decision by the First Selectman to cancel the Board’s December 11th meeting. According to the complainant, the failure to give proper notice of the regular meeting to all board members thereby resulting in a situation where all members would not be in attendance was a legitimate reason for the First Selectman to cancel the meeting. The complainant contended that, pursuant to Conn. Gen. Stat. §§7-12 and 7-342,² the First Selectwoman was authorized to cancel the December 11th meeting because her decision to cancel the meeting was due in part to her protecting the interests of the Town in insuring that the Board did not violate Connecticut law. The respondent Board contended, however, that the First Selectman had no local or statutory authority to cancel Board meetings. The Board maintained that the December 11th regular meeting was not cancelled and that they had properly noticed such meeting in compliance with the FOI Act.

18. It is found that the FOI Act does not contain any provisions governing the cancellation of meetings, including, but not limited to, provisions establishing who is authorized to cancel a meeting. The FOI Act, however, requires that when public agencies meet, such meetings must comply with the notice provisions in the FOI Act.

¹ Conn. Gen. Stat. §53-153 provides that:

Any person who, wilfully and corruptly, takes away, alters, mutilates or destroys any book, record, document, archive or other property in the possession or custody or under the control of any institution, board, commission, department or officer of the state or any county or municipality or court, or who counterfeits the seal of this state or the seal of any court or public office entitled to have and use a seal, and makes use of the same, or, with evil intent, affixes any of the said true seals to any document, or who has in his possession any such counterfeited seal, and wilfully conceals the same, knowing it to be falsely made and counterfeited, shall be imprisoned not more than ten years.

² Conn. Gen. Stat. §7-12 provides, in relevant part, that: “The selectmen of each town shall...superintend the concerns of the town...” In addition, Conn. Gen. Stat. §7-342 provides, in relevant part, that: “The board [of finance] may hold such regular and special meetings as may be advisable at any time upon giving at least twenty-four hours’ notice to each member before the time of such meeting...”

19. Based upon the facts and circumstances of this case including, but not limited to the fact that the original notice and agenda were posted a few weeks prior to the December 11th meeting, that the time, location and items listed on the agenda were not changed, and that a quorum of the Board and members of the general public were in attendance, it is found that the respondents properly noticed the Board's meeting that was held on December 11th.

20. It is therefore concluded that the respondents did not violate the notice provisions as set forth in §1-225, G.S. of the FOI Act.

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 "Matthew Streeter", with a long horizontal flourish extending to the right.

Commissioner Matthew Streeter
as Hearing Officer