



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106  
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Mark Dumas,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-079

Joseph Kubic, Chairman, Town Council, Town  
of Stratford; Town Council, Town of Stratford;  
and Town of Stratford,  
Respondent(s)

September 1, 2015

## Transmittal of Corrected Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the corrected 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 Thursday, September 24, 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 September 11, 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 September 11, 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 **fifteen (15) copies** be filed **ON OR BEFORE September 11, 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

Cynthia A. Cannata  
Acting Clerk of the Commission

Notice to: Mark Dumas  
Michael S. Casey, Esq.

2015-09-01/FIC# 2015-079/Trans/cac/VDH/VB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Corrected Report of  
Hearing Officer

Mark Dumas,

Complainant

against

Docket #FIC 2015-079

Joseph Kubic, Chairman, Town  
Council, Town of Stratford; Town  
Council, Town of Stratford; and  
Town of Stratford,

Respondents

September 1, 2015

The above-captioned matter was heard as a contested case on June 26, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the matter was consolidated with Docket #FIC 2015-099; Mark Dumas v. Chairman, Town Council, Town of Stratford; Town Council, Town of Stratford; and Town of Stratford. 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 and filed February 2, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by improperly convening in executive session during their January 12, 2015 regular meeting to discuss three agenda items. In the complaint, the complainant requested that the Commission consider the imposition of the maximum civil penalty against the respondents, as well as consider declaring any action taken in the executive session to be null and void.
3. Section 1-200(2), G.S., provides, in relevant part, as follows:

"Meeting" means any hearing or other proceeding of a public agency, [and] any convening or assembly of a quorum of a multimember public agency . . . to discuss or act upon a matter over which the public agency has

supervision, control, jurisdiction or advisory power. . . . A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.

4. Section 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. . . .”

5. Section 1-200(6), G.S., provides, in relevant part, as follows:

“Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: . . . (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; . . . (Emphasis supplied).

6. It is found that the Stratford Town Council held a regular meeting on January 12, 2015. It is further found that the agenda for such meeting included the following items of business:

- a. Proposed Lease of 576-600 East Broadway;
- b. Broadbridge Ave. (lot 64) – sell property to adjoining property owner; and
- c. Portable ice skating rink at Longbrook Park.

7. The complainant contends that the respondent Town Council improperly convened in executive session to discuss the agenda items described in paragraph 6, above. In addition, the complainant explained at the contested case hearing that, with regard to each item, counsel for the respondents suggested that the respondents adjourn to executive session for the purpose of “contract negotiations.”

8. With regard to the agenda item concerning the “portable ice skating rink,” (see ¶6.c., above), it is found that the members of the Wilcoxon Elementary School’s fathers’ club proposed to place a portable ice skating rink on the elementary school’s grounds during the winter months for the children. It is found that the proposal by the fathers’ club was a simple request originally directed to the town’s Parks and Recreation Department and the Planning

Commission. Thereafter, it is found that the Parks and Recreation Department and the Planning Commission forwarded the request with favorable recommendations to the Town Council for final approval or denial. It is further found that the request never involved a “lease, sale, purchase or construction” of real estate, within the meaning of §1-200(6)(D), G.S.

9. Accordingly, it is found that the discussion concerning whether or not to approve the fathers’ club’s request regarding a portable ice skating rink should not have occurred in executive session. It is therefore concluded that the respondents violated the open meeting provisions of §1-225(a), G.S., by convening in executive session for an impermissible purpose.

10. With regard to the agenda items concerning the proposed lease of 576-600 East Broadway, (see ¶6.a., above), and the sale of lot 64 on Broadbridge Avenue, (see ¶6.b., above), it is found that the complainant’s testimony and documentary evidence established that, at the time of the respondent Town Council’s January 12, 2015 meeting, these two properties were owned by the Town of Stratford. However, it was the complainant’s position that discussing these two properties during the open portion of the meeting at issue would not have had an “adverse impact” on either the price of the proposed lease or the contemplated sale.

11. While the respondents’ counsel appeared at the contested case hearing, the respondents did not appear to testify about the reasoning involved in convening an executive session for the purpose of discussing the proposed lease or the contemplated sale.

12. It is generally understood that, with the exception of a few narrowly defined circumstances, which are set forth in §1-200(6), G.S., the meetings of a public agency must be open to the public. Accordingly, the definition of public meetings in §1-200(2), G.S., “must be read to limit rather than to expand the opportunities for public agencies to hold close meetings.” See Glastonbury Educ. Ass’n v. FOIC, 234 Conn. 704, 712-13 (1995). In addition, the burden of establishing the appropriateness of denying the public access to a portion of a public meeting rests squarely on the respondents. See Dir., Dep’t of Info. Tech. of Town of Greenwich v. FOIC 274 Conn. 179, 191 (2005).

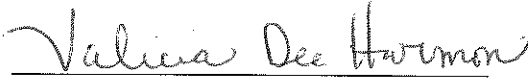
13. The respondents failed to prove that discussing either the proposed lease or the contemplated sale during the open portion of the January 12, 2015 meeting would have adversely impacted the price of the said lease or sale. Consequently, it is concluded that the respondents violated the open meeting provisions of §1-225(a), G.S., by discussing the items described in paragraph 6.a and 6.b, above, in executive session.

14. With regard to the requested remedies, no evidence was presented at the contested case hearing which would tend to show that any kind of decision making or voting occurred during the respondents’ executive session. However, the respondent Town Council did create minutes of its January 12, 2015 executive session. Upon review of such minutes (which is a document separate from the minutes created for the open session of the January 12, 2015 meeting), it appears that, in addition to the violations addressed above, there are other irregularities with regard to the manner in which the respondents are conducting executive sessions. A monetary penalty would not be the best way to help the respondents understand all of the limitations and requirements of conducting an executive session. Accordingly, while the

complainant's request for monetary civil penalties is denied, it is concluded that the respondents are in need of a FOI training session and one is so ordered.

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 requirements of §1-225(a), G.S.
2. Forthwith, the respondents, or their designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.

  
Valicia Dee Harmon  
Valicia Dee Harmon  
as Hearing Officer