

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by Hans G. Reichardt, Complainant)	Report of Hearing Officer
)	
against)	Docket #FIC77-157
)	
Town of Prospect, Mayor of the Town of Prospect and the Planning and Zoning Commission of the Town of Prospect,)	September 20, 1977
Respondents)	
)	

The above captioned matter was heard as a contested case on September 2, 1977 at which time the complainant and respondents appeared and presented testimony and argument on the complaint.

After consideration of the entire record, the following facts are found:

1. The respondent commission is a public agency under §1-18a(a), G.S.
2. The respondent commission held a public meeting on August 3, 1977 which was preceded by an executive session.
3. By letter of appeal received by this Commission on August 15, 1977 the complainant alleged that the executive session was convened improperly.
4. The respondent commission admitted that the executive session violated the requirements of §1-21, G.S., in that the procedures required of a public agency which convenes in executive session were not followed.
5. The respondent commission claimed, however, that the purpose of the executive session was proper under either §1-18(e)(2), G.S. or §1-19(b)(3)(B), G.S. as it is incorporated into §1-18(e)(5), G.S.
6. Several days prior to the convening of the executive session in question a landfill operation on property located on Route 69 had been stopped by the respondent mayor.
7. The mayor is ex officio a member of the respondent commission under §§8-4a G.S. which incorporates §8-19, G.S.
8. Through his attorney the owner of the property which was affected by the mayor's order pursued various strategies in order to resume his landfill operations. There were threats of litigation, meetings with the town attorney, and an application for a permit to fill was submitted to the respondent commission.

9. The executive session in question was held by the respondent commission in response to a request by the town attorney and in reliance on his advice that the executive session was proper under the Freedom of Information Act.

10. It is found that the primary subject matter of the executive session was the scope of the respondent commission's authority both to entertain a specific application for a permit to conduct a landfill operation and to impose conditions on that landfill operation.

11. It is concluded that there was no proper purpose for the executive session under §§1-18(e)(5) and 1-19(b)(3)(B), G.S., in that no records of a law enforcement agency would have been subject to disclosure had the meeting been open to the public.

12. It is further concluded that while the respondent commission was threatened with litigation, such litigation had neither been commenced nor was it imminent at the time of the executive session. Thus there was no proper purpose for the executive session under §1-18(e)(2), G.S.

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

1. Henceforth the respondent commission shall meet in executive session only for the purposes stated in §1-18(a)(e), G.S. in accordance with the procedures set forth in §1-21, G.S.

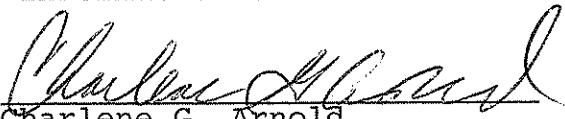
2. The complainant has called the Commission's attention to an earlier stipulation whereby the respondent commission agreed not to hold illegal executive sessions. While the findings herein do not justify the imposition of a penalty, the respondent should note that both procedural and substantive requirements of the Freedom of Information Act must be observed, and that failure to observe these requirements in the future could result in the imposition of a more severe remedy by this Commission.



Commissioner Judith A. Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on
October 12, 1977.



Charlene G. Arnold
Clerk of the Commission