



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Robert Barnes,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-260

Edward Edelson, First Selectman, Town of Southbury;  
Board of Selectmen, Town of Southbury; and Town of  
Southbury,

Respondent(s)

February 4, 2016

### 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, February 24, 2016**. 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 February 16, 2016**. 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 February 16, 2016**. **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 February 16, 2016**, 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: Robert Barnes  
Jeffrey J. Tinley, Esq.

2016-02-04/FIC# 2015-260/Trans/wrbp/MES/VB/KKR

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Robert Barnes,

Complainant

against

Docket #FIC 2015-260

Edward Edelson, First Selectman, Town  
of Southbury; Board of Selectmen, Town  
of Southbury; and Town of Southbury,

Respondents

February 3, 2016

The above-captioned matter was heard as a contested case on August 14, 2015, at which time 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. It is found that on March 12, 2015, and March 25, 2015, the respondent board conducted special meetings (“the meetings”).
3. By letter of complaint dated April 12, 2015, and filed on April 13, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (FOI) Act with respect to executive sessions conducted by the respondents during the meetings.<sup>1</sup> Specifically, the complainant contends that the respondents:
  - (i) convened in executive session for impermissible purposes during the meetings;
  - (ii) failed to specify the business to be transacted at the meetings in the agendas of such meetings;
  - (iii) failed to adequately describe the purpose of the executive session during the March

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<sup>1</sup>Due to the sometimes different circumstances relating to the special meetings, they will be referred to individually at certain points throughout this Report.

25, 2015 special meeting and failed to vote prior to convening in executive session during the March 25, 2015, special meeting.<sup>2</sup>

The complainant also requested the imposition of civil penalties in this matter.

4. With respect to the allegation described in paragraph 3(i), above, §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, that:

‘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, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims 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; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

6. It is found that the purpose of the March 12, 2015, executive session was to discuss personnel matters involving both a municipal police officer and a public works employee. With respect to the public works employee, the specific issue was such employee's safety concerns with the conditions of his employment. The public works employee testified, and it is found, that those concerns were based on alleged actions taken by the complainant, including taking photographs at the employee's job locations during working hours and following the employee around town during working hours. It is further found that the discussion that took place in

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<sup>2</sup>While the complainant asserts in his complaint that the respondents also violated §1-231(b), there was no documentary or testimonial evidence submitted by the complainant at the hearing to advance that claim. Section 1-231(b) provides that, “[a]n executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental agency, unless the executive session is for a purpose explicitly permitted pursuant to subdivision (6) of section 1-200.” Accordingly, such claim is deemed abandoned.

executive session tangentially included some mention of the complainant in the context of those alleged actions. It is further found that during the March 12, 2015, executive session a copy of a communication was distributed to Board members, which referenced both personnel issues and mentioned the complainant in the context of his alleged actions affecting the employment of the public works employee.

7. It is found that also during that the March 12, 2015, executive session, the respondents discussed concerns regarding the complainant's conduct at previous Board of Selectmen meetings, which conduct was unrelated to the personnel issue involving the public works employee.

8. At the hearing in this matter, the respondents contended that the discussion concerning the public works employee and municipal police officer were employment-related and that those employees had a reasonable expectation of privacy, which permitted the discussion in executive session as personnel matters. It is found that most of the discussion which occurred in executive session concerned the appointment, employment, performance, evaluation, health or dismissal of public officers or employees, within the meaning of §1-200(6)(A), G.S. Accordingly, it is concluded that the respondents did not violate §1-225(a), G.S., as alleged in paragraph 3(i), above, with respect to most of the March 12, 2015, executive session.

9. However, it is also found that the discussion of the complainant that was unrelated to those same personnel issues was not a discussion permitted by §1-200(6), G.S. It is further found that there was no basis upon which to exclude the public from that portion of the discussion as it related to the complainant as a private citizen, which was unrelated to the personnel issue involving the public works employee. Accordingly, it is concluded that the respondents violated §1-225(a), G.S., as alleged in paragraph 3(i), above, above with respect to such portion of the March 12, 2015, executive session.

