

Since 1975



# 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

Bruce Flax and Harry Watson,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-249

City Council, Town of Groton; and Town of Groton,  
Respondent(s)

January 29, 2016

### Corrected 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, February 10, 2016**. 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 February 5, 2016**. 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 February 5, 2016**. **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 February 5, 2016**, 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: Bruce Flax and Harry Watson  
John P. Casey, Esq.

2016-01-29/FIC# 2015-249/Trans/wrbp/MES//TAH

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Bruce Flax and Harry Watson,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-249

City Council, Town of Groton; and Town of Groton,  
Respondent(s)

January 15, 2016

## Transmittal of Proposed Final Decision

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By Order of the Freedom of  
Information Commission

W. Paradis  
Acting Clerk of the Commission

Notice to: Bruce Flax  
John P. Casey, Esq.

2016-01-15/FIC# 2015-249/Trans/wrbp/MES/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Bruce Flax and Harry Watson,

Complainants

against

Docket #FIC 2015-249

City Council, City of Groton; and  
City of Groton,

Respondents

January 15, 2016

The above-captioned matter was heard as a contested case on September 14, 2015, at which time the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint. The case caption has been amended to accurately identify the complainants and the respondents in this matter.

At the hearing, the parties requested permission to file an exhibit, consisting of two emails, after the close of the hearing. The hearing officer granted this request, and the emails have been marked as joint exhibit 1 (after-filed).

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 April 2, 2015, the complainant appealed to this Commission, alleging that the respondents conducted an illegal meeting on March 31, 2015.
3. It is found that the complainants are members of the Groton Town Council ("town council"). It is found that the town council issued a notice of a joint meeting of the town council and the respondent city council ("city council"), which meeting was to be held on March 31, 2015, at 6:00 p.m., at the town hall ("joint meeting"). It is found that the only substantive item of business listed on the agenda for the joint meeting was "City Highway Budget Committee—update."
4. It is found that the joint meeting was called to order at 6:03 p.m. Prior to any substantive discussion, however, certain members of the city council, as well as the mayor of the respondent city, who were present at the joint meeting, objected to the presence of the attorney for the town council at such meeting. It is found that the town council members then voted on a motion to ask the attorney to leave the meeting voluntarily, and that such motion failed by a 3 to 5 vote. It is found that, thereafter, the mayor and all members of the city council left the joint meeting to confer about whether or not to continue with the

meeting, and that they ultimately declined to do so. It is found that the joint meeting was adjourned at 6:17 p.m.

5. It is found that the mayor and the city council members then briefly exited the town hall building and walked to the parking lot, but, because it was raining, soon came back inside the building and gathered in the room next to where the joint meeting had taken place. It is found that the door to the room in which the city council members gathered was closed and that the members remained inside the room with the door closed for approximately 15 to 25 minutes. It is found that no person, other than the mayor and the members of the city council, was present inside the room, and that this gathering was not noticed.

6. At the hearing in this matter, the complainants argued that the gathering, described in paragraph 5, above, constituted a “meeting,” for purposes of the Freedom of Information (“FOI”) Act, which “meeting” was not open to the public, and was unnoticed.

7. Section 1-200(2), G.S., “meeting” is defined as:

...any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. “Meeting” does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event. (Emphasis added).

8. 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....

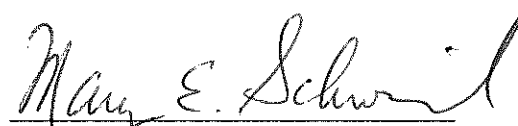
(d)[n]otice of each special meeting of every public agency...shall be posted not less than twenty-four hours before the meeting to which such notice refers....The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency.

9. It is found that the complainants did not hear the discussion that took place during the gathering, described in paragraph 5, above. Based upon the credible testimony of the respondents' witnesses, and the lack of any evidence to the contrary, it is found that the mayor and the members of the city council did not "discuss or act upon" any matter over which the city council "has supervision, control, jurisdiction or advisory power." Rather, it is found that, during the gathering, the mayor and the members of the city council expressed their frustration with the town council and its decision to have its attorney present at the joint meeting, and discussed a date and the agenda for a future meeting, and whether they should request the presence of their own attorney at such meeting.

10. Accordingly, it is concluded that the gathering, described in paragraph 5, above, was not a "meeting" within the meaning of §1-200(2), G.S. Because there was no "meeting," it is further concluded that the respondents were not required to comply with the notice provisions of §1-225, G.S. Thus, it is concluded that the respondents did not violate the FOI Act as alleged.

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.

  
Mary E. Schwind  
as Hearing Officer