



FREEDOM OF INFORMATION

Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Neil Hornish

Complainant(s)

Notice of Meeting

against

Docket #FIC 2024-0388

First Selectman, Board of Selectmen, Town of Suffield;
Board of Selectmen, Town of Suffield; and Town of
Suffield

Respondent(s)

June 13, 2025

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.

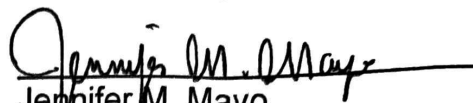
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, June 25, 2025.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. 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 June 24, 2025.*** 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 June 24, 2025.*** **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 June 24, 2025*** 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


Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Neil Hornish
Attorney Derek E. Donnelly

FIC# 2024-0388/ITRA/MGS//RB/JMM/2025-06-13

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Neil Hornish,

Complainant

against

Docket # FIC 2024-0388

Colin Moll, First Selectman, Board of
Selectmen, Town of Suffield; Board of
Selectmen, Town of Suffield; and Town of
Suffield,

Respondents

June 11, 2025

The above-captioned matter was heard as a contested case on October 22, 2024; January 24, 2025; and March 4, 2025. At such times the complainant and the 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. It is found that the respondents convened a regular meeting of the Suffield Board of Selectmen on June 5, 2024 (“regular meeting”). It is found that one of the agenda items for such meeting was described as “Executive Session – Litigation.” It is found that the minutes for the meeting indicate that a motion was made, and a unanimous favorable vote was taken, prior to convening in executive session “to discuss litigation.” It is further found that the next item listed on the regular meeting agenda read “Action on Executive Session,” which the respondent board ultimately did not act upon during such meeting.

3. By email dated July 4, 2024, and received and filed by the Commission on July 5, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to properly notice the purpose of the executive session convened as part of the regular meeting agenda described in paragraph 2, above (“agenda items at issue”). The complainant did not request specific relief in his appeal, other than to note that, “[w]hile suggesting FOIA training might be an appropriate response to this complaint, it should be noted that First Selectman Moll, Selectman Harrington, and Town Attorney Donnelly attended the FOI presentation [given by the Commission’s Director of Education and Communication] on May 29, one week before” the regular meeting at issue in the instant appeal.

4. Section 1-225(a), G.S., provides in relevant part that “[t]he meetings of all public agencies, except executive session, as defined in subdivision (6) of section 1-200, shall be open to the public.” Pursuant to §1-200(6)(B), G.S., the public may be excluded from an executive session held for the following purpose, among other enumerated purposes: “strategy and

negotiations with respect to pending claims or pending litigation to which the public agency or 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."

5. With regard to the complainant's allegation described in paragraph 3, above, §1-225(c), G.S., provides in relevant part that "[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...."

6. The courts have opined, with respect to the notice requirements in §1-225, G.S., that one purpose of a regular meeting agenda is to allow "the public and interested parties to be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views." Zoning Board of Appeals of the Town of Plainfield v. Freedom of Info. Comm'n, Docket No. CV 99-047917-S, 2000 WL 765186 at *4 (Superior Court, Judicial District of New Britain, May 3, 2000), reversed on other grounds, Zoning Board of Appeals of the Town of Plainfield v. Freedom of Info. Comm'n, 66 Conn. App. 279 (2001) ("Zoning Board of Appeals"). "A notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participating in the meeting." Id. at *3.

7. It is found that the complainant is not only a member of the public but also an "interested party" as contemplated by the Court in Zoning Board of Appeals. Specifically, the complainant is an interested party relative to litigation involving the respondent board, as the complainant testified that he currently is a party to pending litigation against the town.

8. Additionally, in Durham Middlefield Interlocal Agreement Advisory Board v. Freedom of Info. Comm'n, et al., Superior Court, Docket No. CV 96 0080435, Judicial District of Middletown, Memorandum of Decision dated August 12, 1997 (McWeeny, J.), the court concluded that it was reasonable for the Commission to require something more detailed than "Executive Session Re: Possible Litigation."

9. Furthermore, this Commission repeatedly has held that, for the public to be fairly apprised of the reason for an executive session listed on public agency's meeting agenda, the public agency must give some indication of the specific topic to be addressed. Descriptions such as "legal strategy" or "pending litigation" are inadequate. See, e.g., Zandri v. Chairman, Town Council, Town of Prospect, et al., Docket #FIC 2020-0109 (February 22, 2021) (agenda item "Executive Session pending litigation and related strategies" fail[ed] to fairly apprise the public); Lowthert v. Bill Brennen, First Selectman, Town of Wilton, et al., Docket #FIC 2014-417 (June 5, 2015) (agenda item "Executive session: Litigation; Employee contract" failed to fairly apprise the public); Kate King and the Stamford Advocate v. Water Pollution Control Authority, City of Stamford, et al., Docket #FIC 2021-502 (May 8, 2013) ("legal strategy" failed to identify with sufficient particularity the reason for respondents' executive session); George Schober v. Janet Tyler, Superintendent, Lebanon Public Schools, et al., Docket #FIC 2011-471 (July 13, 2012) ("Update from legal counsel" listed under executive session failed to fairly and sufficiently apprise the public of the business to be transacted); Dostaler v. Water Development Task Force, Town of East Hampton, Docket #2009-333 (March 24, 2010) ("pending litigation" failed to adequately apprise the public of business to be transacted); Preston D. Schultz and the Citizens

for Prudent Spending v. Board of Education, Woodstock Public Schools, Docket #FIC 2008-236 (February 25, 2009) (agenda item “discussion of attorney/client privilege [sic] documents and pending litigation” did not fairly apprise the public); and Robert Cox v. Ridgefield Board of Education, Docket #FIC 88-165 (January 25, 1989) (the agenda item listing executive session to “receive advice from legal counsel on a legal matter” was insufficient).

The First Contested Case Hearing on October 22, 2024

10. Despite the controlling case law and the extensive list of precedent final decisions issued by the Commission, described in paragraphs 6, 8, and 9, above, at the initial October 22, 2024 contested case hearing the respondents argued that “[t]he degree of specificity that the Freedom of Information Act required for an agenda item informing the public of the topics to be discussed during an upcoming executive session is highly fact-sensitive, and no bright-line rule exists.”¹

11. At the first hearing, the respondents also produced an affidavit from the respondent first selectman, which was admitted into evidence as Respondents’ Exhibit 1 (“the affidavit”). In the affidavit, the respondent first selectman swore to, among other things, statements relating to the respondent board’s use of executive session to “regularly receive litigation updates from the Town Attorney on all pending claims against the Town,” as well as statements regarding the number and types of litigation discussed at the executive session at issue during the respondent board’s June 5, 2024, regular meeting.

12. At the close of the first hearing, the complainant requested the opportunity to cross-examine the respondent first selectman regarding the statements to which he swore as affiant, described in part in paragraph 11, above. The complainant also requested for the first time that the Commission impose civil penalties on the respondents.

13. Accordingly, on October 28, 2024, the undersigned hearing officer issued a notice to the parties that a continued contested case hearing would be scheduled for a future date, at which respondent First Selectman Colin Moll was ordered to appear so that he might be cross-examined on his affidavit. Such notice also informed the parties that they would be afforded an opportunity to be heard on the request for a civil penalty against the public official directly responsible for the violations alleged in paragraph 3, above, at such continued hearing. Thereafter, a continued contested case hearing/civil penalty hearing was scheduled for January 24, 2025.

The Second Contested Case Hearing/Civil Penalty Hearing on January 24, 2025

14. Pursuant to the hearing officer’s October 28, 2024 order, respondent First Selectman Colin Moll appeared at the second hearing and testified on behalf of himself regarding the statements in the affidavit to which he swore as the affiant.

¹ See Respondents’ Ex. 2 (for Identification Only), Memorandum of Law, October 22, 2024.

15. It is found that respondent First Selectman Moll, as the affiant, swore to the veracity of the following in paragraph 6 of the affidavit, which states in relevant part:

When the Board of Selectmen entered executive session to receive litigation updates from the Town Attorney on June 5, 2024, the Board of Selectmen reviewed and discussed all current and potential claims involving the Town [...] at the time there were **nine pending matters that were discussed and two matters where a notice of intent to sue had been filed** with the Town Clerk. (Emphasis added.)

16. It is found that respondent First Selectman Moll, as the affiant, also swore to the veracity of the following in paragraph 7 of the affidavit, which states as follows: "The June 5, 2024 Executive Session covered all **pending** litigation that the Town of Suffield had **pending** as of that date." (Emphasis added.)

17. It is found that, while under questioning by the undersigned hearing officer, respondent **First Selectman Moll gave vague and conflicting testimony** when asked to reconcile his sworn statements described in paragraphs 15 and 16, above, and to clarify whether only the nine items of pending litigation were discussed, or whether the additional two notices of intent to sue were also discussed, for a total of eleven matters. It is further found that the respondent first selectman was unable to articulate in his own words the distinction between "pending matters" and matters where there is a "notice of intent to sue."

18. Therefore, based upon respondent First Selectman Moll's testimony at the second contested case hearing, described in paragraphs 15-17, above, it is found that **he was unable to articulate a clear understanding of certain statements, the veracity of which he swore to, in the affidavit.**

19. During the civil penalty phase of the second hearing, the respondent first selectman's executive assistant testified as a witness for the respondents.

20. It is found that one of the executive assistant's duties is to craft the agendas for the respondent board in consultation with the first selectman and, occasionally, the town attorney. It is further found that the executive assistant places an executive session on the agenda for a meeting of the respondent board when the respondent first selectman instructs her to do so.

21. It is found that **the executive assistant presented conflicting testimony** regarding First Selectman Moll's role in preparing and approving the agenda items at issue in the instant matter. Under questioning by the hearing officer, the executive assistant testified that she prepared the agenda for the regular meeting at issue and shared it with First Selectman Moll for approval before publicly publishing it. Minutes later, however, the executive assistant testified that, for the agenda items at issue, she didn't recall whether she consulted with First Selectman Moll, but acknowledged under further questioning that she would not have added the agenda items at issue on her own accord.

22. It is found that the executive assistant did not demonstrate an understanding of the FOI Act's requirements regarding the description of executive session agenda items for respondent board meetings. Specifically, she testified that it was not necessary to create eight line-items to properly notice the topic of an executive session if eight cases were to be discussed. She further testified to her belief that noticing the executive session topic as "Litigation" alone would suffice.

23. Also, during the civil penalty phase of the second hearing, Selectwoman Kathy Harrington of the respondent Board of Selectmen also testified as a witness for the respondents.

24. It is found that Selectwoman Harrington attended the executive session at the regular meeting at issue for its entirety, but she was unable to corroborate the respondent first selectman's testimony regarding the topics discussed by the respondent board at such executive session. It is found that Selectwoman Harrington could not recall anything that was discussed at such executive session. It is further found that she could not confirm whether the topic of discussion at such executive session was even "litigation" as described in the regular meeting's agenda.

25. At the conclusion of the parties' presentation of their cases in the civil penalty phase of the second hearing, the hearing officer requested the opportunity to question respondent First Selectman Moll about matters relating to the complainant's request for civil penalties. After requesting a brief recess to consult with the First Selectman, counsel for the respondents declined to permit the First Selectman to be questioned by the hearing officer and instead requested a continuance so that he could call the First Selectman as his own witness at a future hearing. The hearing officer granted counsel's request, and a continued civil penalty hearing subsequently was scheduled for March 4, 2025.

Third Hearing/Continued Civil Penalty Hearing on March 4, 2025

26. At the third hearing on March 4, 2025, under direct examination by counsel for the respondents, it is found that respondent First Selectman Moll testified on behalf of himself and the respondents and attempted to clarify his prior testimony from the second hearing held on January 24, 2025.

27. It is found that, in his testimony at the third hearing, respondent First Selectman Moll was unable to demonstrate an independent understanding of what constitutes a "pending action" and "notice of intent to sue" as referenced in the affidavit to which he was the sworn affiant. Rather, it is found that the First Selectman was only able to respond affirmatively to leading questions by respondents' counsel regarding what the First Selectman meant when he used such terms in the affidavit and in his testimony at the prior hearing.

28. Based on respondent First Selectman Moll's testimony, it is found that he participated in constructing the agenda for the June 5, 2024 regular meeting of the respondent board, including the agenda items at issue. It is further found that First Selectman Moll instructed his executive assistant that he was going to have an executive session to cover all litigation at such meeting.

29. Accordingly, based on paragraphs 15-18 and 26-28, above, it is found that respondent First Selectman Moll did not demonstrate an understanding of the FOI Act's requirements regarding the description of executive session agenda items for respondent board meetings.

Proper Agenda Notice and Consideration of a Civil Penalty

30. It is found that the public could not discern, from the description associated with the agenda items at issue, which particular litigation would be discussed in the executive session at the respondent board's June 5, 2024 regular meeting. Accordingly, it is found that the agenda items at issue did not include sufficient information to fairly apprise the public of the matters to be discussed at the meeting and the subject of any potential proposed action taken subsequent to the executive session as required by the Court in Zoning Board of Appeals.

31. It is concluded, therefore, that the respondents violated §1-225(c), G.S., as alleged.

32. As noted in paragraph 12, above, the complainant requested that the Commission consider the imposition of civil penalties against the named respondent, First Selectman Colin Moll.

33. Section 1-206(b)(2), G.S., provides the following in relevant part:

upon a finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at the hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than five thousand dollars.

34. It is found that respondent First Selectman Moll, as the first selectman and a public agency in his own right, is the public official directly responsible for approving the agenda for meetings of the respondent board, including the agenda and the agenda items at issue in the above-captioned matter, and is therefore directly responsible for the violation set forth in paragraph 32, above.

35. It is found that, given the breadth of the instructive body of case law and numerous precedent Final Decisions of the Commission, as described in paragraphs 6, 8, and 9, above, the respondents' position that the notice for the agenda items at issue was "appropriate" was not reasonable.² It is further found that the respondents' position that they "are not aware of any guidance from the FOIC that specifically addresses the proper way for a public agency to notify

² See Respondents' Post-Hearing Brief (March 28, 2025), p. 7.

the public that it will be entering executive session to discuss a high volume of present and potential claims” is not reasonable.³

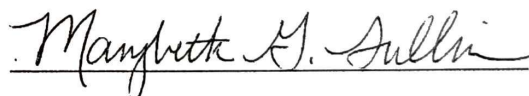
36. It is found that respondent First Selectman Moll’s misunderstanding of FOI Act public meeting notice requirements, as described in paragraphs 15-18 and 26-29, above, is not reasonable.

37. It is found that the respondents’ failure to produce any witness who could corroborate respondent First Selectman Moll’s testimony or affidavit regarding the actual topic discussed during the regular meeting executive session was not reasonable.

38. It is therefore concluded that the complainant’s right to access the respondents’ public meeting held on June 5, 2024 was denied by the respondents “without reasonable grounds,” within the meaning of §1-206(b)(2), G.S., and a civil penalty is warranted.

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

1. Respondent First Selectman Colin Moll, as the official directly responsible for the denial herein, shall remit to the Commission, within forty-five (45) days of the Notice of Final Decision in this matter, a civil penalty in the amount of two hundred fifty dollars (\$250).
2. Henceforth, the respondents shall strictly comply with the notice requirements in §1-225(c), G.S.



Marybeth G. Sullivan
as Hearing Officer

HOR/FIC#2024-0388/MGS/06.11.25

³ Id., p. 10.