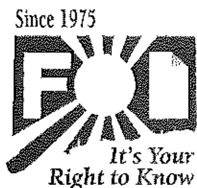
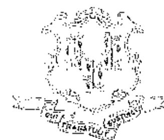


FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 · www.state.ct.us/foi/ · email: foi@po.state.ct.us

Alexander Wood and the
Manchester Journal Inquirer,
Complainant(s)

against

Chairman, State of Connecticut, Board of
Pardons and Paroles; and State of Connecticut,
Board of Pardons and Paroles,
Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2012-668

August 14, 2013

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, August 28, 2013 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, Ist floor, Hartford, Connecticut, at **2:00 p.m.** on **Wednesday, September 11, 2013.**

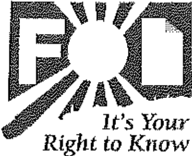
Any brief, memorandum of law or request for additional time, as referenced in the July 29, 2013 Transmittal of Proposed Final Decision, must be received by the Commission on or before August 30, 2013.

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Alexander Wood
Steven R. Strom, Esq.

8/14/13/FIC# 2012-668/ReschedTrans/wrbp/MS/LFS/KKR



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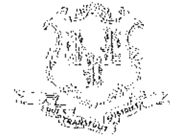

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Alexander Wood and the
Manchester Journal Inquirer,
Complainant(s)
against

Chairman, State of Connecticut, Board of
Pardons and Paroles; and State of Connecticut,
Board of Pardons and Paroles,
Respondent(s)

Notice of Meeting

Docket #FIC 2012-668

July 29, 2013

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, August 28, 2013.** 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 August 16, 2013***. 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 August 16, 2013.*** **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 **fourteen (14) copies** be filed ***ON OR BEFORE August 16, 2013,*** 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

W. Paradis
Acting Clerk of the Commission

Notice to: Alexander Wood
Steven R. Strom, Esq.

7/29/13/FIC# 2012-668/Trans/wrbp/MS/LFS/KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Alexander Wood and the
Manchester Journal Inquirer,

Complainants

against

Docket #FIC 2012-668

Chairman, State of Connecticut, Board of Pardons and Paroles; and State of Connecticut, Board of Pardons and Paroles,

Respondents

July 24, 2013

The above-captioned matter was heard as a contested case on April 30, 2013, at which time the complainants 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. By letter filed December 3, 2012, the complainants appealed to this Commission, alleging that the respondent Board of Pardons and Paroles ("Board") violated the Freedom of Information ("FOI") Act by:

a. Failing to post agendas and minutes of their meetings on their agency website;

b. Misstating the location of their November 14, 2012 meeting on their meeting schedule posted on their website;

c. Convening in executive session during their meetings of November 1, 2012 and November 14, 2012 to discuss matters not authorized by §§1-225(a) and 1-200(6), G.S.; and

d. Voting in such executive sessions, in violation of §§1-225(a) and 1-200(6), G.S.

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

> The 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...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....."

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

> "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: ...(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.

5. Section 1-225, G.S., also provides in relevant part:

> (b) Each such public agency of the state shall file not later than January thirty-first of each year in the office of the Secretary of the State the schedule of the regular meetings of such public agency for the ensuing year and shall post such schedule on such public agency's Internet web site, if available...
>
> (c) The 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 Secretary of the State for any such public agency of the state ... For any such public agency of the state, such agenda shall be posted on the public agency's and the Secretary of the State's web sites...

6. With respect to the respondents' alleged violations described in paragraph 2.a and b, above, the respondents concede that they did not properly post their minutes and agendas on the agency's website, and that the address listed on the agenda was not where the meeting was actually held. *See* Robert Faro v. Robert Morton, Chairman, Southington Enterprise Zone and Economic Development Commission, et al; Docket #FIC1999-235 (December 8, 1999) (failure to include accurate place of regular meeting violates §1-225(a), G.S.).

7. It is concluded, therefore, that the respondents violated §1-225, G.S., as alleged by the complainants in paragraph 2.a and b, above.

8. With respect to the respondents' alleged violations concerning the executive sessions held during their meetings of November 1, 2012 and November 14, 2012 ("meetings"), described in paragraph 2.c and d, above, the respondents claim that §1-200(6)(E), G.S., authorized their executive sessions. In particular, they claim that the executive sessions were to discuss "confidential" information contained in records that would be exempt from disclosure pursuant to §§1-210(b) (2), (3), and (10),G.S.

