

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ethan Fry and the Valley  
Independent Sentinel,

Complainants

against

Docket #FIC 2016-0561

Chairman, Board of Education,  
Ansonia Public Schools; and  
Board of Education, Ansonia  
Public Schools,

Respondents

May 10, 2017

The above-captioned matter was heard as a contested case on October 18, 2016, 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 dated and filed August 5, 2016, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by entering into executive session for an improper purpose.
3. Section 1-225(a), G.S., provides, in relevant part, as follows: "The meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public."
4. Section 1-200(6), G.S., provides, in relevant part, as follows:

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 1-210(b)(10), G.S., exempts from mandatory disclosure “[r]ecords. . . or communications privileged by the attorney-client relationship.”

6. It is found that the Ansonia Board of Education (“BOE”) held a regular meeting on July 6, 2016. It is further found that one of the items on the July 6<sup>th</sup> agenda stated the following: “Executive Session. . . B. School Donation Form/BOAT Meeting.”

7. It is found that the School Donation Form was a form mailed to Ansonia taxpayers, explaining how they could contribute financially to the BOE if they desired to do so.

8. It is found that, after a motion was made to move the meeting into executive session, a member of the BOE objected to the motion on the grounds that the forms had already been distributed to the public and that the forms were an inappropriate topic for executive session. However, it is further found that, at such time, counsel for the BOE clarified that the purpose of the executive session was not to discuss the actual forms, but rather to discuss a legal opinion concerning the use of the forms. It is found that, after counsel’s clarification, the motion to move into executive session was seconded, and the meeting adjourned to an executive session.

9. It is found that, during the executive session, counsel for the BOE handed out a legal opinion to the members of the BOE concerning the use of the School Donation Form. It is further found that, after the executive session, the BOE reconvened in public, and then, after voting, the meeting was adjourned.

10. It is further found that the legal opinion referred to in paragraph 9, above, contained confidential legal advice for the respondents concerning the School Donation Form from their attorney.

11. It is found that, while the agenda item described in paragraph 6, above, would have been clearer had it stated that the purpose of the executive session was to discuss counsel’s written legal opinion concerning use the School Donation Form, the complainants in this case did not allege that the agenda item was insufficient to apprise the public of the business to be transacted during the executive session; rather the complainants alleged that the executive session was for an improper purpose.

12. It is found, however, that, because the discussion of an attorney-client privileged document, is a permissible purpose for an executive session pursuant to §1-200(6)(E), G.S., and because the respondents did discuss a written communication that was privileged by the attorney-client relationship within the meaning of §1-210(b)(10), G.S., it is concluded that the respondents did not violate the FOI Act as alleged in the complaint

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 10, 2017.



Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Ethan Fry and The Valley Independent Sentinel  
158 Main Street, #305  
Ansonia, CT 06401

Chairman, Board of Education, Ansonia Public  
Schools; and Board of Education, Ansonia  
Public Schools  
c/o Frederick L. Dorsey, Esq.  
Kainen, Escalera & McHale  
21 Oak Street, Suite 601  
Hartford, CT 06106



Cynthia A. Cannata  
Acting Clerk of the Commission