

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Jay Hardison,

Complainant

against

Docket #FIC 2018-0053

Michael Harmon, Chairman,
Board of Education, Darien
Public Schools; and Board of
Education, Darien Public Schools,

Respondents

November 14, 2018

The above-captioned matter was heard as a contested case on April 17, 2018, 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 email dated and filed February 2, 2018, the complainant appealed to the Commission, alleging that the Darien Board of Education violated the Freedom of Information (“FOI”) Act by conducting an illegal meeting by way of three email exchanges. In addition, the complainant requested the imposition of civil penalties against the respondents.
3. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies . . . shall be open to the public. . . .”
4. 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.

“Meeting” does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. . . . (Emphasis supplied).

5. It is found that, on January 5, 2018, the complainant received copies of three emails from the respondents and he contends that the second email evidences “an unnoticed, non-public meeting of the Darien Board of Education.”

6. It is found that the first email, dated June 5, 2017, was sent from Ms. Sarah S. Zuro to the eight members of the Board of Education (the “Board”). It is found that, at the time all of the emails at issue in this case were exchanged, Ms. Zuro was the ninth member of the Board and a parent involved in a legal matter concerning her child.

7. It is found that, with regard to the legal matter involving Ms. Zuro’s child, Ms. Zuro and the Board are adverse parties.

8. It is found that Ms. Zuro begins the June 5th email informing the board members that she will not be in attendance “for any portion of your meeting this evening.” It is further found that Ms. Zuro reminds the Board that it is her practice to recuse herself from all Board meetings involving the discussion or consideration of the matter concerning her child. It is found that Ms. Zuro then proceeds to provide a detailed opinion on the matter concerning her child, including setting forth what she believes would be the best approach for the Board to follow so as to to “deescalate” and “resolve” the matter. It is found that Ms. Zuro raises an issue with regard to the mounting legal fees the Board has incurred in dealing with the legal issue involving her child. Finally, it is found that Ms. Zuro indicates that she has “important and specific factual information” concerning the underlying situation involving her child, but that she does not feel she can share this information with the Board.

9. It is found that, based on the content of the June 5th email, Ms. Zuro is addressing the entire Board on “a matter over which the [Board] has supervision, control, jurisdiction or advisory power,” within the meaning of G.S.

10. It is found that the second email, dated June 12, 2017, contains the Chairman of the Board’s response to Ms. Zuro’s email. It is found that, in addition to replying to Ms.

Zuro, the Chairman simultaneously copied such response to each member of the Board. The complainant contends that when the Chairman replied to Ms. Zuro's email by hitting "reply all," he engaged in an unnoticed or illegal meeting.

11. It is found that the Chairman's response focused on Ms. Zuro's contention that she is aware of important and relevant information concerning the underlying legal matter involving the Board, but does not feel she can share such information with the Board. It is further found that the Chairman also responded to Ms. Zuro's contention concerning the Board's mounting legal fees. It is found that both of these subjects concern Board business.

12. Finally, it is found that the third email, dated June 28, 2018, is Ms. Zuro's reply to the Chairman's June 12th response. It is found that all of the subjects raised by Ms. Zuro in her June 28th reply concern Board business. It is found that, once again, each member of the Board is copied on this email.

13. It is found that considering the senders, recipients, and topics discussed, the three emails in question considered together were a "communication . . . to a quorum of a multimember public agency" by way of "electronic equipment, to discuss . . . a matter over which the [Board] has supervision, control, jurisdiction or advisory power," within the meaning of §1-200(2), G.S. Accordingly, it is found that these matters should have been discussed a properly noticed public meeting.

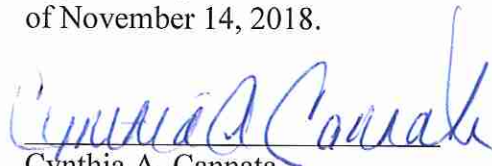
14. With regard to each of the three emails considered together, it is concluded that the respondents violated §1-225(a), G.S., of the FOI Act by conducting unnoticed meetings.

15. Based on the facts and circumstances of this case, including the fact that all three emails at issue in this case were sent and received over a year ago and the fact that the initial email in the trilogy broached subjects in a manner that begged a swift response, the imposition of civil penalties is not merited.

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 comply with §1-225(a), G.S., of the FOI Act.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 14, 2018.



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:

JAY HARDISON, 11 Nearwater Lane, Darien, CT 06820

MICHAEL HARMON, CHAIRMAN, BOARD OF EDUCATION, DARIEN PUBLIC SCHOOLS; AND BOARD OF EDUCATION, DARIEN PUBLIC SCHOOLS, c/o
Attorney Thomas B. Mooney, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919



Cynthia A. Cannata
Acting Clerk of the Commission