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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2013-733

David Reed, Chairman, Economic Development
Committee, Town of Somers; Economic
Development Committee, Town of Somers; and
Town of Somers,
Respondent(s)

October 2, 2014

Transmittal of Proposed Final Decision Dated October 2, 2014

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 dated October 2, 2014, 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 22, 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 October 14, 2014*. 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 October 14, 2014*. **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 14, 2014* 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: Barry Moynihan; Sarah Bollinger, Esq.
Carl T. Landolina, Esq.

2014-10-02/FIC# 2013-733/Trans/wrbp/MS/PSP/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Barry Moynihan,

Complainant

against

Docket # FIC 2013-733

David Reed, Chairman,
Economic Development Committee,
Town of Somers; Economic Development
Committee, Town of Somers; and
Town of Somers

Respondents

October 2, 2014

A hearing was originally scheduled in the above-captioned matter for June 17, 2014, at which time the respondents appeared with a witness but the complainant failed to appear. A hearing officer's report was issued on June 17, 2014, with the recommendation that the Commission dismiss the complaint for failure to prosecute. At the July 9, 2014 regular meeting of the Commission, the complainant moved to reopen the matter, which motion was granted by the Commission.

The above-captioned matter was heard as a contested case on August 6, 2014, at which time the complainant and respondents appeared to present 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 November 25, 2013, and later supplemented on November 27, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by:
 - a. failing to provide 24-hour notice of the respondents' November 25, 2013 special meeting;

- b. holding the November 25th special meeting in a small office behind the First Selectman's office so the general public would not know where to go if they wanted to attend;
- c. informing the complainant and others attending the November 25th special meeting that they were not allowed to be at the meeting because the respondents were going to discuss confidential information; and
- d. failing to list an executive session on the agenda and to state that the respondents were going into executive session.

The complainant also requested the imposition of civil penalties against the respondent Chairman.

3. Sections 1-225(a) and 1-225(d), G.S., provide in relevant part that:

The meetings of all public agencies, except executive sessions... shall be open to the public.... Notice of each special meeting of every public agency.... shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and 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 and in the office of the clerk of each municipal member for any multitown district or agency. The secretary or clerk shall cause any notice received under this section to be posted in his office.... The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency....

4. Section 1-225(f), G.S., further provides that:

A public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.

5. It is found that the respondents held a special meeting on November 25, 2013.

6. It is also found that shortly after the start of the November 25th special meeting the respondents informed the complainant and other members of the public that they had to leave the meeting because the respondents had important business to discuss.

7. It is found that the agenda for the November 25th special meeting included the date, time and location (*i.e.*, Selectmen Conference Room) of such meeting, but did not list an executive session as an item on the agenda. It is also found that although the minutes of the November 25th special meeting reflected that the respondents discussed a potential business opportunity in Somers and that no motions were made and no votes taken, the minutes did not reflect that the respondents voted to, or entered into, executive session nor did the minutes state the purpose for an executive session.

8. It is found that the respondents did not vote to enter into executive session nor state a purpose for entering into executive session at the November 25th special meeting.

9. With respect to the complainant's allegations in paragraph 2[b], above, it is found that there was no intent on the part of the respondents to limit attendance to the meeting by purposely holding the November 25th special meeting in the Selectmen Conference Room.

10. With respect to the complainant's allegations in paragraphs 2[a], 2[c] and 2[d], above, it is found that the respondents failed to post the agenda for the November 25th special meeting within 24 hours of such meeting as required by the FOI Act. In addition, it is found that the respondents' agenda for the November 25th special meeting failed to reasonably apprise the public of the business to be transacted in the executive session. It is also found that the respondents failed to properly vote and enter into executive session. Accordingly, it is concluded that the respondents violated §1-225, G.S., in this matter.

11. Based upon the facts and circumstances of this case, the Commission declines to impose civil penalties against the respondents.

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

1. Henceforth, the respondents shall strictly comply with the meeting provisions set forth in the FOI Act.


Commissioner Matthew Streeter
as Hearing Officer