

Re: FOIC decision

Robert Tarlov

Fri 5/4/2018 4:35 PM

To:jmcnair3 <jmcnair3@comcast.net>;

James,

In my response to your question, I am not representing the position of the Board. Although some members may agree with my perspective, these are my personal opinions.

For clarification, the legal expense was for two separate complaints, although both were filed by the same person, possibly on the same day and related to the same meeting. I would think, had these been combined into one complaint, the legal expenses would likely have been lower.

The first complaint was dismissed and I assume incurred a lower percentage of the cost as the complaint was against two people, there was only one item to research and the hearing was relatively short as the complainant failed to appear.

The second complaint was against 11 people (two specifically by name and 9 others as members of the Boards of Selectmen and of Finance, 10 of whom were unpaid volunteers. It also had many alleged violations requiring research as well a 2 ½ hour tape to review and then, a full length hearing. On this complaint, all claims against the First Selectman and Board of Selectmen were dismissed, and all but one was dismissed against the Board of Finance Chairman, who did not chair the meeting in question, and the Board of Finance. As you state in your question, that claim being that members of the audience were unable to identify who was on the phone as Stan Soby and myself, who both called in to the meeting, were only identified by the acting the chairman by first names and also, that I did not say, "This is Rob Tarlov speaking" each time that I spoke on the phone.

To answer your question about the legal expense to the taxpayer, I think we need to address several questions where some of the answers I believe could have minimized or avoided these costs. Just because an expense is justified, does not mean there could not have been better and less expensive ways to achieve an acceptable result.

1. Under the circumstances, did the complainant have the right to file?
2. Was the involvement of an attorney necessary or a prudent investment of taxpayer dollars?
3. Could the Town or State have done anything in advance of the incident to have prevented the occurrence?
4. Were there alternative solutions available?

For number 1, yes, under FOI, the complainant had the right to file a complaint if she felt that she, or any other citizens, had their rights granted under the FOI Act violated due to some action or lack of action.

For number 2, the Town, in defending any legal action, would not be prudent to send an employee or volunteer to a hearing to defend the Town without legal counsel. To save money by avoiding the cost of a legal defense could in the end prove to be a lot more expensive for the taxpayers. A complainant can be a lot more adept at presenting their case than a town employee or volunteer and the complainant could also show-up for the hearing with an attorney. I think we all have had experiences where we have felt the decisions in disputes were not made

based on what we perceived to be right, but based on the capacity of the other side to do better research and, with better presentation skills, be able to use that research to create a better narrative for their position.

Also, as an unpaid volunteer, subject to possible fines, adverse publicity or other action, if in the course of fulfilling my duties, a citizen files a complaint, I expect the Town to provide me legal defense, and if possible, stand in for me at a hearing so that I do not have to leave my employment to attend the hearing. I would expect the Town would not attempt in my defense, to save on costs by selecting a cheaper attorney than they have chosen to use in all other matters. Unlike larger municipalities, Colchester does not have the resources for a staff attorney to represent us in these claims or to provide us ongoing guidance on FOI compliance.

For number 3, the Town arranges for someone from the State to conduct FOI training in Town Hall about every other year. The last one was one in September of 2016 and another one is scheduled for June 14. Three current BOF members attended the 2016 training and over the last 25+ years, I have attended many of these State sessions, but this item in the FOI decision was never discussed.

The FOI Commission's remedy, at the request of the complainant, was that BOF must attend FOI training. In this solution, the Commission has assumed the problem occurred because Board of Finance members have not been sufficiently trained. That may be true, but not because we haven't invested the time to attend the FOI training sessions, but, in my opinion, because the State training is not adequate. I would have been attending the planned session in June regardless of the FOIC decision, not because I feel I learn much at any session, but because I am hopeful that an accumulation information from these training sessions over time may help, however, after 28 years of attending these State sponsored sessions I feel I should have a much better handle on this.

Unfortunately, the practical application of the FOI Act cannot be covered in a 30 minute presentation followed by a Q and A, especially with the dearth of available resources from the State. The only take-away from these sessions is a 3" x 10" brochure in a minute 6pt type face that carries the disclosure that one should not rely on this material, and that we should always check the statutes. When you google the Act or visit the State site, what little material is available, all contains the same disclosure and, when you reference the statutes, they are so sparse, they offer no guidance. I cannot see in the statute they said we violated, how anyone could draw out from that language that our actions violated that statute – it was an extremely broad interpretation of a statute that could be used for any action one might perform. Perhaps deliberately vague so it can be used as a catch all that they can use in justifying any ruling.

On our FOI violation, Googling "CT FOI Act Attending Meetings by Telephone" brings up an Advisory Opinion issued to the Town of Seymour in 1980 and a legislative report from December 2017 (7 months after our meeting) which references the 1980 document and which to find this on the State site, you would need to know an opinion exists and know the # of the opinion, and I would not have known to look for the document to avoid an incident.

