

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Derek Donnelly,

Complainant

against

Docket #FIC 2019-0031

Chairman, State of Connecticut, State
Elections Enforcement Commission; and
State of Connecticut, State Elections
Enforcement Commission,

Respondents

May 8, 2019

The above-captioned matter was heard as a contested case on April 9, 2019, at which time the complainant and the respondents appeared 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 of complaint, dated January 17, 2019 and filed January 18, 2019, the complainant appealed to this Commission, alleging that during the January 16, 2019 regular meeting of the respondent commission ("commission"), the commission convened in executive session for an improper purpose, in violation of the Freedom of Information ("FOI") Act.

3. Section 1-225, G.S., provides, in relevant part, that:

(a) [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....

4. Section 1-200(6), G.S., provides:

'[e]xecutive 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.

5. Section 1-231(b), G.S., 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 entity, unless the executive session is for a purpose explicitly permitted pursuant to subdivision (6) of section 1-200.

6. It is found that, on January 16, 2019, the commission held a regular meeting, and that one of the items on the agenda for such meeting was consideration of a hearing officer's report regarding In the Matter of a Complaint by Thomas Brummett, File No. 2018-001B. It is found that the complainant attended the meeting in his capacity as counsel for the subjects of that complaint.

7. It is found that, during the meeting, the commission voted to enter into executive session in connection with the Brummett matter.

8. It is found that, after the executive session concluded, the complainant questioned the propriety of such session. The commission's executive director/general counsel stated that the purpose of the executive session was to provide advice to the commission as to the effect of a recently enacted statutory provision requiring automatic dismissal of a complaint in the event that the commission fails to hear and decide such complaint within one year of its filing. It is found that the executive director/general counsel did not issue a written opinion to the commission containing his legal advice on this issue, but rather, only provided such advice orally during the executive session.

9. It is found that, after the executive session, the commission returned to public session and discussed the Brummett matter in open session. The commission then voted to table the matter so that the hearing officer's report could be modified.

10. It is found that the minutes of the January 16 meeting state that the purpose of the executive session was to "discuss strategy and negotiations with respect to pending claims and exempt records." The minutes further state that the executive session was authorized by §§1-200(6)(E), 1-210(b)(1), (3), (4), (10), and 9-7a, as amended by Public Act 11-48 §300.

11. At the hearing in this matter, however, the respondents conceded, and it is found, that the executive session was improper, as it was not held for one of the purposes identified in §1-200(6), G.S. Counsel for respondents indicated that this was a mistake, that the commission has a very good track record of compliance with the FOI Act, and vowed that such mistake will not occur again in the future.

12. Nonetheless, it is concluded that the respondents violated §§1-225(a) and 1-231(b), G.S.

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 §§1-225(a) and 1-231(b), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 8, 2019.



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:

DEREK DONNELLY, c/o Attorney Derek E. Donnelly, Law Office of Derek E. Donnelly, 68 Bridge Street, Suite 210, Suffield, CT 06078

CHAIRMAN, STATE OF CONNECTICUT, STATE ELECTIONS ENFORCEMENT COMMISSION; AND STATE OF CONNECTICUT, STATE ELECTIONS ENFORCEMENT COMMISSION, c/o Attorney Joshua Foley, State Elections Enforcement Commission, 20 Trinity Street, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission