



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

Henry Gowan Dacey, Jr.,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-021

Thomas Herrman, Member, Building Subcommittee, Board of Education, Easton Public Schools; Edward Nagy, Member, Building Subcommittee, Board of Education, Easton Public Schools; Bernard Josefsberg, Member, Building Subcommittee, Board of Education, Easton Public Schools; Adam Dunsby, Member, Building Subcommittee, Board of Education, Easton Public Schools; Margaret Sullivan, Member, Building Subcommittee, Board of Education, Easton Public Schools; Steve Rowland, Member, Building Subcommittee, Board of Education, Easton Public Schools; Andrew Kachele, Member, Building Subcommittee, Board of Education, Easton Public Schools; Daniel Underberger, Member, Building Subcommittee, Board of Education, Easton Public Schools; and Board of Education, Easton Public Schools,

November 1, 2013

Respondent(s)

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 **special 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, December 18, 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 November 29, 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 November 29, 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 November 29, 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

A handwritten signature in cursive script, appearing to read "W. Paradis", written over a horizontal line.

W. Paradis
Acting Clerk of the Commission

Notice to: Henry Gowan Dacey, Jr.
Ira W. Bloom, Esq.
Henry J. Zaccardi, Esq.

11/1/13/FIC# 2013-021/SpecialMtgTrans/wrbp/VDH//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Henry Gowan Dacey, Jr.,

Complainant

against

Docket #FIC 2013-021

Thomas Herrman, Member, Building Subcommittee, Board of Education, Easton Public Schools; Edward Nagy, Member, Building Subcommittee, Board of Education, Easton Public Schools; Bernard Josefsberg, Member, Building Subcommittee, Board of Education, Easton Public Schools; Adam Dunsby, Member, Building Subcommittee, Board of Education, Easton Public Schools; Margaret Sullivan, Member, Building Subcommittee, Board of Education, Easton Public Schools; Steve Rowland, Member, Building Subcommittee, Board of Education, Easton Public Schools; Andrew Kachele, Member, Building Subcommittee, Board of Education, Easton Public Schools; Daniel Underberger, Member, Building Subcommittee, Board of Education, Easton Public Schools; and Board of Education, Easton Public Schools,

Respondents

November 1, 2013

The above-captioned matter was heard as a contested case on September 18, 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 email dated and filed January 14, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by forming a subcommittee of the Easton Board of Education, and holding meetings without following the requirements in the FOI Act for posting agendas and preparing minutes. The complainant requested the imposition of civil penalties against all of the individually named respondents.

3. It is found that Thomas Herrman is the First Selectman for the Town of Easton. It is found that Edward Nagy is the Town Engineer for the Town of Easton. It is further found that Margaret Sullivan is the Director of Finance and Operations for Easton, Redding and Region 9 School Districts.

4. It is found that, approximately eight years ago, the Town of Easton constructed a high school. It is further found that, since the high school was built, there has been and continues to be a problem with the school's heating and air conditioning systems and/or controls, commonly referred to as the building management system ("BMS").

5. It is found that, up until June 2012, the Board of Education refused to "accept" the high school, meaning that it would not sign off on the construction, issue payment for certain bills incurred, and consider the building under its jurisdiction. It is further found that, once the Board of Education signed off on the high school, the building and its associated BMS problem became the board's responsibility.

6. It is found that in June 2012, after the Board of Education signed off on the high school, the Superintendent of Schools approached Ms. Sullivan about the high school's continuing BMS problem. It is found that the Superintendent is Ms. Sullivan's direct supervisor. It is further found that the import of the conversation between the Superintendent and Ms. Sullivan was that Ms. Sullivan was charged with the task of finding a solution for the high school's continuing BMS problem. It is found that Ms. Sullivan was further informed that the BMS problem should be corrected as soon as possible.

7. It is found that, subsequent to her charge, Ms. Sullivan solicited the assistance of certain individuals who she believed would have some insight into the BMS issue or would otherwise be helpful. It is found that these individuals, including Ms. Sullivan, First Selectman Herrman, Town Engineer Nagy, Dr. Daniel Underberger, the Chairman of the Board of Education, Glen Maiorano, a member of the Board of Education, as well as Steve Rowland and Andrew Kachele, two private citizens, referred to themselves as both a "study group" and a "work group." It is found that the purpose of this group was to assess, analyze and find a solution for the high school's BMS problem, and to report their progress to the Board of Education.

