

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

David Razler (The Chronicle)

Docket #FIC83-163

Complainant(s)

vs.

State Elections Commission,  
State of Connecticut

May 23, 1984

The above captioned matter was scheduled for hearing November 1, 1983 at which time the parties presented evidence and argument on the complaint. After hearing but prior to issuance of a hearing officer's report the respondent requested and was granted a rehearing by the hearing officer. In early December the hearing officer granted intervenor status to J. D. Eaton, Executive Director and General Counsel to the Ethics Commission.

The rehearing was held January 10, 1984 at which time the parties and the intervenor appeared. The respondent presented additional evidence at that time and all sides presented argument.

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

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. By complaint dated July 28, 1983, the complainant alleged that the respondent met in illegal executive sessions on July 13 and July 24, 1983 to consider settlement of a complaint by Arthur P. Meisler.
3. The complainant further alleged that the respondent illegally withheld records concerning the settlement of the Meisler complaint.
4. The respondent claimed its actions were proper because they were permitted under §1-18a(e)(2), §1-18(a)(e)(5), G.S., §1-19(b)(3), §1-19(b)(4), G.S. and under its own regulations.

5. The complaint filed by Meisler alleged certain violations of the elections laws by candidate for first selectman and by his campaign treasurer.

6. After investigation of the alleged violation the respondent met in executive session first on July 13, 1983 to authorize settlement negotiations with respect to the Meisler complaint and to set the parameters for the civil penalty which would be part of the settlement.

7. Subsequently on July 27, 1983 the respondent met in executive session to consider whether to approve the settlement which had been negotiated by its general counsel.

8. After the settlement agreement was approved on July 27, 1983, it was made public.

9. The settlement was entitled "An Agreement Containing a Consent Order to Pay a Civil Penalty for Violations of Section 9-336h of the General Statutes."

10. §1-18a(e)(2), G.S. permits an executive session for conducting "strategy and negotiations with respect to pending claims and litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled."

11. §1-19(b)(4), G.S. permits a public agency to exempt from disclosure records pertaining to strategy and negotiations with respect to pending claims and litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled.

12. It is found that the complaint of Meisler alleging violations of the election laws constituted a claim pending before the elections commission within the meaning of §1-18a(e)(2) and §1-19(b)(4), G.S.

13. It is found that the respondent elections commission is a party to the Meisler complaint because it, rather than the complainant, is authorized by regulations to dispose of complaints of election law violations by consent order.

14. It is further found that the respondent elections commission is a party to the Meisler complaint because it set the parameters of the negotiations with respect to the consent agreement and negotiated the settlement which resulted in the consent order.

15. It is concluded therefore that the action of the respondent in holding the two executive sessions complained of

and in withholding the consent agreement until it was approved by the respondent was lawful and did not constitute a violation of the Freedom of Information Act.

16. Section 9-7(b)(11), G.S. provides that the elections commission shall be deemed a law enforcement agency for the purposes of subdivision (3) of subsection (b) of Section 1-19 "to the extent that the elections commission is involved in the investigation of alleged or suspected criminal violations of any provisions of the general statutes pertaining to or relating to any such election, primary or referendum and is engaged in such investigation for the purpose of presenting evidence to the chief state's attorney."

17. It is found that the respondent failed to prove that it should be deemed a law enforcement agency for the purposes of §1-19(b)(3), G.S. and therefore that the applicability of that section and §1-18a(e)(5), G.S. need not be considered herein.

18. The claim of the intervenor that the executive session was proper and the document in issue exempt under the attorney-client privilege will not occasion analysis herein beyond the already stated recognition of the applicability of the statutory exemption from disclosure for records at §1-19(b)(4), G.S. and for executive sessions at §1-18(a)(e)(2), G.S.

19. The claim of the respondent that the requested documents were exempt from disclosure under its regulations need not be considered here because the documents are exempt from disclosure under Section 1-19(b)(4), G.S.

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

1. The complaint is hereby dismissed.

Approved by order of the Freedom of Information Commission at its regular meeting of May 23, 1984.

  
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Mary Jo Jolicoeur  
Clerk of the Commission