

Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Guy Sullivan,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2011-640

Frank Reed, Acting Chairman, State of Connecticut, Connecticut Council on Developmental Disabilities; Molly Cole, Executive Director, State of Connecticut, Connecticut Council on Developmental Disabilities; Membership Committee, State of Connecticut, Connecticut Council on Developmental Disabilities; and State of Connecticut, Connecticut Council on Developmental Disabilities,

Respondent(s)

September 28, 2012

### Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, October 24, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE October 12, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE October 12, 2012**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE October 12, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis  
Acting Clerk of the Commission

Notice to: Guy Sullivan  
Jane D. Comerford, AAG

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Guy Sullivan,

Complainant

against

Docket #FIC 2011-640

Frank Reed, Acting Chairman,  
Connecticut Council on Developmental  
Disabilities; Molly Cole, Executive  
Director, State of Connecticut,  
Connecticut Council on Developmental  
Disabilities; Membership Committee,  
State of Connecticut, Connecticut Council  
on Developmental Disabilities; and State  
of Connecticut, Connecticut Council on  
Developmental Disabilities,

Respondents

September 27, 2012

The above-captioned matter was heard as a contested case on July 18, 2012, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above captioned matter was consolidated with Docket #FIC 2012-010, Guy Sullivan v. Chairman, State of Connecticut, Connecticut Council on Developmental Disabilities; and State of Connecticut, Connecticut Council on Developmental Disabilities.

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 November 22, 2011 and filed on November 23, 2011, the complainant, a member of the Connecticut Council on Developmental Disabilities ("the council"), appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by conducting "secret" meetings during July and August of 2011, at which time the respondents' Membership and Support Committee ("the committee") considered and voted to recommend the council's then acting chairman "as the sole candidate for chairman" of the council. The complainant specifically alleged that "the votes and nominating process, [during such alleged meetings, were] kept secret" from the public, as well as "who attended and what was

discussed." The complainant also alleged that the council's website "contains no information about [the committee's] meeting, posted no agenda, nor meeting notice and kept no minutes of meeting(s) held, though finally disclosed today [sic]." The complainant further alleged that all members of the council were not aware of the committee's secret meetings "until after said meeting(s)." The complainant requested that the Commission order the following relief to remedy respondents' alleged violations of the FOI Act:

- a. "[i]mmediately Order that any and all nominations for Chair, Vice-Chair and members in general made by the Membership Committee, including those recently submitted to Governor Malloy's office, be declared null and void to avoid the Governor from embarrassment by the alleged illegal activities of the Membership Committee;
- b. [i]mmediately revoke the Chair and Vice-Chair as having been, upon knowledge and belief, improperly nominated and voted for in secret at some meeting held at some point in time, on or around August 2nd, 2011, by the Membership Committee;
- c. [i]mmediately issue a Cease & Desist Order against all current and future activities of the "Membership Committee" including any known or unknown sub-committee, task force or ad-hoc group improperly assuming a role as a nominating committee acting or claiming to act in the name of the Connecticut Council on Developmental Disabilities;
- d. [t]hat the FOI Commissions having found such violations, Order all actions, decisions, determinations, solicitations of candidates, interviews, job offers, nominations, elections, votes, motions and other such work as the Membership Committee conducted at meetings held in secret in 2011 be declared fully null and void;
- e. [o]rder the immediate disclosure of the dates of any and all secret meetings held without public notice, agendas and publicly posted minutes by the Membership Committee;
- f. [t]he production of documents associated with any and all secret meetings held by the Membership Committee;
- g. [r]equire the Connecticut Council on Developmental Disabilities comply with the Freedom of Information Act and provide public access to all documents associated with the Membership Committee;
- h. [r]equire fines against member of the Membership Committee, in attendance at the secret meeting(s). A training session conducted by the Commission's Public Information Officer on June 14th, 2011 at a regularly scheduled Council meeting was ignored and therefore

training has been ineffective and therefore moot as a possible solution; and

- i. [g]rant such other and further relief as may be deemed just and proper."