9. It is found that the respondents have the exclusive authority to grant pardons for any crime under Connecticut law. It is found that the meetings at issue in this case were convened to consider and act on dozens of applications by non-inmates (i.e., no longer in the custody of the Department of Correction) for pardon. It is found that no inmate applications were on the docket of either of the two meetings.

10. It is found that the Board has the authority to grant three types of pardon: absolute; conditional, which is a pardon to which the respondents have attached a condition (such as no pistol permit) that could result in the pardon's revocation if the subject fails to comply with the condition; and provisional, which removes one or more enumerated barriers to employment or forfeiture of professional licenses. See §54-130a, G.S.

11. It is found that the pardon process begins with an application submitted by the person seeking the pardon. It is found that the application is a 15-page document requesting information under the following headings:

a. Applicant information;
b. Family information;
c. Other names;
d. Previous application history;
e. Citizenship information;
f. Pistol permit restoration;
g. Educational background;
h. Military record;
i. Criminal history;
j. Employment history;
k. Substance abuse and treatment information;
l. Volunteer, charitable and community activities;
m. Purpose of application;
n. Background investigation authorization;
o. Three applicant reference forms; and
p. Request for criminal history.

12. It is found that the "Background Investigation Authorization" (see paragraph 11.n, above) requires the applicant to authorize the release of:

> any and all information, verbal and/or written, which includes but is not limited to, information related to current or previous

> employment, personnel records, criminal records, educational records, any investigative records, credit records, tax or bank records, correctional records, sealed records, confidential records or information previously agreed to be withheld, opinions of my character or conduct, and any and all information that a person or entity may have concerning me, and I agree to hold [*sic*] all entities and persons from any liability arising out of the furnishing of said information.
> I understand that I may be required to complete an additional authorization form allowing the Board to obtain any relevant medical records or mental health records.

13. It is found that the Authorization contains the following statement to which the applicant must sign his or her assent in order to be considered for pardon: "I understand that information gathered may become public record if the subject application is brought for consideration at a meeting before the Pardons Board."

14. It is found that once the application is complete, the next step for the applicant is the "pre-hearing" docket, essentially a screening process, where the respondents either deny the application or grant the applicant a "full hearing," at which the respondents decide whether to grant the pardon petition, either absolute, conditional, or provisional.

15. It is found that the Board's November 1, 2012 meeting was a "full hearing" docket; and their November 14, 2012 meeting was a "pre-hearing" docket.

16. It is found that the respondents hear testimony on each application in open session, usually consisting of a statement by and questioning of the applicant and sometimes also a family member, a victim, and/or the state's attorney.

17. It is found that at the conclusion of the oral testimony, the respondents then convene in executive session, as they did during the meetings at issue in this matter, to deliberate on the individual applications for pardon. It is found that the respondents deny more than half of all pardon petitions.

18. It is found that the respondents discuss the pardon applications as part of their deliberations in executive session.

19. The respondents assert, first, that §1-210(b)(10), G.S., authorizes their executive sessions pursuant to §1-200(6)(E), G.S., which permits discussion in closed session 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, G.S.

20. The respondents claim a categorical exemption for the pardon applications, contending that they are always confidential in their entirety.

21. Section 1-210(b)(10), G.S., provides that disclosure is not required of "[r]ecords, ... reports and statements exempted by ... the general statutes..."

22. The respondents contend that §§54-130e and 54-142a, G.S., prohibit disclosure of all the information contained in every pardon application.

23. Section 54-130e (f), G.S., provides:

> The board may, for the purpose of determining whether such provisional pardon should be issued, request its staff to conduct an investigation of the applicant and submit to the board a report of the investigation. Any written report submitted to the board pursuant to this subsection shall be confidential and not disclosed except where required or permitted by any provision of the general statutes or upon specific authorization of the board. (Emphasis added.)

24. The respondents claim that since all applications are considered for provisional pardon if they are not granted absolute pardon, any confidentiality that attaches to a report submitted pursuant to §54-130e (f), G.S., for consideration of a provisional pardon must also attach to applications for absolute pardon.

25. It is found, however, that the respondents have not demonstrated that the application for pardon is the "written report" of investigation prepared by respondents' staff to which §54-130e (f), G.S., applies. In particular, for example, it is found that the application is not prepared by the respondents' staff, but by the applicant or his or her attorney and any references that are provided by the applicant. Perhaps the "background investigation authorization" section of the application (paragraph 11.n, above) may result in the written staff report referenced in §54-130e (f), G.S., but it is found that the administrative record in this matter contains no such evidence.