8. It is concluded that the work group was a public agency within the meaning of §1-200(1), G.S., during its existence.

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

[a]ny 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

10. Section 1-200(2), G.S., defines meeting as follows:

. . . any hearing or other proceeding of a public agency. . . to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.

11. Section 1-225(a), G.S., provides in relevant part that:

The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. . . .Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet web site. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

12. Section 1-225(d), G.S., provides in relevant part that:

[n]otice 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

13. At the start of the contested case hearing, the respondents conceded that they should have considered the work group a subcommittee of the Board of Education, subject to the provisions of the FOI Act. The respondents explained that, in their haste to resolve the BMS problem, they did not realize that they had in fact created a subcommittee. The respondents contended, however, that any violations of the FOI Act that the work group may have committed with regard to their meetings are

now time-barred.

14. It is found that between July 12, 2012 and December 19, 2012 the work group convened five times. Specifically, it is found that the work group met on the following dates: July 12, 2012, August 13, 2012, August 20, 2012, November 14, 2012, and December 19, 2012. It is found that the work group ultimately recommended that a private company be hired to address the BMS problem. It is further found that subsequently the company was hired and the BMS problem was addressed and resolved. It is found that after December 19, 2012 meeting, the work group disbanded.

15. Despite the complainant's contention that the meetings of the work group were conducted in secret and with the intention of violating of the FOI Act, it is found that members of the work group referred to both the group's meetings and the progress that the group was making several times during the public meetings of the Board of Education. In fact, it is found that the complainant attended the Board of Education's August 23, 2012 meeting, at which time a private engineer addressed the board with regard to the scope of the work necessary to address the BMS problem. It is further found that the minutes of the August 23rd meeting evidence that the progress of the study group was discussed at this meeting. In addition, it is found that the minutes summarize business discussed at the August 23rd meeting as follows:

A study group, consisting of Andy Kachele, Steve Rowland, and Ed Nagy, along with Dr. Underberger and Mr. Maiorano, met to discuss the various approaches to find a solution to the heating/cooling issues at SSES. An RFQ (Request for Qualifications) for energy management services was prepared. The request was for services to review the situation at SSES, what was working, what was not working and what could be better. In addition, all municipal buildings would be looked at, including heating/cooling, lighting, roof, etc. The primary focus would be on the SSES heating/cooling issues.

The RFQ was issued and resulted in four proposals. The study group reviewed the proposals, narrowed the field to two, met with the two finalist firms, and recommended that a contract be awarded to Honeywell Energy & Environmental Solutions.

Doreen Hamilton, Honeywell representative, was present for the meeting. . . .

16. It is found that the work group would not have intentionally violated the requirements of the FOI Act only thereafter to discuss its illegal meetings in public. It makes more sense and it is found that the work group was formed under urgent circumstances, and began to address its objective, without realizing that it was, in fact, a subcommittee of the Board of Education subject to the provisions of the FOI Act.

17. In any event, it is found that, because the complainant attended the August 23rd meeting, he had notice in fact that some sort of a work or study group had formed and was meeting to address the BMS problem on August 23, 2012. It is therefore found that any issue that the complainant had with regard to the work group's meetings from July 12, 2012, August 13, 2012, or August 20, 2012, should have been brought to this Commission's attention within 30 days of August 23, 2012.

18. It is concluded that, because the complaint in this case was not filed within thirty days of August 23, 2012, the Commission does not have jurisdiction over the work group's July 12, 2012, August 13, 2012, August 20, 2012 meetings.

19. However, based on the complainant's testimony, it is found that the complainant had notice in fact of the work group's November 14, 2012 and December 19, 2012 meetings sometime in late December 2012.

20. It is therefore concluded that the Commission does have jurisdiction over the work group's November 14, 2012 and December 19, 2012 meetings.

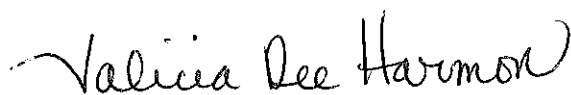
21. It is found that the meetings of the work group conducted on November 14, 2012 and December 19, 2012 were "meetings" within the meaning of §1-200(2), G.S.

22. It is found that the work group failed to file notices of the November 14, 2012 and December 19, 2012 meetings and also failed to prepare minutes for such meetings.

23. It is concluded that that work group violated §1-225(a) and (d), G.S., by holding unnoticed meetings and by not preparing minutes for said meetings.

24. The Commission declines to consider the imposition of a civil penalty.

Based on the facts and circumstances of this case, no order by the Commission is hereby recommended.



Valicia Dee Harmon
Valicia Dee Harmon
as Hearing Officer