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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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Marissa Lowthert,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-454

Warren Serenbetz, Chairman, Board of Finance, Town of
Wilton; Al Alper, Richard Creeth, Lynne Vanderslice,
Jeffrey Rutishauser, John Kalamarides, as members,
Board of Finance, Town of Wilton; Board of Finance,
Town of Wilton; and Town of Wilton,
Respondent(s)

June 5, 2015

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, June 24, 2015**. 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 June 22, 2015**. 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 June 22, 2015**. **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 **fifteen (15) copies** be filed **ON OR BEFORE June 22, 2015**, 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: Marissa Lowthert
Patricia C. Sullivan, Esq.

2015-06-05/FIC# 2014-454/Trans/wrbp/MS/TCB/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Marissa Lowthert,

Complainant

against

Docket #FIC 2014-454

Warren Serenbetz, Chairman, Board of Finance, Town of Wilton; Al Alper, member, Board of Finance, Town of Wilton; Richard Creeth, member, Board of Finance, Town of Wilton; Lynne Vanderslice, member, Board of Finance, Town of Wilton; Jeffrey Rutishauser, member, Board of Finance, Town of Wilton; John Kalamarides, member, Board of Finance, Town of Wilton; Board of Finance, Town of Wilton; and Town of Wilton,

Respondents

June 5, 2015

The above-captioned matter was heard as a contested case on April 29, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

For purposes of hearing, the above-captioned matter was consolidated with Docket #FIC2014-417; Marissa Lowthert v. Bill Brennan, First Selectman, Town of Wilton; Harold Clark, member, Board of Selectmen, Town of Wilton; Richard Dubow, member, Board of Selectmen, Town of Wilton; Tedd Hoffstatter, member, Board of Selectmen, Town of Wilton; James Saxe, member, Board of Selectmen, Town of Wilton; Board of Selectmen, Town of Wilton; and Town of Wilton.

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 on June 17, 2014, the respondent board held a regular meeting (“the meeting”) during which it convened in executive session.

3. By e-mail sent and received on July 15, 2014, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by:

- a. “failing to state the purpose of the executive session with sufficient specificity;” and
- b. “failing to identify all persons who attended the executive session.”

4. With respect to the complainant’s allegation described in paragraph 3a, above, the complainant stated at the hearing on this matter that her allegation in that regard was specifically that the respondents failed to state the purpose of the executive session on the agenda and at the time the board convened the executive session.

5. In her complaint, the complainant requested that the Commission consider the imposition of a civil penalty, as well as other various remedies, including disclosure of those who attended the executive session.

6. 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 ... (B) strategy and negotiations with respect to a pending claim or pending litigation to which the public agency or a member thereof, because of the member’s conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled

7. Section 1-225(c), G.S., provides as follows:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) in the office of the clerk of such subdivision for any public agency of a political subdivision of the state ...

8. 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.

9. In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC et al., Superior Court, Docket No. CV 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda “is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views,” and that “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.”

10. In Trenton E. Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048, the Commission found that the phrase "executive session - personnel matters" was too vague to communicate to the public what business would be transacted.

11. In Durham Middlefield Interlocal Agreement Advisory Board v. FOIC et al., Superior Court, Docket No. CV 96 0080435, Judicial District of Middletown, Memorandum of Decision dated August 12, 1997 (McWeeny, J.), the court concluded that it was reasonable for the Commission to require something more detailed than “Executive Session Re: Possible Litigation” in a special meeting notice.

12. It is found that the agenda for the meeting included the following relevant item:

2. Executive Session: Litigation

13. It is found that the respondent board convened in executive session specifically to discuss the complainant’s May 12, 2014 letter to the town which it believed fell within the definition of a pending litigation within the meaning of §1-200(9), G.S.

14. It is found that the minutes for the respondent board’s June 17, 2014 regular meeting state in relevant part as follows:

PRESENT: Warren Serenbetz, Al Alper, Jeff Rutishauser,
Richard Creeth, Lynne Vanderslice (on the phone)

ALSO PRESENT: Sandy Dennies, Ken Bernhard, John
Kalamarides, Melissa Lowthert

...

Executive Session: Mr. Serenbetz moved to go into the Executive Session to discuss pending notice of claim and invited Ken Bernhard to attend. The Motion was seconded and carried. Ken Bernhard left Executive Session at 7:20pm. The board come out of Executive Session at 7:30 pm. No actions were taken.

15. With respect to the complainant’s allegation described in paragraph 3a, above, the respondents contended at the hearing on this matter that they did not violate the FOI Act as

alleged by the complainant with respect to the agenda for its meeting because a public agency is not required to notice on the agenda that it convene in executive session.

16. It is found that stating “executive session,” by itself, does not delineate an item of business but rather an executive session is simply a way to conduct the business of a public agency. However, a public agency is required to fairly apprise the public of the business to be transacted the agenda for its meeting whether the business is to be conducted in open session or in executive session.

17. It is found, therefore, that stating that “Litigation” would be taken up as an item of business was not sufficient and failed to fairly apprise the public of the business to be transacted with respect to that item. *See* Kate King and the Stamford Advocate v. Water Pollution Control Authority, City of Stamford, et al., Docket #FIC 2012-502 (May 8, 2013) (“legal strategy” failed to identify with sufficient particularity reason for respondents’ executive session); George Schober v. Janet Tyler, Superintendent, Lebanon Public Schools, et al., Docket #FIC 2011-471 (July 13, 2012) (“Update from legal counsel” listed under executive session failed to fairly and sufficiently apprise the public of the business to be transacted); Richard Stone et al., v. David Palmer, Chairman, Board of Education, Somers Public Schools, et al., Docket #FIC 2012-741 (September 14, 2011) (“legal matters insufficient to inform the public what respondents planned to discuss in executive session); Dostaler v. Water Development Task Force, Town of East Hampton, Docket #2009-333 (March 24, 2010) “pending litigation” failed to adequately apprise the public of business to be transacted).

18. Consequently, it is concluded that the respondents violated §1-225(c), G.S., by failing to fairly apprise the public of all of the business it intended to conduct at its June 17, 2014 regular meeting on the agenda for that meeting.

19. It is also found that, when the respondent board convened in executive session, it did not state the reason for the executive session and therefore, it is concluded that the respondents violated the provisions of §1-225(f), G.S., for failing to state the purpose of the executive session during the public portion of its June 17, 2014 meeting.

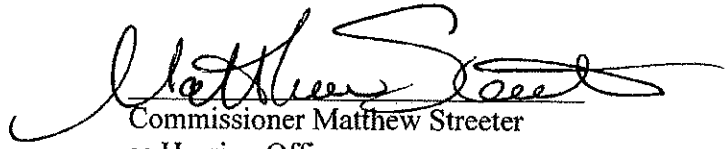
20. Finally, with respect to the allegation described in paragraph 3b, above, §1-231(a), G.S., requires in relevant part “that the minutes of [an] executive session shall disclose all persons who are in attendance.”

21. Based on the facts and circumstances of this case, it is found that the minutes of the respondents’ June 17, 2014 meeting disclose all persons who attended the executive session held during that meeting. Therefore, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant in that regard.

22. Notwithstanding the conclusions in paragraphs 18 and 19, above, the Commission declines to consider the complainant’s request for the imposition of a civil penalty and denies the complainant’s request for the other various remedies, including censure against the respondent board and the law firm representing the respondent board.

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 provisions of §1-225(c) and (f), G.S.



Commissioner Matthew Streeter
as Hearing Officer