

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gerald Daley,

Complainant

against

Docket #FIC 2018-0604

Director of Information Technology,  
City of Middletown; and City Clerk,  
City of Middletown,

Respondents

September 11, 2019

The above-captioned matter was heard as a contested case on January 3, 2019, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the matter was consolidated with Docket #FIC 2018-0603; Gerald Daley v. Mayor, City of Middletown; Clerk, Common Council, City of Middletown; City Clerk, City of Middletown; Common Council, City of Middletown and City of Middletown.

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. It is found that, by email dated October 9, 2019, 2018, the complainant sent the Director of Information Technology and the City Clerk<sup>1</sup> the following public records request:

I am requesting an opportunity to inspect or obtain copies of public records comprising all emails sent through the City of Middletown e-mail servers between January 2, 2018 and October 9, 2018 to and/or from the following email addresses: [Margaret.mason@leclairryan.com](mailto:Margaret.mason@leclairryan.com); [Daniel.elliott@leclairryan.com](mailto:Daniel.elliott@leclairryan.com); and any other e-mail with the domain name @leclairryan.com.

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<sup>1</sup> The Commission notes that the complainant did not send the instant request to the Mayor for the City of Middletown or to the City of Middletown itself. Accordingly, the mayor and the city are removed as party respondents in this case.

3. It is found that, by email dated October 9, 2018, Brig Smith, General Counsel for the City of Middletown, acknowledged the request.

4. By letter dated and filed October 25, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to provide him with copies of the records described in paragraph 2, above.

5. With regard to the allegations that the respondents failed to disclose responsive public records to the complainant, §1-200(5), G.S., provides:

“Public records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. Ashley Flynn, the City and Town Clerk for the City of Middletown, and Brian Skowera, the Director of Information Systems for the City of Middletown, appeared and testified at the contested case hearing.

10. It is found that neither Ms. Flynn nor Mr. Skowera created the records requested in this case.

11. It is further found that neither Ms. Flynn nor Mr. Skowera maintain the records requested in this case.

12. It is found that, although Ms. Flynn determined that she did not maintain the requested records, she forwarded the request to the Clerk of the Common Council.

13. After Ms. Flynn testified, the complainant withdrew the complaint against her.

14. It is found that Mr. Skowera is in charge of the maintenance and construction of computer systems throughout the city. It is further found that, in the course of his work, Mr. Skowera will assist public agencies and public officials in gathering requested electronic records. In this regard, Mr. Skowera will run a search in the city's computer systems for requested electronic records and then provide the responsive records or "hits" to the appropriate public agency or official.

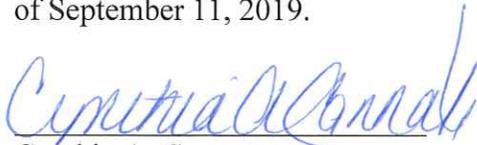
15. It is found that, on October 19, 2018 and at the direction of the mayor, Mr. Skowera ran a search in the city's computer systems for records responsive to the request set forth in paragraph 2, above. It is further found that, on October 22, 2018 and at the direction of the mayor, Mr. Skowera hand-delivered the responsive records to Attorney Sommaruga.<sup>2</sup>

16. After Mr. Skowera testified, the complainant withdrew the complaint against Mr. Skowera.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 11, 2019.



Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>2</sup> The Commission notes that, by email dated December 13, 2018, Attorney Mark J. Sommaruga, counsel for the City of Middletown, disclosed public records to the Mayor for the City of Middletown in connection with a matter that has been docketed by the Commission as Docket #FIC 2018-0598, Daniel Drew v. Sebastian Guiliano, as Member, City Council, City of Middletown; Mary Bartolotta, as Member, City Council, City of Middletown; and City of Middletown. Attorney Sommaruga also disclosed these same records to the complainant. The Commission further notes that the records that Attorney Sommaruga disclosed on December 13<sup>th</sup> are the email records that the complainant requested from Ms. Flynn and Mr. Skowera.

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:

**GERALD DALEY**, 70 Autumn Lane, Middletown, CT 06457-4787

**DIRECTOR OF INFORMATION, CITY OF MIDDLETOWN; CITY CLERK, CITY OF MIDDLETOWN;** c/o Attorney Nicholas R. Bamonte, Berchem Moses PC, 1221 Post Road East, Westport, CT 06880

FORMER PARTIES:

**Mayor, City of Middletown; and City of Middletown,** c/o Attorney Mark J. Sommaruga, Pullman & Comley, LLC, 90 State House Square, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission