

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Spilo,

Complainant

against

Docket #FIC 2023-0338

Chair, Central Middle School Building
Committee, Greenwich Public Schools;
Central Middle School Building Committee,
Greenwich Public Schools; and Greenwich
Public Schools,

Respondents

April 26, 2024

The above-captioned matter was heard as a contested case on December 15, 2023, at which time the complainant and the respondents appeared 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 email dated and filed June 13, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act in connection with an executive session held during a regular meeting of the respondent Central Middle School Building Committee (“Committee”) on June 13, 2023. Specifically, the complainant alleged that:
 - (a) the Committee improperly permitted certain individuals to attend the entire executive session; and
 - (b) the respondent Chair improperly held a vote requesting that the Committee allow certain individuals to remain in executive session.
3. It is found that the respondent Committee held a regular meeting on June 13, 2023 (“June 13th meeting”). It is also found that the June 13th meeting was conducted in part by means of electronic equipment. It is further found that at such meeting, the respondents entered executive session to discuss “service and fee proposals for RFP 2390-22”.

4. Section 1-225(a), G.S., provides, in relevant part:

[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 Internet web site, if available ... Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

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

'[e]xecutive sessions' means 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;

(B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled;

(C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security;

(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; 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.

6. Section 1-231(a), G.S., provides that:

[a]t an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency. (Emphasis added.)

7. With regard to the allegation described in paragraph 2(a), above, it is found that, although they were not members of the Committee at the time of the June 13th meeting, two individuals, Stephanie Cowie and Tom Healy, were permitted to attend the entirety of the executive session during the June 13th meeting. It is also found that, at the time of such meeting, Ms. Cowie was a member of the Greenwich First Selectman's Advisory Committee for People with Disabilities and its liaison to the Committee, and Mr. Healy was principal of the Central Middle School.

8. At the hearing, and in their post-hearing brief, the respondents argued that both Ms. Cowie and Mr. Healy were properly permitted to attend the executive session because each has unique expertise and can provide input on those areas of expertise, if necessary. In their post-hearing brief, the respondents also argued that it was likely that both guests' opinions would have been asked due to the single-issue nature of the executive session during the June 13th meeting.

9. It is found, however, that neither Ms. Cowie nor Mr. Healy were asked questions during the June 13th meeting's executive session and did not participate in such executive session in any tangible way. It is also found that both remained for the entirety of the Committee's discussion regarding the RFP in question.

10. Based upon the facts and circumstances of this case, the respondents failed to prove that the attendance of both Ms. Cowie and Mr. Healy, for the entirety of the Committee's executive session during the June 13th meeting, was limited to the period for which their presence was necessary to present testimony or opinion, within the meaning of §1-231(a), G.S.

11. It is therefore concluded that the respondents violated §1-231(a), G.S., as alleged in paragraph 2(a), above.

12. This Commission has consistently ruled that action beyond discussion in an executive session, such as a vote, is not permissible pursuant to §1-200(6), G.S.

13. It is found that, at the June 13th meeting, the respondents voted to enter executive session to discuss the topic described in paragraph 3, above. It is also found that, after such vote to enter executive session, the respondents then voted to allow Ms. Cowie and Mr. Healy to

attend such executive session, over the objections of the complainant, who is also a member of the respondent Committee.

14. At the hearing on this matter, and in their post-hearing brief, the respondents argued that they did not vote during executive session because at the time of the vote described in paragraph 14, above, the public had not completely cleared from the meeting room of the June 13th meeting. The respondents also argued that, even if such vote was improper, it was not a violation of the FOI Act because public agencies are free to invite non-members to attend executive session without holding a public vote.

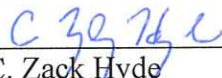
15. The complainant argued that the respondents provided no evidence of what members of the public, other than the two non-members of the respondent Committee who were invited to attend the executive session, were still present in the meeting room or, for those participating remotely, virtually present through the ZOOM link.¹ The complainant also argued, and it is found, that the vote to allow Ms. Cowie and Mr. Healy to attend the executive session occurred after the executive session vote and after members of the public had been instructed to clear the meeting room and the online Zoom session.

16. It is found that there is no requirement that a public agency vote to permit non-members to attend executive session. It is also found, however, that because the respondents voted to enter executive session at the June 13th meeting, prior to voting to allow Ms. Cowie and Mr. Healy to attend such executive session, the respondents technically voted while in executive session.

17. Accordingly, it is concluded that the respondents committed a technical violation of §1-200(6), G.S., by voting during the executive session.

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 §1-231(a), G.S.



C. Zack Hyde
as Hearing Officer

FIC2023-0338/hor/CZH/04/26/2024

¹ The Commission notes that there is conflicting testimony regarding whether members of the public were present in the meeting room.