

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Neal E. Yates and The Hartford
Courant

Complainants

against

the City of Torrington, City
Council of the City of Torrington;
and the Mayor of the City of
Torrington

Respondents

Report of Hearing Officer

Docket #FIC80-58

January 13, 1981

The above entitled matter was scheduled for hearing on April 16, 1980, at which time the parties appeared and presented evidence and argument on the complaint.

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

1. The respondents are public agencies within the meaning of §1-18a(a) G.S.
2. By letter filed with the Commission on February 26, 1980, the complainant alleged that on February 19, 1980 the respondent Council had held two improper executive sessions.
3. The first violation was alleged to have occurred when the Council moved into executive session to discuss expenses related to the election, including the performance of the Registrars of voters.
4. The second violation which was alleged to have occurred was an executive session dealing with the proposed personnel director's position where the discussion was alleged not to have been within the proper purpose set forth at §1-18a(e)(1) G.S.
5. The complainant requested that the Commission find the violations were willful in view of the fact that the City Council members have had enough experience to be thoroughly familiar with the requirements of the Freedom of Information Act.
6. On February 13, 1980, the Registrars and Deputy Registrars received a notice to meet with the City Council to "discuss your report on positions and fees for elections, primaries, etc."

7. On February 19, 1980, the Registrars appeared as required at the City Council meeting

8. Councilman Teti made a motion to hold an executive session for the purpose of discussing personnel matters, but before going into executive session the Registrars were asked whether they wanted the discussion held in public.

9. The Registrars stated that they wished to have the executive session held in public.

10. Then the respondent Council voted to close the executive session to the public.

11. §1-18a(e)(1) G.S. provides in relevant part that "'executive session' means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (1) 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" (emphasis provided).

12. It is found that the Registrars are public officers or employees within the meaning of §1-18a(e)(1) G.S.

13. It is further found that it was improper for the respondent Council to hold an executive session after the Registrars stated that they wished an open session because under §1-18a(e)(1) G.S. the choice as to whether the discussion should be closed or open to the public is that of the employee or public officer being discussed rather than that of the public agency.

14. At the same February 19 meeting the Mayor made a motion to go into a second executive session for the purpose of discussing, among other items, "personnel".

15. The Mayor discussed the need for the proposed position of personnel director, the role of the proposed personnel director in negotiations, problems relating to procedures for hiring and promotion and, by way of illustration, some matters involving pending labor relations problems.

16. The respondents failed to prove that any of the discussion of the above related to any specifically identified public officer or employee.

17. It is found that none of the foregoing matters fall within any of the proper purposes for an executive session which are set forth at §1-18a(e)(1) G.S. because none of it related to the discussion

of a specifically identified public officer or employee.

18. It is further found that none of the other purposes stated at §1-18a(e) G.S. provides justification for the executive session discussion of the proposed position for the personnel director.

19. It is concluded on the basis of the foregoing findings of facts and law that both of the executive sessions which were at issue violated the open meetings requirements at §1-21 and §1-18a(e) G.S.

20. The respondent Mayor has been a public official for at least four years.

21. Although it was proved that the respondents were not newly elected, it is found that the complainant failed to prove the violations which occurred were willful.

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

1. The respondents shall henceforth comply with the open meetings requirements of §1-18a(e) G.S. and §1-21 G.S.

2. The Commission urges the members of the respondent Council to become familiar with the requirements of the Freedom of Information Act. While the elements necessary to prove a willful violation were not found here, it does not seem reasonable for any public official to allow himself to remain unschooled in the requirements of the law over a period of several years.

Judith A. Lahey
Commissioner Judith A. Lahey
as Hearing Officer

Approved by Order of the Freedom of Information Commission at its regular meeting of January 28, 1981.

Wendy Rae Briggs
Wendy Rae Briggs
Clerk of the Commission