

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT
18-20 Trinity Street Hartford, CT 06106
Telephone: (860) 566-5682
Toll-free (CT only): (866) 374-3617
Fax: (860) 566-6474

Jonathan Searles,

Complainant(s)

against

Notice of Meeting

Docket #FIC 2009-341

Real Estate Acquisition &
Disposition Committee,
Town Council,
Town of East Hartford,

Respondent(s)

November 10, 2009

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, December 2, 2009**. 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 November 20, 2009*. 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, the Commission requests that an **original and ten (10) copies** be filed *on or before November 20, 2009*. **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 **eleven (11) copies** be filed *on or before November 20, 2009*, 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: Jonathan Searles
Frank N. Cassetta, Esq.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jonathan Searles,

Complainant

against

Docket #FIC 2009-341

Real Estate Acquisition & Disposition
Committee, Town Council, Town of
East Hartford,

Respondent

November 10, 2009

The above-captioned matter was heard as a contested case on October 5, 2009, at which time the complainant and the respondent 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 respondent is a public agency within the meaning of §1-200(1), G.S.

2. By letter dated and filed June 12, 2009, the complainant appealed to the Commission, alleging that the respondent violated the Freedom of Information (hereinafter "FOI") Act by denying the public "proper notice and access" to two special meetings of the respondent. The complainant specifically claimed that the respondent failed to timely publish on the Town of East Hartford's website, notice of special meetings held on May 14, 2009 and May 19, 2009 (hereinafter "the special meetings"), of the Real Estate Acquisition & Disposition Committee, a subcommittee of the East Hartford Town Council. The complainant also claimed that the minutes of the May 14, 2009 special meeting were not timely published on the Town of East Hartford's website. The complainant requested that the actions taken at such special meetings be declared null and void.

3. Section 1-225, G.S., provides in relevant part that:

- (a) 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. Within seven days 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 such agency shall make, keep and maintain a record of the proceedings of its meetings...

- (d) Notice of each special meeting of every public agency, except for the General Assembly, either house thereof or any committee thereof, shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof in the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state and in the office of the clerk of each municipal member for any multitown district or agency. The secretary or clerk shall cause any notice received under this section to be posted in his office. Such notice shall be given not less than twenty-four hours prior to the time of the special meeting...

and

- (g) In determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under this section, Saturdays, Sundays, legal holidays and any day on which the office of the agency, the Secretary of the State or the clerk of the applicable political subdivision or the clerk of each municipal member of any multitown district or agency, as the case may be, is closed, shall be excluded.

4. It is found that the respondent held a special meeting on Thursday, May 14, 2009, at 12:00 p.m., the notice and minutes for which were not posted by the East Hartford Town Council Clerk (hereinafter "Council Clerk"), on the Town of East Hartford's website until approximately 2:48 p.m. on Thursday, June 11, 2009.

5. It is found that the respondent held a special meeting on Tuesday, May 19, 2009, at 5:30 p.m., the notice for which was posted by the Council Clerk on the Town of East Hartford's website until 11:13 a.m. on Wednesday, May 20, 2009.

6. The respondent concedes that the notices of the May 14, 2009 and May 19, 2009 special meetings, as well as the minutes from the May 14, 2009 special meeting, were not timely posted on the Town of East Hartford's website, as required by §1-225(a) and (d), G.S.

7. It is therefore concluded that the respondent violated the notice and minutes provisions of §§1-225(a) and (d), G.S.

8. At the hearing on this matter, the complainant argued that he was prejudiced by the respondent's violation of the notice provisions of §1-225(d), G.S., which was without reasonable grounds, considering the contentious subject of the special meetings concerning the transfer of Title of 590 Burnside Avenue in East Hartford (hereinafter "the property"), by the East Hartford Town Council to the East Hartford Redevelopment Agency. Consequently, the complainant requested that the Commission declare the actions taken at such special meetings null and void.

9. The respondent argued that, while it failed to post the records at issue in this matter, declaring the actions taken by the respondent at the special meetings null and void is unnecessary since the public was not prejudiced by the inadvertent error in failing to post such records on the town's website. The respondent claimed that the only action taken by the committee at the special meetings was to make a recommendation to the East Hartford Town Council regarding the transfer of title of the property. The respondent also claimed that at the East Hartford Town Council's properly noticed June 2, 2009 and June 16, 2009 special meetings, public hearings were conducted for the purpose of allowing public comments on the proposed transfer of title of the property, after which, the Council held regular meetings on each respective date. The respondent further claimed that the complainant attended at least one of the June 2009 special meetings and commented on the transfer of the property.

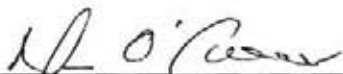
10. Notwithstanding the conclusion in paragraph 7, above, it is found that the Council Clerk inadvertently failed to post the notices and minutes at issue herein, and understands the significance of timely posting such records in accordance with the FOI Act.

11. It is found, therefore, that the respondent's violation of §§1-225(a) and (d), G.S., was unintentional.

12. After consideration of the entire record in this case, the Commission, in its discretion, declines to declare the actions taken at the respondent's May 14, 2009 and May 19, 2009 special meetings null and void.

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

1. Henceforth, the respondent shall strictly comply with the provisions of §§1-225(a) and (d), G.S.



Commissioner Dennis E. O'Connor
as Hearing Officer