

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Scott Parsons,

Complainant

against

Docket #FIC 2017-0574

President, Bantam Fire Company; and
Bantam Fire Company,

Respondents

August 8, 2018

The above-captioned matter was heard as a contested case on February 27, 2018, and July 10, 2018, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2017-0573, Scott Parsons v. Chairman, Committee of Inquiry, Bantam Fire Company; Committee of Inquiry, Bantam Fire Company; and Bantam Fire Company.

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 of complaint, dated September 21, 2017, postmarked September 22, 2017, and received and filed September 25, 2017, the complainant appealed to this Commission, alleging that respondents violated the Freedom of Information (“FOI”) Act by convening in executive session for an improper purpose during meetings held on June 6, 2017, and August 1, 2017. The complainant also alleged that he was the subject of the discussions held during such executive sessions, and that the respondents failed to notify of him that he would be so discussed.
3. The respondents moved to dismiss the complaint on the grounds that: (a) the complainant failed to file his complaint within 30 days of the alleged violations of the FOI Act; and (b) the discussions that occurred during the executive sessions did not pertain to “public safety, expenditure of public funds or other public business,” and therefore were outside the jurisdiction of the FOI Act.
4. It is found that the complainant had been a member of the respondent fire company for approximately 40 years until he was “expelled by a unanimous vote of members

of the fire company” in August 2017, for “conduct unbecoming to a member of the Company.” Specifically, according to the respondents, the complainant was expelled because he was “hostile and aggressive” toward other members of the respondent fire company, and such conduct “damaged the fraternal bonds of the members and they no longer wanted to socialize with him.” It is further found that, approximately 18 months prior to the complainant’s expulsion, the superior court had imposed a civil protection order against the complainant prohibiting the complainant from having contact with the fire company and its members.

5. With regard to the respondents’ claim that the complaint was not timely filed, §1-206(b)(1), G.S., provided at the time of the alleged violations and at the time the complaint was filed with the Commission, in relevant part:

[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 not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held.¹ (Emphasis added).

6. 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. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken. 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

¹ In Lowthert v. Freedom of Information Commission and Bruce Hampson, Chairman of Miller Driscoll Building Committee, HHB-CV-15-6030425-S (superior court, judicial district of New Britain, January 17, 2017), the superior court ruled that “notice in fact” in §1-206(b)(1), G.S., meant actual notice received by the person appealing, and did not include constructive notice, i.e., notice that is inferred from facts that a person had a means to know and is thus imputed to that person. During the 2017 legislative session, the General Assembly legislatively overruled the Lowthert decision by passing SB 983, which became Public Act 17-86. Public Act 17-86 amended §1-206(b)(1), G.S., by deleting the phrase “notice in fact” in §1-206(b)(1), G.S., and substituting the phrase “actual or constructive notice.” The stated effective date of Public Act 17-86 is October 1, 2017.

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 website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

(c) [t]he agenda of the regular meetings of every public agency... shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2)... in the office of the clerk of such subdivision for any public agency of a political subdivision of the state....

7. It is found that the respondent fire company held regular meetings on June 6, 2017, and August 1, 2017. It is found that the agendas and minutes pertaining to these meetings were timely filed and posted with the town clerk. With regard to the June 6 meeting, it is found that the minutes and the testimony at the hearing in this matter established that the respondents did not meet in executive session or discuss the complainant in open session, during such meeting. Therefore, even if the jurisdictional question was resolved in the complainant's favor with respect to the June 6 meeting, the evidence demonstrates that the respondents did not violate the FOI Act, as alleged, with respect to such meeting. Thus, the Commission declines to further consider the allegations with respect to the June 6 meeting.

8. The complainant alleged in his complaint that he became aware of the August 1 meeting on August 24, 2017, and argued, therefore, that he had "notice in fact," as that term was interpreted by the Lowther court (see footnote 1), of the alleged improper executive session on August 24, 2017. According to the complainant, the Lowther court's interpretation of "notice in fact" controls the jurisdictional question in this case because such interpretation was the law in effect at the time he filed his complaint. According to the complainant, his complaint was timely filed because it was filed within 30 days of August 24, 2017.

9. The complainant further argued that the August 1 meeting was secret or unnoticed because the agenda did not indicate that an executive session would be held² and the respondents failed to give notice to him that he would be discussed in executive session.

10. With regard to the August 1 meeting, it is found that such meeting was not unnoticed, based on the finding, in paragraph 7, above, that the agenda and minutes were timely filed. Regarding whether or not the meeting was "secret," it is found that, although the agenda for the August 1 meeting does not reflect that the respondents intended to hold an

² The Commission notes that "executive session" is not an agenda item which is required to be listed on an agenda, but rather, is a means of discussion of a particular agenda item.

executive session, the minutes of the August 1 meeting reflect that the respondents did hold an executive session during such meeting.

11. Without deciding whether the executive session that took place during the August 1 meeting was held for a proper purpose under the FOI Act, it is concluded that the August 1 meeting was not “secret,” and that any person, including the complainant, had the opportunity, beginning 24 hours prior to such meeting, to review the agenda and, within 7 days after each meeting, to review the minutes of such meeting. To the extent any person believed the respondents violated the FOI Act with regard to the August 1 meeting, such person could and should have filed a complaint with the Commission alleging such violation, within 30 days of the alleged violation.

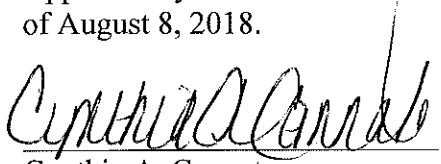
12. Because the August 1 meeting was not secret or unnoticed, it is concluded that the exception to the filing deadline in §1-206(b)(1), G.S., for unnoticed or secret meetings does not apply in this case.³ It is therefore concluded that the complainant was required under §1-206(b)(1), G.S., to file his complaint with respect to the August 1, 2017 meeting within 30 days of the alleged improper executive session, or by August 31, 2017.

13. Because the complainant did not file his complaint with respect August 1 meeting until September 22, 2017, at the earliest, which is more than 30 days after the alleged violation, it is concluded that the Commission lacks jurisdiction to adjudicate such complaint. Accordingly, the Commission need not consider the respondents’ alternative ground for dismissal.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 8, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

³ Thus, the Commission need not decide in this case whether the Lowther court’s interpretation of “notice in fact” in §1-206(b)(1), G.S., applies, or whether the current version of §1-206(b)(1), G.S., controls.

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

SCOTT PARSONS, c/o Attorney M. Leonard Caine, Caine and Caine, 38 Central Avenue, Waterbury, CT 06702

PRESIDENT, BANTAM FIRE COMPANY; AND BANTAM FIRE COMPANY, c/o Attorney James Stedronsky, Stedronsky & Meter, LLC, 62 West Street, PO Box 1529, Litchfield, CT 06759

A handwritten signature in black ink, appearing to read 'Cynthia A. Cannata', written over a horizontal line.

Cynthia A. Cannata
Acting Clerk of the Commission