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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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Tom Frenaye,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-050

Board of Selectmen, Town of Suffield; and Town of  
Suffield,

Respondent(s)

September 16, 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, October 14, 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 October 2, 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 October 2, 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 October 2, 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: Tom Frenaye  
Charles T. Alfano, Jr., Esq.

2015-09-16/FIC# 2015-050/Trans/wrbp/VDH/VB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Tom Frenaye,

Complainant

against

Docket #FIC 2015-050

Board of Selectmen,  
Town of Suffield; and  
Town of Suffield,

Respondents

September 14, 2015

The above-captioned matter was heard as a contested case on July 6, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter dated January 19, 2015 and filed January 20, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") in the following ways:
  - a. By amending the Board of Selectmen's January 7, 2015 Board of Selectmen's regular meeting agenda by way of a motion without sufficiently describing the action item being added to the agenda;
  - b. By moving the Board of Selectman's January 7, 2015 regular meeting into an executive session without stating the purpose of the executive session;
  - c. By ignoring the request of a prospective selectman to have his candidacy discussed as part of the open meeting, rather than in executive session; and
  - d. By failing to post the January 7, 2015 Board of Selectmen's meeting minutes in a timely manner.
3. Section 1-200(2), G.S., provides, in relevant part, as follows:

"Meeting" means any hearing or other proceeding of a public agency, [and] any convening or assembly of a

quorum of a multimember public agency . . . to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. . . .

4. 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. . . .”

5. 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: . . . (A) Discussion concerning the appointment, employment, performance, health or dismissal of a public officer or employee, provided that such individual may require that the discussion be held at an open meeting. . . .

6. Section 1-225(f), G.S., provides, in relevant part, 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. . . .

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

The agenda of the regular meeting of every public agency . . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer. . . . Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.

8. At the start of the contested case hearing, the complainant indicated that he wished to withdraw the allegations contained in paragraph 2.d, above. Accordingly, the Commission will not address these allegations.

9. With regard to the allegations in paragraphs 2.a and 2.b, above, regarding two motions that were made at one of the Board of Selectman’s regular meetings, it is found that, in December 2014, a member of the Suffield Board of Selectmen took a position as the Suffield Interim Superintendent of Schools. Accordingly, the Board of Selectmen found itself with a vacant selectman’s position that needed to be filled. It is found that, prior to January 7, 2015, the Board of Selectmen received applications from, and/or nominations for, two individuals.

10. It is found that the Board of Selectman held a regular meeting on January 7, 2015 and that one of the action items on the agenda was “Selectman’s Update: Open Positions.”

11. It is found that, at the start of the January 7, 2015 meeting, the First Selectman made introductory remarks, which included the fact that the Board of Selectmen would be adding an executive session to that evening’s meeting agenda in order “to discuss what we heard from any and all parties” interested in the open selectman’s position. It is found that, a short time after the First Selectman’s introductory remarks, one of the other Selectman made the following motion to amend the agenda: “Move to amend the agenda to add an Executive Session.” It is found that the Selectman’s motion was seconded, and approved unanimously.

12. It is found that both of the candidates for the selectman’s position were present at the January 7, 2015 meeting. It is found that the respondents provided the candidates with an opportunity to introduce themselves at the meeting, and address the Board of Selectmen and the public.

13. It is found that, shortly after the candidates introduced themselves, the Selectman who had moved to amend the agenda made a motion to move the meeting into executive session. It is found that the Selectman’s motion did not include a statement of the purpose; rather, the motion was simply, “move to enter executive session.” It is found that the Selectman’s motion was seconded, and approved unanimously.

14. The complainant takes issue with both of the Selectman’s motions because neither motion included an express statement of purpose. See ¶¶ 11, 13, above.

15. This Commission has repeatedly stated that in order for the public to be fairly apprised of the business to be transacted during an executive session, the public agency must give some indication of the specific topic to be addressed, prior to convening such session. Therefore, descriptions such as “personnel,” “personnel matters,” “legal” or even “the appointment, employment, performance, evaluation, health, dismissal of a public officer or employee” are inadequate and do not state the reason for convening in executive session, within the meaning of §1-225(f), G. S. See *Kate King and the Stamford Advocate v. Water Pollution Control Authority, City of Stamford, et al.*, Docket #FIC 2012-502 (May 8, 2013).

16. However, it is found that even the complainant conceded in his complaint that it was abundantly clear why the Selectman was moving the meeting into executive session: “When the Board entered the Executive Session they did not indicate the reason for the session, though it was obvious from the earlier comments that it had to do with the appointment to be made.” It is found that the complainant’s mention of “earlier comments” is a reference to the First Selectman’s introductory remarks. See ¶ 11, above. Accordingly, it is necessarily found that it was also abundantly clear why the Selectman moved to amend the agenda to add an executive session to it, as this motion occurred closer in time to the First Selectman’s introductory remarks than did the motion to move the meeting into executive session.

17. In this case, it is found that the respondents did not expressly state the purpose of the motions at the time the motions were made. However, it is found that these failures are, at best, technical oversights, not rising to the level of a violation of the FOI Act. This

determination is bolstered by the fact that the respondents' failure to state the purpose behind the motions did not impede the public's ability to meaningfully attend the January 7, 2015 meeting; it was readily understood by those in attendance that the purpose of both motions related back to the First Selectman's introductory remarks concerning the two prospective candidates.


18. Finally, with regard to allegations in paragraph 2.c, above, concerning one of the candidates request to be discussed as part of the open meeting, it is found that, as one of the candidates introduced himself at the January 7, 2015 meeting, he stated that he believed in transparent government and that he wanted his candidacy to be discussed as part of the open, public meeting. It is found that, subsequent to the candidate requesting to be discussed as part of the open meeting, the Board of Selectman moved the meeting into an executive session. It is found that the executive session lasted approximately eleven minutes.

19. It is found that the Board of Selectmen did not discuss the candidate who had requested to have his candidacy discussed as part of the open meeting during the executive session; rather, they only discussed the other candidate in executive session. It is further found that, upon the conclusion of the executive session, the Board of Selectman reconvened in the meeting in public and voted to select one the candidates for the vacant position.

20. It is therefore 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 dismissed.

  
Valicia Dee Harmon  
as Hearing Officer