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FREEDOM OF INFORMATION



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Art Reid,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-226

Fire Commission, Town of Fairfield; and Town of Fairfield,
Respondent(s)

February 19, 2015

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, March 25, 2015**. 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 March 13, 2015**. 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 March 13, 2015**. **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 March 13, 2015**, 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: Art Reid
Stanton H. Lesser, Esq.

2015-02-19/FIC# 2014-226/Trans/wrbp/PSP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Art Reid,

Complainant

Docket # FIC 2014-226

against

Fire Commission,
Town of Fairfield; and
Town of Fairfield,

Respondents

February 19, 2015

The above-captioned matter was heard as a contested case on October 30, 2014, at which time only the complainant appeared and presented testimony, exhibits and argument on the complaint. The respondents failed to appear.

Subsequently, by facsimile dated October 31, 2014, to the Commission, the respondents moved to reopen the matter, which motion was granted by the hearing officer.

The above-captioned matter was heard again on December 4, 2014, at which time the complainant and 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 dated April 16, 2014, and filed on April 17, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by discussing his contract during an executive session at its March 21, 2014 special meeting without providing him with the opportunity to have such discussion take place in public session. The complainant requested that the Commission investigate the claims as he described in his complaint and to take any and all appropriate actions including voiding any actions taken regarding his contract at the March 21st special meeting.
3. Section 1-225, G.S., provides, in relevant part, that:

(a) [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....

(f) 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.

4. Section 1-200(6), G.S., defines “executive session”, in relevant part, as:

...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... and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

5. It is found that between 2002 and 2014 the complainant served as the Deputy Chief of the Fire Department for the Town of Fairfield. It is found that the complainant’s contract was subject to renewal. It is found that, under the terms of the contract, the Board of Fire Commissioners and First Selectman were required to advise the complainant as to whether or not they wished to enter into a successor contract not later than nine months prior to the expiration of such contract. It is found that the complainant’s contract was renewed and extended several times since December 2002.

6. It is found that the complainant’s most recent contract was for the time period from January 1, 2013 through December 31, 2014. It is found that in January 2014, the complainant contacted the Chairman of the Fire Commission to remind the respondents that such contract was up for renewal. It is also found that the complainant requested that all discussions pertaining to the renewal of his contract be conducted in public session and not in executive session.

7. It is found that the respondents held special meetings in February 2014 and March 2014. It is found that the complainant was present at both meetings.

8. It is found that the initial discussions regarding the renewal of the complainant’s contract were conducted by the respondents at their February 2014 meeting, in public session. It is found that the respondents did not vote to take action regarding the complainant’s contract at that time.

9. It is found that one of the agenda items for the respondents’ March 21st special meeting was “Discuss Deputy Chief’s Contract.”

10. It is found that at the March 21st special meeting a motion was made to not renew the complainant's contract which was followed by a brief discussion. It is found that, prior to voting on the motion, the respondent Chairman, as reflected in the minutes, "wanted one more opportunity to [go] over procedures in Executive Session." It is found that the motion not to renew was then tabled and the respondents unanimously voted to go into executive session. It is found that the minutes for the March 21st special meeting reflect that the respondents entered into executive session "to discuss a legal document protected by section 1-2-10b [sic]." It is further found that after coming out of executive session a second motion was made to not renew the complainant's contract. The motion carried 5-2, without further discussion.

11. At the hearing, the complainant maintained that the respondents went into executive session for an improper purpose and contrary to his request for any discussion of his contract to take place in public session. The respondents contended that they properly went into executive session to discuss a written legal opinion and that the only matters discussed in executive session were those addressed in such opinion. The respondents contended that they did not discuss the complainant's performance, employment or health.

12. Section 1-210(b)(10), G.S., permits an agency to withhold from disclosure records of "communications privileged by the attorney-client relationship."

13. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

14. Section 52-146r(2), G.S., defines "confidential communications" as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

15. The Supreme Court has also stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, *supra* at 149.

16. It is found that, prior to the March 21st special meeting, the respondents requested that the Town attorney provide them with some rudimentary advice regarding the contracts for the Chief and Deputy Chief positions. It is found that the attorney provided a written legal opinion to the respondents to consider at their March 21st special meeting. A copy of such legal opinion was submitted to the Commission for in camera inspection after the hearing. Such document is identified as IC-2014-226-1 through IC-2014-226-4.

17. It is found that the legal opinion, described in paragraph 16, above, is a written communication transmitted in confidence between counsel and public officials or other employees acting within the scope of their employment with the respondent agency. It is further found that the opinion relates to legal advice sought by the public agency from its attorney, received by the public officials acting on behalf of the agency from its attorney.

18. It is found that, during the March 21st special meeting, the respondents voted to enter into executive session to discuss the legal opinion described in paragraphs 16 and 17, above. It is found that the attorney who drafted such legal opinion was invited into the executive session. It is found, as credibly testified to by such attorney, that, during the executive session, the respondents discussed the issues addressed in the legal opinion, only, and did not discuss the renewal of the complainant's contract, nor did they discuss his performance, employment or health.


19. It is concluded that the respondents convened in executive session for a proper purpose under §§1-200(6)(E) and 1-210(b)(10), G.S.

20. It is found that the respondents' discussion of the complainant's contract renewal was conducted entirely in public session at its March 21st special meeting.

21. Based upon all of the foregoing findings of fact and a careful review of the legal opinion, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is hereby dismissed.


Paula Sobral Pearlman
as Hearing Officer