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FREEDOM OF INFORMATION
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Robert Gross,
Complainant(s)
against

Recycling Committee, Town of Wallingford,
Respondent(s)

Notice of Meeting

Docket #FIC 2013-069

December 4, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, January 8, 2014.** 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 December 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 December 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 December 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

W. Paradis
Acting Clerk of the Commission

Notice to: Robert Gross
Janis M. Small, Esq.

12/4/13/FIC# 2013-069/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

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| In the Matter of a Complaint by | Report of Hearing Officer |
| Robert Gross, | |
| Complainant | |
| against | Docket #FIC 2013-069 |
| Recycling Committee,<br>Town of Wallingford, | |
| Respondents | December 4, 2013 |

The above-captioned matter was heard as a contested case on September 9, 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 respondent is a public agency within the meaning of §1-200(1), G.S.

2. By letter of complaint filed February 13, 2013, the complainant appealed to the Commission, alleging that Donald Roe, the head of the Wallingford Program Planning Department, violated the Freedom of Information ("FOI") Act by denying him the right to attend the respondent Recycling Committee's January 17, 2013 regularly scheduled meeting. The complainant requested that a civil penalty be levied against Mr. Roe, and also against town attorney Gerald Farrell, whom the complainant believes should have advised Mr. Roe of his FOI Act responsibilities, and Mayor Williams Dickinson, whom the complainant also believes should have directed Mr. Roe to permit the complainant's attendance at the Recycling Committee meeting.

3. It is found that the Town of Wallingford originally created a recycling committee in the 1980's, and that that committee was dissolved when it completed its mandate to establish town-wide recycling.

4. It is found that the current Recycling Committee is not a direct successor of the 1980's committee, although it appears to perform a related function; that is, primarily to promote the continuation of recycling in the town of Wallingford.

5. It is found that the current Recycling Committee meets under the supervision of the head of the Wallingford Program Planning Department, Mr. Roe, whose umbrella department oversees solid waste management planning, as well as development activities and grants in other areas.

6. It is found that this group of volunteers, called the Recycling Committee, meets monthly with Mr. Roe in a meeting room at town hall in order to be updated by Mr. Roe on the status of town recycling efforts, including changes in the contractor or changes in the materials that are accepted for recycling, and that this group of volunteers plans and staffs, under Mr. Roe's authority, recycling promotional events in the town, such as Earth Day, art contests promoting recycling, the sale of backyard composters, and the like.

7. It is found that the agenda of the January 17, 2013 meeting from which the complainant was excluded was:

- Recycling Center update
- Compost Center Update
- Resident Disposal Center Update
- Art Recycling Contest Planning
- Summary of Governor's Recycling Work Group Recommendations
- Next Meeting

8. It is also found that the complainant had also been earlier excluded from the Recycling Committee's September 18, 2012 meeting, for which the agenda provided:

- Recycling Center update
- Compost Center Update
- Resident Disposal Center Update
- Discussion Re: Memorial for Walter Sawallish
- Covanta Solid Waste Permit Informational Meeting – October 4, 2012
- New Programs/Potential New Programs: Goodwill Donation Box; Catalog Choice
- Single-stream Recycling Re-education
- Celebrate Wallingford Oct. 6-7, 2012: Opt-Out Theme, Terra Cycle Collection Programs, Carbon Cycle Display; Work Sign-up
- America Recycles Day – Trunk Sale Nov. 4, 2012
- Next Meeting – October 18, 2012

9. It is found that the complainant expected to be permitted to attend the January 17, 2013 meeting, because he had contacted the town attorney following his exclusion from the September 18, 2012 meeting, and been assured that the town attorney had spoken to the mayor, and the complainant was certainly entitled to attend the Recycling Committee's meetings.

10. It is found, however, that neither the town attorney nor the mayor informed Mr. Roe that the Recycling Committee's meetings were to be open, and that the town attorney subsequently changed his mind about the issue, without so informing the complainant.

11. It is found that when the complainant showed up at the January 17, 2013 meeting, he was told by Mr. Roe that unless the complainant left, the meeting would be cancelled. The complainant acquiesced and left. It is therefore found that the complainant was denied the opportunity to attend the January 17, 2013 meeting.

12. The respondents contend that the complainant was not entitled to attend the September 18, 2012 meeting because it was an administrative meeting.

13. Section 1-225(a), G.S., provides in relevant part: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."

14. Section 1-200(2), G.S., provides in relevant part:

> "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.

15. Section 1-200(2), G.S., provides in relevant part: "'Meeting' does not include: an administrative or staff meeting of a single-member public agency...."

16. The phrase "administrative or staff meeting" is not defined in the FOI Act.

17. Black's Law Dictionary defines "administrative" as follows: "Connotes of or pertains to administration, especially management, as by managing or conducting, directing, or superintending, the execution, application or conduct of persons or things."

18. Webster's Third New International Dictionary Unabridged (Merriam-Webster 1993) defines "administration" in relevant part as:

> ... performance of executive duties: management, direction, superintendence; ... the management of public affairs as distinguished from the executive or political function of policy making....

19. It is found that the volunteer members of the Recycling Committee do not perform an executive or political function of policy making. It is further found that there

was no evidence that the volunteers themselves have supervision, control, jurisdiction or advisory power over recycling activities in the town.

20. It is found that Mr. Roe manages, directs or superintends the efforts of the Recycling Committee to promote and support recycling activities.

21. It is also found that the volunteers comprising the Recycling Committee resemble unpaid staff—that is, they "staff" booths at events such as Earth Day, and they have some unspecified role in the sale of backyard composters and such events as school art competitions promoting recycling.

22. It is found that, fundamentally, the complainant was not excluded from a meeting at which governmental policies or decisions were discussed or formulated. Rather, it is found that the complainant was excluded from a meeting of volunteer recycling activists working under the supervision of Mr. Roe.

23. It is therefore concluded that, under the facts and circumstances of this case, the meetings from which the complainant was excluded were essentially administrative or staff meetings of Mr. Roe, exercising his authority to superintend the efforts of volunteers to promote recycling activities in the Town of Wallingford.

24. It is further concluded, therefore, that the respondent did not violate the FOI Act as alleged.

25. There being no violation of the FOI Act found in this case, the Commission has no basis on which to consider the imposition of civil penalties.

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.

Victor R. Perpetua
As Hearing Officer

HOR/FIC2013-069/VRP/12042013