

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ed Schwing,

Complainant

against

Docket #FIC 2017-0081

Board of Selectmen,  
Town of Haddam; and  
Town of Haddam,

Respondents

November 15, 2017

The above-captioned matter was heard as a contested case on May 2, 2017, 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 dated and filed February 7, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act in the following ways:
  - a. By entering into an executive session during a January 9, 2017 meeting for an improper purpose;
  - b. By failing to state the purpose of the January 9, 2017 executive session on the meeting agenda with sufficient specificity; and
  - c. By preparing minutes for the January 9, 2017 meeting, which failed to identify who attended the executive session.

3. Section 1-200(2), G.S., provides, in relevant part, as follows:

“Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, 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, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting. . . . 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. Section 1-231(a), G.S., provides as follows:

At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

7. Section 1-225(d), G.S., provides, in relevant part, that “[n]otice of each special meeting of every public agency . . . shall specify . . . the business to be transacted.”

8. It is found that the respondents held a special meeting on January 9, 2017. It is found that agenda for the January 9<sup>th</sup> special meeting contained the following action item:

“Executive Session: Public Health.”

9. It is found that the respondents actually planned on discussing Haddam Public Health, Inc. (“HPH”), an independent, non-profit organization located in Haddam, Connecticut. It is found that HPH serves the Town of Haddam by providing eligible town residents with access to certain services, such as access to a fuel bank, a food bank and limited health services.

10. It is found that the respondents convened an executive session and invited four HPH board members into the executive session so that they could “discuss the future of HPH.” It is further found that the respondents wanted to consider terminating its relationship with HPH because the respondents realized that they might have relationships with other entities providing the same or similar services to town residents.

11. It is further found that the respondents also invited the First Selectwoman’s assistant into the executive session.

12. It is found that the minutes for the January 9<sup>th</sup> special meeting state the following with regard to the executive session: “Duvall made motion to adjourn to Executive Session at 5:04 PM, pursuant to C.G.S. Section 1-200(6)(A). The Executive Session was adjourned at 6:23 PM upon the motion of Duval, seconded by Donlan, [and] the Board returned to Regular Session. No votes were taken during executive session.”

13. It is concluded that, because the minutes do not “disclose all persons who were in attendance” at the executive session, the respondents failed to comply with the requirements of §1-231(a), G.S. However, it is further concluded that, at their March 30, 2017 special meeting, the respondents amended the January 9<sup>th</sup> minutes to show who was in attendance at the executive session.

14. Accordingly, it is concluded that, while the respondents initially violated the provisions of §1-231(a), G.S., they readily cured such violation.

15. The complainant also contends that the description of the executive session was insufficient. See ¶ 8, above.

16. When examining a contention that the description of an agenda item is insufficient, this Commission has repeatedly looked to the reasoning in Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., No. 99-0497917-S, 2000 WL 765186, \*3-4 (Conn. Super. Ct. May 3, 2000), reversed on other grounds, 66 Conn. App. 279 (2001) (“Zoning Board”). In Zoning Board, 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.”

17. It is concluded that the agenda item labeled as “Public Health” was patently insufficient to apprise the public and interested parties that the respondents were intending to go into an executive session to discuss the possible termination of the town’s existing relationship with a private entity.<sup>1</sup>

18. It is therefore concluded that the respondent violated §1-225(d), G.S., by failing to describe sufficiently the business to discussed in the January 9<sup>th</sup> executive session.

19. However, the more concerning matter in this case is the subject matter of the January 9<sup>th</sup> executive session itself.

20. The respondents testified that they believed it would be better to have the HPH discussion in executive session. In this regard, the respondents further testified that the elimination of HPH was a sensitive issue, which garnered much public concern. The respondents further testified that, because this meeting was convened at HPH’s request, they believed that it was possible that the discussion with the HPH board members could lead to a discussion of HPH’s business, including HPH’s employees and the potential for layoffs, and/or a discussion of the kind of services that HPH is providing to certain town residents.

21. It is concluded, however, that these reasons and concerns simply are not permissible topics for an executive session. See Bd. of Estimate and Taxation for the Town of Greenwich, et al. v. FOIC, No. HHB-CV-14-6024209-S, 2014 WL 6844106 (Conn Super. Ct. Oct. 30, 2014) (“Section 1–200(6) defines an executive session as ‘a meeting of a public agency at which the public is excluded’ for one of five specified purposes. This court has narrowly construed these purposes because ‘the general rule under the . . . [a]ct is disclosure. . . .’ New Haven v. FOIC, 205 Conn. 767, 775 (1988); see also Stamford v. FOIC, 241 Conn. 310, 314 (1997) (the overarching legislative policy of the [act] is one that favors the open conduct of government and free public access to government records [internal quotation marks omitted]).” Chairperson, Connecticut Med. Examining Bd. v. FOIC, 310 Conn. 276, 283-84 (2013)”).

22. It is concluded that a discussion concerning the respondents’ continued relationship with HPH does not fall within the language of §1-200(6)(A), G.S., as HPH is a private entity.

23. It is further concluded that a discussion concerning HPH’s business, or the benefit that HPH provides to certain town residents, does not fall within the language of §1-200(6)(E), G.S.

24. It is concluded that the discussion concerning the possible termination of HPH’s relationship with the Town of Haddam should have been conducted in public.

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<sup>1</sup> For clarity’s sake, it is found that in the town’s budget there are line items for donations to non-profits, such as HPH, and, when a town budget gets approved with a line item expenditure for a non-profit, the town gives the allocated funds to the non-profit to use without restriction.

25. Consequently, it is concluded that the respondents convened in executive session during its January 9, 2017 special meeting for an impermissible purpose.

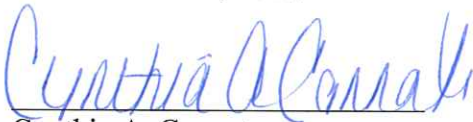
26. In this regard, it is concluded that the respondents violated the FOI Act as alleged in the complaint.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall strictly comply with the requirements of §§1-200(6) and 1-225(d), G.S.

2. Forthwith, the respondents shall, to the best of their ability, create minutes of the January 9, 2017 executive session, to include a detailed account of the discussion that took place and shall forthwith post such minutes with the town clerk and provide a copy, free of charge, to the complainant.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 15, 2017.



Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**ED SCHWING**, 143 Church Hill Road, Haddam, CT 06438

**BOARD OF SELECTMEN, TOWN OF HADDAM; AND TOWN OF HADDAM**, c/o Attorney Brian C. Hoeing, Updike, Kelly & Spellacy, P.C., 100 Pearl Street, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission