



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Mary Beth Litrico,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-026

President, Eighth Utilities District, Town of
Manchester; and Eighth Utilities District, Town
of Manchester,

Respondent(s)

September 3, 2013

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, September 25, 2013**. 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 September 13, 2013**. 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE September 13, 2013**. **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 September 13, 2013**, 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: Mary Beth Litrico
John D. LaBelle, Jr., Esq.

9/3/13/FIC# 2013-026/Trans/wrbp/MS/LFS/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Mary Beth Litrico,

Complainant

against

Docket #FIC 2013-026

President, Eighth Utilities District, Town
of Manchester; and Eighth Utilities
District, Town of Manchester,

Respondents

August 28, 2013

The above-captioned matter was heard as a contested case on June 4, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts 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 filed January 17, 2013, the complainant appealed to this Commission, alleging that the respondents' board of directors violated the Freedom of Information ("FOI") Act by convening in executive session at their special meeting of December 26, 2012, to discuss the complainant's job performance without providing her the opportunity to require that the discussion be held in an open meeting. In addition, the complainant alleged that the respondents "on numerous occasions held Executive Sessions to discuss Job Descriptions."
3. By letter filed January 22, 2013, the complainant also alleged that the respondents held an improper executive session at their meeting of December 3, 2012, to discuss a "job description" and that she recently learned that such discussion concerned her performance as clerk of the respondents' board of directors.
4. With respect to the meeting of December 3, 2012, described in paragraph 3, above, §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 not later than thirty days after such denial, except in the case of an unnoticed or secret

meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held.

5. It is found that the December 3, 2012 meeting was neither unnoticed nor secret.

6. It is found that the notice of appeal in this matter was filed more than 30 days after the December 3, 2012 executive session.

7. It is concluded that the Commission lacks subject matter jurisdiction to address alleged violations occurring at the December 3, 2012 meeting.

8. With respect to the complainant's allegation, described in paragraph 2, above, that the respondents "on numerous occasions" improperly discussed "job descriptions" in executive session, it is found that the complainant's appeal lacked specific dates of alleged violations.

9. It is concluded, therefore, that this portion of the complainant's appeal also fails to satisfy the threshold requirement of §1-206(b)(1), G.S., requiring a notice of appeal to be filed within thirty days of the alleged violation.

10. With respect to the balance of the complainant's appeal, described in paragraph 2, above, §1-225(a), G.S., provides, in relevant part that "[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..."

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

"Executive 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

12. It is found that the notice for the December 26, 2012 meeting listed "executive session on Job Performance – Elected Official."

13. It is found that the elected official discussed at the December 26, 2012 executive session was the tax collector, not the complainant.

14. It is found that the respondents did not discuss the complainant's job performance in executive session on December 26, 2012.

15. It is found that the respondents did discuss the complainant's job performance at executive sessions convened during their meetings of November 5, 2012 and January 22, 2013,

and that on both occasions they provided the complainant with the opportunity to have such discussions in an open meeting.


16. It is concluded that the respondents did not violate §1-200(6)(A), G.S., of the FOI Act.

17. At the hearing in this matter, the complainant observed that her letters to the Commission would not have been necessary had the District's agendas been more precise in identifying specific topics to be discussed in the executive sessions.

18. The Commission has repeatedly stated that in order for the public to be fairly apprised of the business to be transacted during an executive session, the public agency must give some indication of the specific topic to be addressed, prior to convening such session. See, Carlson v. Board of Education, East Granby Public Schools, Docket #FIC2007-388 (March 12, 2008) ("personnel matters" violated FOIA notice requirement for executive session); Trenton E. Wright, Jr. v. First Selectman, Town of Windham, Docket #FIC 1990-048 ("executive session - personnel matters" too vague); Boman v. Connecticut Resources Recovery Authority, Docket #FIC1990-24 (September 26, 1990) ("personnel matters" on agenda too vague to communicate to public what topics would be discussed).

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

1. The complaint is dismissed.


Commissioner Matthew Streeter
as Hearing Officer