3. It is found that the alleged violations occurred more than 30 days before the date of the complainant's appeal to this Commission.

4. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed within thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed within thirty days after the person filing the appeal receives notice in fact that such meeting was held.

5. It is found that the complainant filed his appeal within thirty days after receiving notice in fact, within the meaning of §1-206(b)(1), G.S., of such alleged meetings.

6. It is concluded, therefore, that the Commission has jurisdiction to consider the complainant's appeal in this matter.

7. With respect to the complainant's claim regarding secret meetings held in July and August 2011, described in paragraph 2, above, §1-200(2), G.S., provides in relevant part that:

"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 . . . . intended for the purpose of discussing matters relating to official business.

8. Section 1-210(a), G.S., provides in relevant part that "[e]ach such agency shall make, keep and maintain a record of the proceedings of its meetings."

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

(a) the meetings of all public agencies . . . shall be open to the public . . . .

(c) The agenda of the regular meeting of every public agency. . . shall be available to the public and shall be filed, not less than twenty-four hours before the meeting to which they refer, (1) in such agency's regular office or place of business, and (2) . . . in the office of the clerk of such subdivision for any public agency of a political subdivision of the state or in the office of the clerk of each municipal member of any multitywn district or agency . . . Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings . . . .

(d) Notice of each special meeting of every public agency... shall be given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof ...in the office of the clerk of such subdivision for any public agency of a political subdivision of the state.... The...clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting; provided, in case of emergency...any such special meeting may be held without complying with the foregoing requirement for the filing of notice but a copy of the minutes of every such emergency special meeting adequately setting forth the nature of the emergency and the proceedings occurring at such meeting shall be filed with the...the clerk of such political subdivision...not later than seventy-two hours following the holding of such meeting. The notice shall specify the time and place of the special meeting and the business to be transacted.

10. The Commission takes administrative notice of its decision in Docket #FIC 2011-227; Guy R. Sullivan v. Anita Tremarche and Frank Reed, Transition Committee, State of Connecticut, Council on Developmental Disabilities, and Transition Committee, State of Connecticut, Council on Developmental Disabilities. This decision concluded that proceedings of the council's Transition Committee were meetings within the meaning of §1-200(2), G.S., and that the Transition Committee violated the meeting provisions of §1-225, G.S., when it failed to post its agendas and comply with the notice and minutes requirements of the FOI Act.

11. At the hearing on this matter, the complainant contended that in addition to the alleged secret meetings specifically held by the committee on July 7, 2011, August 2, 2011 and August 9, 2011, the committee allegedly held a secret meeting on August 30, 2011, as reflected in the minutes of the respondent committee's January 30, 2012 regular meeting. The complainant also contended that the committee considered and voted to recommend the then acting chairman, Frank Reed, "as the sole candidate for chairman" of the council during the secret meetings. The complainant further claimed that the respondents failed to provide him or the public with notices, agendas and minutes pertaining to such secret meetings.

12. It is found that the committee is charged with the following responsibilities:

- a. "[r]ecruit, interview, and present to the Governor, at least annually, a listing of viable nominees for membership on the Council;
- b. [s]olicit information from Council members regarding potential nominees;
- c. [e]nsure that the staggering of memberships, and any other provisions of these by-laws regarding membership, are maintained;
- d. [d]evelop and implement programs, with staff assistance, for enhancing the effectiveness of members with regard to participation in Council affairs; and
- e. [t]o submit nominations for Chair and Vice Chair for which elections are to be held at the annual meeting."

13. It is found that, on July 7, 2011, August 2, 2011 and August 9, 2011, the committee held meetings during which members considered and voted to recommend to the council nominees for chairman and vice chairman (hereinafter "the meetings").

14. It is found that, at the respondent council's September 13, 2011 regular meeting, the committee nominated Frank Reed for Chair and Maryann Lombardi for Vice Chair of the council, after which, the council voted and unanimously elected both nominees.

15. At the hearing in this matter, the respondents conceded, and it is found that, with regard to the July 7, 2011, August 2, 2011 and August 9, 2011 meetings, they did not give notice or post an agenda prior to such meetings. The respondents also conceded that they failed to timely draft minutes of such meetings. However, the respondents' director credibly testified that she does not recall that there was an August 30, 2011 committee meeting, despite the reference to such meeting in the minutes of the respondent committee's January 30, 2012 regular meeting.

16. It is found that the respondents' director also testified that upon starting as director of the council on July 1, 2011, she was immersed in uncompleted projects left by the prior director. She further testified that her inadvertent failure to follow the notice,

minutes, and meetings requirements of the FOI Act was in part due to her immersion in the task of completing an outstanding five-year plan for submission in Washington.

17. It is found that based on the findings in paragraphs 12, 13, 14, 15 and 16, above, the respondents held proceedings to discuss and act upon a matter over which they have supervision, control, jurisdiction or advisory power when the committee met to discuss nominees for chair and vice chair of the council and subsequently submitted such nominees for election during the council's September 13, 2011 regular meeting. It is also found that such committee meetings constituted planned meetings intended for the purpose of discussing matters relating to "official business," within the meaning §1-200(2), G.S.

18. It is concluded, therefore, that the respondents held meetings on July 7, 2011, August 2, 2011 and August 9, 2011 within the meaning of §1-200(2), G.S., which meetings were not regularly scheduled meetings of the committee and therefore were special meetings.

19. As to the alleged August 30, 2011 secret meeting referenced in the minutes of the respondent committee's January 30, 2012 regular meeting, it is found that there is insufficient evidence to conclude that the respondents conducted such meeting, particularly since the respondents' director openly conceded that the committee conducted meetings on July 7, 2011, August 2, 2011 and August 9, 2011. The respondents' director credibly testified that she does not recall an August 30, 2011 committee meeting despite the committee's adoption of the August 30, 2011 committee minutes at its the January 30, 2012 meeting. Based on the findings in paragraphs 13 through 18, above, it is found that the respondent committee held no meeting within the meaning of 1-200(2), G.S., relevant to this complaint, other than those described in paragraph 18, above.

20. It is found that, despite the fact that the committee's January 30, 2012 regular meeting minutes reference minutes of an August 30, 2011 meeting of the committee, the committee held no such meeting on August 30, 2011 and no minutes of an August 30, 2011 committee meeting exist.

21. However, it is found that the respondents did not provide notices, agendas or minutes for the July 7, 2011, August 2, 2011 and August 9, 2011 meetings of its committee.

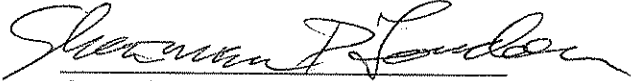
22. It is therefore found that the respondents failed to notice and make available on their website an agenda for the July 7, 2011, August 2, 2011 and August 9, 2011 meetings; consequently, it is concluded that the respondents violated §1-225(a) and (d), G.S., in that regard.

23. Based on the foregoing, it is concluded that the respondents violated the open meetings provisions of §1-225(a), G.S., by failing to hold its July 7, 2011, August 2, 2011 and August 9, 2011 meetings in public.

24. Under the facts and circumstances of this case, the Commission, in its discretion, declines to grant the specific forms of relief requested by the complainant in paragraph 2, above, including a civil penalty.

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

1. Forthwith, to the extent possible, the respondents shall create minutes for every meeting of the Membership and Support Committee, except those for which minutes already exist. Such minutes shall contain, at least, the names of all in attendance, items discussed, any motions, and a record of all votes. All minutes of the Membership and Support Committee shall be available to the public as required by §1-225, G.S.
2. Henceforth, the respondents shall comply with §1-225, G.S.

  
Commissioner Sherman D. London  
as Hearing Officer