26. Moreover, it is concluded that the confidentiality requirement of §54-130e (f), G.S., by its terms does not apply where another state statute, such as the FOI Act, permits or requires disclosure. Construing language nearly identical to that used in §54-130e (f), G.S., the Connecticut Supreme Court concluded that such language means that the FOI Act's requirements of disclosure trump the other law's requirement of secrecy. In Dir. of Health Affairs Policy Planning v. Freedom of Info. Comm'n, 293 Conn. 164 (2009), federal law (45 CFR §60.13 (a)) provided:

> Information reported to the [National Practitioner] Data Bank is considered confidential and shall not be disclosed outside the Department of Health and Human Services ... Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable [s]tate law to make such disclosure.

The Supreme Court rejected the agency's argument that the information was confidential: "The [FOI] act not only authorizes the plaintiff to make the disclosure; it makes such disclosure *mandatory*. Section 60.13 (a), therefore, is inapplicable [to justify the agency's claim that the records were not subject to disclosure]." Ibid., n. 13.

27. It is concluded that §54-130e (f), G.S., does not make the pardon applications exempt from disclosure pursuant to the FOI Act and therefore a permissible subject for discussion in executive session.

28. The respondents also rely on §54-142a (d), G.S., which provides:

> (1) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction ... and the Superior Court or records center of the Judicial Department shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.
>
> (2) Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased.

29. The respondents contend that because some of the applications for pardon may be successful and result in the erasure of records described in §54-142a (d), G.S., and it is not known at the time of the hearings which applications will end with absolute pardons, the respondents must treat all of the applications as confidential, and, therefore, may discuss them all in executive session.

30. It is found, however, that the plain language of §54-142a (d), G.S., authorizes erasure *only* "whenever [an] absolute pardon was received (emphasis added)." It is found that when the respondents convened in executive session during the meetings at issue in this matter, *no* pardons had been received, because all were pending, awaiting the Board's deliberation and vote.

31. It is concluded, therefore, that §54-142a (d), G.S., did not apply to any of the records that the respondents discussed in executive session. It is concluded that §54-142a (d), G.S., via §1-210(b)(10), G.S., did not make discussion of such records a permissible subject for executive session pursuant to §1-200(6)(E), G.S.

32. Moreover, even if §54-142a(d), G.S., did operate to erase records prior to receipt of a pardon, it is found that the applications comprise more than the "police and court records and records of the state's or prosecuting attorney" to which §54-142a(d), G.S., applies.

33. The respondents also claim that §1-210(b)(2) and (3), G.S., provide categorical exemptions for the applications in their entirety. It is found that the minutes of the meetings at issue in this matter cite the same two exemptions to support the executive sessions, as do *all* the minutes of the respondents' pre-hearing and full session meetings.

34. Section 1-210(b)(2) G.S., provides in relevant part that disclosure is not required of: "Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy[.]"

35. Section 1-210(b)(3), G.S., provides in relevant part that disclosure is not required of:

> Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E)investigatory techniques not otherwise known to the general public, (F)arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (H)uncorroborated allegations subject to destruction pursuant to section 1-216;

36. The general rule under the FOI Act is disclosure: exceptions to this rule must be narrowly construed; and the burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. New Haven v. FOI Comm'n, 205 Conn. 767, 775 (1988); Ottochian v. FOI Comm'n, 221 Conn. 393, 398 (1992). By design, that burden is difficult to meet. "This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." Director, Retirement & Benefits Service v. FOI Commission, 256 Conn. 764, 773 (2001), citing New Haven, supra.

37. It is found that the respondents in this case provided nothing more than conclusory language, generalized allegations, and speculation to support their claims of exemption. It is found that none of the witnesses at the hearing had reviewed the records discussed in executive session and none knew any specifics of the records' contents with any degree of certainty or specificity.

38. It is found that the respondents failed to provide a sufficiently detailed record reflecting the reasons why the exemptions applied to the application materials discussed in executive session.

39. Moreover, with respect to §1-210(b)(3), G.S., it is found that few, if any, of the records that comprise a pardon application and supplementary background investigation would contain any information to which subsections (A) through (H) of §1-210(b)(3), G.S., would apply, especially in light of the fact that the pardon applications discussed at the relevant meetings in this matter were by people no longer in the custody of the Department of Correction and whose criminal involvement was many years passed.

40. Furthermore, with respect to §1-210(b)(2), G.S., it is found that the respondents failed to prove that disclosure of such records would constitute an invasion of privacy according to the long-standing test articulated in Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993), which test has been the standard for disclosure of records pursuant to that exemption since 1993. The Commission takes administrative notice of the multitude of court rulings, and Commission final decisions, as well as instances of advice given by Commission staff members, which have relied upon the Perkins test since its release in 1993.

41. Specifically, under the Perkins test, the claimant must first establish that the files in question are personnel, medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy. In determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that disclosure of such information is highly offensive to a reasonable person.

42. In Connecticut Alcohol and Drug Abuse Commission, et al. v. Freedom of Information Commission, et al. ("CADAC"), 233 Conn. 28, 41 (1995), the Supreme Court further expounded on the threshold test for the exemption contained in §1-210(b)(2), G.S:

> We conclude that such a determination requires a functional review of the documents at issue. Just as a "medical" file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual, a "personnel" file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. If a document or file contains material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is "similar" to a personnel file. Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered "similar" to a

> personnel file for the purposes of §1-[210](b)(2). (Emphasis added.)

43. The respondents argue that a decision of the Connecticut Appellate Court in 1989, Board of Pardons and Paroles v. FOI Commission ("Board of Pardons"), 19 Conn.App. 539 (1989) settled that applications for pardon are *per se* personnel or medical and similar files. It is found, however, that Board of Pardons does not specifically address this issue. It is concluded that CADAC's express interpretation of the meaning of the phrase "personnel or medical and similar files" controls, as it was decided by a court of higher authority six years after Board of Pardons.

44. It is found that the respondents failed to prove, using CADAC's "functional review," that the application for pardon has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. Similarly, it is found that the respondents failed to prove that the application for pardon has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual. CADAC, supra, 233 Conn. 41. See State of Connecticut, Department of Public Safety v. FOI Commission, Town of Putnam and Putnam Board of Education, Superior Court, Docket No. CV08-4018164-S, Judicial District of New Britain, Memorandum of Decision dated March 3, 2009 (Schuman, J.), in which the Court ruled that medical information contained in a police report investigating a suicide is not a medical file within the meaning of §1-210(b)(2), G.S:

> While these pages do contain some medical and prescription information about a third party, the obvious function of that information is not to contribute to making a medical decision regarding the third party, but rather to explain the decedent's source of a means to commit suicide. Stated differently, it is apparent from reading the entire six pages that the third party, rather than providing information to a health care professional to assist in medical treatment, rendered the medical information to the police in order to assist in their investigation. The department can establish only that the file contains medical "information" but not that the file is a "medical file" under the prevailing definition. Accordingly, the commission reasonably concluded that the six pages do not constitute a medical file and therefore are not exempt from disclosure under the act.

45. It is also found that the application for pardon specifically excludes medical records from the customary release that all applicants are required to sign. See paragraph 12, above.

46. It is found that the respondents failed to prove that the applications for pardon are personnel or medical and similar files within the meaning of §1-210(b)(2), G.S.

47. With respect to the second part of the Perkins test, it is found that the respondents failed to prove that the information contained in the application for pardon from a criminal conviction does not pertain to legitimate matters of public concern. It is also found that the

respondents failed to prove that disclosure of such information, in the context of a convicted person's wholly voluntary petition to be pardoned for a crime for which he or she was duly convicted, is highly offensive to a reasonable person.

48. It is found that the respondents failed to prove that disclosure of the applications for pardon satisfied the Perkins test for invasion of privacy.

49. The respondents also argue that confidentiality is implied based on the language in the form authorizing the board to investigate an applicant's background. It is found that the form states that records gathered through the investigation are to be released to the respondents or their designated agent. The respondents contend that such statement implies that disclosure is restricted to the respondents.

50. It is found, however, that in the absence of a specific statutory provision to the contrary, even an express promise of confidentiality[1] alone does not exempt records from disclosure. Patrick Egan and New Haven Firefighters Local 825 v. Mayor, City of New Haven; Docket #FIC 2004-182 (March 9, 2005); Vincent Lombardo v. Newington Housing Authority; Docket #FIC 1993-5 (August 11, 1993); Margaret Olszewski v. Chief of Police, Farmington Police Department; Docket #FIC 1998-154 (March 25, 1992); Housing Authority of the City of New Haven v. Commission on Equal Opportunities of the City of New Haven; Docket #FIC 1987-54 (July 8, 1987).