10. With respect to the March 25, 2015, special meeting, it is found that the respondent Board convened in public session on such date and allowed public comments. It is further found that, during the public comments session, the complainant alleged that the March 12, 2015, executive session was improper, and also discussed in public the personnel matter involving the public works employee which was previously addressed in such session.

11. It is found that after hearing the complainant's comments describing the personnel issue discussed in executive session on March 12<sup>th</sup>, the respondent board immediately moved to enter executive session. The respondent First Selectman testified, and it is found, that the executive session was convened specifically to discuss the complainant's comments, which involved the personnel matter involving the public works employee. It is found that the Board confined its discussion in executive session to that personnel matter, within the meaning of §1-200(6)(A), G.S. Accordingly, it is concluded that the respondents did not violate §1-225(a), G.S., with respect to the March 25, 2015, meeting, as alleged in paragraph 3(i), G.S.

12. With respect to the allegation described in paragraph 3(ii), above, §1-225(d), G.S.,

provides in relevant part, that “[n]otice of each special meeting . . . 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.”

13. The Commission has determined that “all matters on an agency’s agenda must be sufficiently specific so that the public is fairly apprised of the matters to be considered at the meeting in question.” Sherry Disbury and the Terryville/Plymouth Community News v. Police Commission, Town of Plymouth, Docket #FIC 2004-091 (Sept. 8, 2004).

14. In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Judicial District of New Britain, Docket No. 99-0497917-S (May 3, 2000, *Satter, J.*), reversed on other grounds, 66 Conn. App. 279 (2001), the court held that the purpose of a meeting agenda “is that the public and interested parties be apprised of matters 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.”

15. It is found that on March 11, 2015, the Board of Selectmen issued an agenda indicating that it planned to hold a special meeting on March 12, 2015, at 7:30 p.m. It is further found that the agenda stated that the Board planned to convene in executive session to discuss a “personnel issue.”

16. It is found that on or around March 24, 2015, the Board of Selectmen issued an agenda indicating that it planned to hold a special meeting on March 25, 2015, at 7:30 p.m. It is further found that the agenda stated that the Board planned to convene in executive session to discuss “personnel issues.”

17. It is found that the agendas for the March 12 and March 25, 2015, special meetings of the respondents did not adequately specify the business to be transacted within the meaning of §1-225(d), G.S. It is concluded that the respondents violated the notice provisions of §1-225(d), G.S., by failing to describe the business to be transacted at its special meetings of March 12 and March 25, 2015, on the agendas for such meetings.

18. With respect to the allegations described in paragraph 3(iii), above, §1-225(f), G.S., provides that “[a] public agency may hold an executive session as defined in subsection (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.”

19. The respondents contend that because the complainant commented specifically on the personnel matter involving the public works employee during the March 25 meeting, it was necessary to convene immediately in executive session to discuss those comments.

20. It is found that, immediately after the complainant made remarks in public about the personnel matter which had been appropriately discussed in executive session at the March 12, 2015, special meeting, the respondent First Selectman moved to convene in executive session to

discuss the matter just brought to their attention by Mr. Barnes. It is found that the respondents' statement prior to convening in the March 25, 2015, executive session was not specific enough to satisfy the requirements of §1-225(f), G.S.

21. It is also found that the minutes of the respondents' March 25, 2015 special meeting merely indicate that the First Selectman moved to enter executive session and that there were no objections.

22. It is concluded that the respondents violated §1-225(f), G.S, as alleged in paragraph 3(iii), above, by convening in executive session without an affirmative vote of two-thirds of the members of such body present and voting and stating the reasons for such executive session.

23. With respect to the complainant's request that the Commission impose a civil penalty against the respondents, and based on the facts and circumstances of this case, the Commission in its discretion declines to impose such a harsh penalty for violations that stem partly from the respondents' misunderstanding of the FOI Act, and partly from their response to the unanticipated actions of the complainant, rather than from any willful violation of the Act.

The following orders by the Commission are 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(a), (d) and (f), G.S.

  
Mary E. Schwind  
as Hearing Officer