The FOI Act was created to provide for open access to information, meetings, the decision making process, etc. That's a good thing, but unfortunately in the 40+ years this law has been in effect, it appears the State has done little to ensure that local boards have the resources and information necessary to follow the provisions needed to fulfill the intent of the Act, particularly for volunteer boards and commissions where the names continue to be replaced with new volunteers. Instead the State is reactive in exercising broad interpretation of statutes that lack content and context after a complaint has been filed.

I cannot comprehend how the State, after 40 years of experience with the Act, has not created an FOI Compliance Manual. With years of Advisory Opinions and Commission Rulings, why have these not been catalogued and indexed by subject and become an appendix to that yet to be created manual. As an outsider it appears to me that after all this time, compliance is still a reactive process of subjective interpretations of the statutes and that

while the decisions are entered into the record, they are not incorporated into a process manual that local boards and commissions can use as a practical guide to ensure they are in compliance.

For number 4, are there other ways these things can be settled without filing complaints and incurring the use of taxpayer money to defend staff and volunteers?

For me, a rush to file a complaint with no other efforts to reach a local remedy is not in the best interest of other taxpayers. On these complaints relating to a Thursday evening meeting, at least on one of the complaints, a request was made the day after the meeting (Friday) for information and the complaint was filed on the following Tuesday with a 3 day Memorial Day weekend in between.

If both parties have the goal of ensuring, that as Colchester voters and taxpayers, we all have open access to information and meetings, then I believe most of these issues can be solved with local discussion. Although it is difficult for any of us not to be influenced in our perspective by our personal, political and philosophical differences, and although we may not all be on the same page on what embodies open government, I still believe with local discussion, most of these differences can be overcome and necessary changes in process made to ensure we all have the best opportunities to be involved in open government.

When I look at these two complaints one might have been a little more difficult to accomplish with just local discussion, however, as a next step, the complainant and Town have access to an Ombudsman who can assist in mediating the differences to reach a successful conclusion. If this does not result in a remedy satisfactory to the complainant, then a formal complaint can be made to the FOI commission.

Although in both these complaints, the complainant says that to avoid further legal costs for the Town, she had proposed a settlement to the Town saying if the Town agreed to her terms, she would have withdrawn the complaints, this is not what I am outlining above.

First, at the point she says she made these two settlement offers, the complaints had been filed months before and the two hearings had already occurred. The complaints had been filed within days of the May meeting and the Town had already incurred the legal expense when the settlement offer was made. We incurred no additional legal expense after that point.

Second, I would not describe "if you agree to my terms, I will withdraw my complaint" as a local discussion to arrive at a solution.

To me, the complaint should be the last resort if after local discussion, and then mediation through an ombudsman, we have not reach an acceptable remedy for the complainant.

I hope the public realizes that our local boards and commissions, all subject to the FOI Act, are made up of over 100 unpaid volunteers, most with limited experience. On the Board of Finance, we are all unpaid and donating our time around our commitments to our full time jobs and families. In early 2017, just before the complaint the Board had 1 board member with 7 years on the board, one with 5 years, two with 1 year, and two with less than 6 months. We have since had a new person elected replacing one of the members from last year. Many other Boards and commissions are the same. We are your neighbors, all members of the Colchester Community, only different from those not involved in the boards and commissions in that we chose town government as one of our volunteer activities. Few ever volunteer for this service with any future political aspirations, and I think most of us were volunteered!

I would hope that any potential complainant would give us the benefit of the doubt and would initially assume that we all want to do what is right, however, because of our lack of experience combined with the lack of

available State resources and training, we will make mistakes, and when that happens, we all want to work to ensure we don't repeat those errors in the future.

If we could all first work together to solve these breakdowns in process at a local level rather than rush to sue or file a complaint, we can better serve the taxpayers by creating better remedies without the delays and cost of the legal process.

Rob

Rob Tarlov

From: jmcnair3 <jmcnair3@comcast.net>
Sent: Thursday, May 3, 2018 12:34 PM
To: Robert Tarlov
Subject: Re: FIOC decision

Is this much to do about nothing for \$4700 or a learning experience for the Bof.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Robert Tarlov <BOFChair@colchesterct.gov>
Date: 5/3/18 11:57 AM (GMT-05:00)
To: jmcnair3 <jmcnair3@comcast.net>
Subject: Re: FIOC decision

Hi James,

Glad to address, but can you be more specific about, "what should taxpayers make of all of this"?

Rob

Rob Tarlov, Chairman, Board of Finance
860-608-4293

From: jmcnair3 <jmcnair3@comcast.net>
Sent: Thursday, May 3, 2018 8:55 AM
To: Robert Tarlov
Subject: FIOC decision

Recently, the BOF was ordered to receive FOI training. The ruling was based upon not making sure elected meeting participants teleconferencing were not properly identified.

The BOF was not found in violation of the more serious allegations. Given the \$4700 taxpayer expense, what should taxpayers make of all of this?

5/16/2018

Mail - BOFChair@colchesterct.gov

James McNair

Sent from my Verizon, Samsung Galaxy smartphone