51. It is found that the respondents did not claim any statutory provisions that specifically permit a pledge of confidentiality.

52. Furthermore, as noted in paragraph 13, above, it is found that the same Authorization form also requires the applicant to sign the following statement: "I understand that information gathered may become public record if the subject application is brought for consideration at a meeting before the Pardons Board."

53. The respondents rely, generally, on Board of Pardons , supra, 19 Conn.App. 539, to justify meeting in closed session; however, that case is of little help to them in this matter. In Board of Pardons, the FOI Commission concluded that prisoners had no privacy rights, so there would be no invasion of privacy by disclosure of any records to which §1-210(b)(2), G.S., otherwise would apply. Rejecting such a *categorical* approach, the Appellate Court affirmed a case-by-case approach: "Although there may be data concerning prisoner-applicants that is subject to disclosure, we conclude that the trial court did not err in rejecting the FOIC's removing of the shield of confidentiality from those materials that properly belong under [§1-210(b)(2), G.S.]" Board of Pardons, supra, 547.

54. Moreover, Board of Pardons concerned *prisoner* applicants, and the Court's discussion of the need for confidentiality focused exclusively on correctional institutions' need for internal security and safety within the facilities, issues that are of no concern in the non-

[1] It is not found that the language referenced in paragraph 49, above, is a promise of confidentiality.

inmate applications under discussion at the executive sessions of the respondents' meetings of November 1, 2012 and November 14, 2012.

55. It is found that the respondents failed to prove that §1-210(b)(2), G.S., provides a *blanket* exemption for application files in their entirety. It is also found that the respondents failed to prove that §1-210(b)(2), G.S., exempted the specific records discussed by the respondents in the executive sessions at issue in this matter.

56. It is found that the respondents failed to prove that their discussions in executive session, had they been held in open session, would have resulted in the disclosure of public records or the information contained therein described §§1-210(b)(2), (3), or (10), G.S.

57. It is concluded, therefore, that the respondents failed to prove that §1-200(6)(E), G.S., provided a basis for the executive sessions at the meetings at issue in this matter.

58. Consequently, it is concluded that the respondents improperly excluded the public from portions of its meetings. It is therefore further concluded that the respondents violated §1-225(a), G.S., as alleged.

59. With respect to the allegation that the respondents improperly voted in executive session, described in paragraph 2.d, above, it is concluded that §1-200(6)(E), G.S., permits discussion, but not voting, in executive session.

60. It is found that the minutes of the November 1, 2012 and November 12, 2012 meetings indicate that the respondents "considered *and determined*" the applications in executive session.

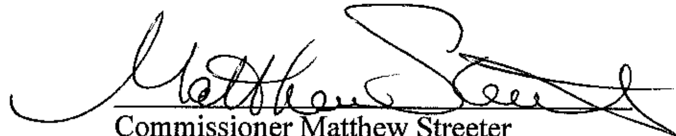
61. It is concluded that such determinations were improper in executive session and violated the FOI Act. It is found, however, that the respondents have not voted in executive session at their more recent meetings.

62. At the hearing in this matter, the respondents' witness testified that the Board currently references applications under consideration by number, instead of by name, on the Board's agendas and minutes of meetings, in order to conceal the identity of the applicants. While the propriety of such practice was not raised in the complainant's appeal to this Commission, the respondents should note that the Commission has held and repeatedly affirmed that each item on an agenda "must specify the business to be transacted, to the extent known...[E]ach item on such agendas must be sufficiently described so that members of the public can be notified of the business at hand." Advisory Opinion #28 (August 9, 1977). In Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Docket No. 99-0497917-S, Judicial District of New Britain, Memorandum of Decision dated May 3, 2000 (Satter, J.), reversed on other grounds, 66 Conn. App. 279 (2001), the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views," and that "[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing." *See also*,

Martin J. Lawlor, Jr. v. Board of Selectmen, Town of Bethel; Docket #FIC2006-264 (January 24, 2007) (agenda in violation of FOI Act for failing to identify by name applicants to town board) .

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 comply with the requirements of §§1-225 and 1-200(6), G.S.



Commissioner Matthew Streeter
as Hearing Officer

2012-668/HOR/MS/LFS/0718 2013