

TO: Freedom of Information Commission
FROM: Thomas A. Hennick
RE: Minutes of the Commission's regular meeting of September 11, 2019

A regular meeting of the Freedom of Information Commission was held on September 11, 2019, in the Freedom of Information Hearing Room, 18-20 Trinity Street, Hartford, Connecticut. The meeting convened at 2:17 p.m. with the following Commissioners present:

Commissioner Owen P. Eagan, presiding
Commissioner Jay Shaw (participated via speakerphone)
Commissioner Matthew Streeter
Commissioner Christopher P. Hankins
Commissioner Lenny T. Winkler

Also present were staff members, Colleen M. Murphy, Mary E. Schwind, Victor R. Perpetua, Valicia D. Harmon, Kathleen K. Ross, Paula S. Pearlman, Matthew D. Reed, Danielle L. McGee, Cindy Cannata, and Thomas A. Hennick.

The Commissioners voted, 4-0, to approve the Commission's regular meeting minutes of August 28, 2019. Commissioner Winkler abstained.

Those in attendance were informed that the Commission does not ordinarily record the remarks made at its meetings, but will do so on request.

[Docket #FIC 2018-0574](#) Jean Conquistador v. Chief, Police Department, City of Meriden; and Police Department, City of Meriden

Jean Conquistador participated via speakerphone. Attorney Kathleen Foster appeared on behalf of the respondents. The Commissioners voted, 4-0, to adopt the Hearing Officer's Report. Commissioner Hankins recused himself from the matter. The proceedings were recorded digitally.

[Docket #FIC 2019-0132](#) Dale Kukucka v. James C. Rovella, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection

Dale Kukucka participated via speakerphone. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were recorded digitally.

[Docket #FIC 2019-0231](#)

Noah Snyder v. Rollin Cook, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0558](#)

Claire Howard v. Superintendent of Schools, Bloomfield Public Schools; and Bloomfield Public Schools

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0598](#)

Daniel Drew v. Sebastian Giuliano, as member, City Council, City of Middletown; Mary Bartolotta, as member, City Council, City of Middletown; and City of Middletown

Daniel Drew appeared on his own behalf. Attorney Mark Sommaruga appeared on behalf of the city of Middletown. Attorney Michael Harrington appeared on behalf of the respondents. The Commissioners unanimously voted three times to amend the Hearing Officer's Report. The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.* The proceedings were recorded digitally.

[Docket #FIC 2018-0602](#)

Robert Young v. Town Manager, Town of Wethersfield; and Town of Wethersfield

Robert Young appeared on his own behalf. Susan Kniep also appeared on the complainant's behalf. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were recorded digitally.

[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

Gerald Daley appeared on his own behalf. Attorney Mark Sommaruga appeared on behalf of the city of Middletown. Attorney Michael Harrington appeared on behalf of the respondents. The Commissioners unanimously voted three times to amend the Hearing Officer's Report. The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.* The proceedings were recorded digitally.

[Docket #FIC 2018-0604](#)

Gerald Daley v. Mayor, City of Middletown; Director of Information, City of Middletown; City Clerk, City of Middletown; and City of Middletown

Gerald Daley appeared on his own behalf. Attorney Mark Sommaruga appeared on behalf of the city of Middletown. Attorney Michael Harrington appeared on behalf of the respondents. The Commissioners unanimously voted to adopt the Hearing Officer's Report. The proceedings were recorded digitally.

[Docket #FIC 2018-0660](#)

Patrick Eaton-Robb and the Associated Press v. President, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0661](#)

Jay Hardison v. Superintendent of Schools, Darien Public Schools; and Darien Public Schools

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0663](#)

Meryl Anne Spat v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2018-0670](#)

W. Scott Van Sicklin v. Town Manager, Town of Glastonbury; and Town of Glastonbury

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

[Docket #FIC 2019-0032](#)

Alexander Wood, Matthew Knox, Doreen Guarino, Kimberly Phillips and Journal Inquirer v. Chairman, Police Commission, Town of Suffield; Police Commission, Town of Suffield; and Town of Suffield

The Commissioners unanimously voted to amend the Hearing Officer's Report.
The Commissioners unanimously voted to adopt the Hearing Officer's Report as amended.*

[Docket #FIC 2019-0038](#)

John Callahan, Jr., Jennine Gleason and Sara Mayer v. First Selectman, Town of Trumbull; Director of Economic and Community Development, Town of Trumbull; Town Planner, Town of Trumbull; Planning and Zoning Commission, Town of Trumbull; Planning and Zoning Department, Town of Trumbull; and Town of Trumbull

The Commissioners unanimously voted to adopt the Hearing Officer's Report.

Colleen M. Murphy reported that work had begun in earnest on filling the agency's vacant paralegal position.

The meeting was adjourned at 5:00 p.m.

Thomas A. Hennick
MINREGmeeting 09112019/tah/09122019

* See attached for amendments

AMENDMENTS

[Docket #FIC 2018-0598](#)

Daniel Drew v. Sebastian Giuliano, as member, City Council, City of Middletown; Mary Bartolotta, as member, City Council, City of Middletown; and City of Middletown

The Hearing Officer's Report is amended as follows:

12. By letter dated and filed October 23, 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] **8** above.

14. With regard to the allegations concerning the illegal meeting and the improper meeting referenced in paragraph [7] **13**, above, §1-200(2)(A), G.S., defines "meeting," in relevant part, as follows:

26. It is found that the records requested in paragraph [2] **8**. a, above, are the investigative records and communication records that were created in connection with LeClairRyan's investigation, as well as invoices for legal services performed by LeClairRyan.

27. It is found that the request for the "notice, agenda, and minutes," set forth in paragraph [2] **8**. b, above, pertains to a June 19, 2018 meeting of the subcommittee of the Common Council. It is found that the June 19th meeting is the alleged illegal meeting that the complainant referenced in his complaint.

28. With regard to the request set forth in paragraph [2] **8**. b, above, it is found that, by the time of the contested case hearing, the complainant had received the notice, agenda and meeting minutes for the subcommittee's special meeting of June 19, 2018. The complainant contended that the FOI Act had been violated nonetheless because he received the requested records from Gerald Daly, a member of the Common Council, but he did not receive the records from any of the three subcommittee members, identified in paragraph 6, above.

30. Accordingly, with regard to the request set forth in paragraph [2] **8**. b, above, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

31. With regard to the request set forth in paragraph [2] 8. a, above, it is found that, on or about December 13, 2018, the complainant received a large package of records responsive to his request. It is found that some of the records contained in the package were redacted. The complainant indicated at the contested case hearing that he was not challenging the redactions in the records that had been disclosed to him. The complainant contended, however, that there are more responsive records, particularly emails between the Common Council and Attorney Mason, and between Linda Reed, the Clerk of the Common Council, and Attorney Mason, which have been withheld in their entirety. In addition, the complainant contended that some city employees may have used personal emails accounts to communicate with Attorney Mason. Finally, the complainant contended that, while the Common Council had authority to hire an investigator, it was not authorized to hire an attorney for the purpose of receiving legal advice; accordingly, the complainant contended that none of the requested records should be deemed exempt pursuant to the attorney-client privilege.

34. First, because the respondents disclosed some of the in camera records to the complainant with redactions and because the complainant indicated during his case-in-chief that he was not challenging any of the redactions contained within the records that had been disclosed to him, the Commission will not address the legal claims made for the redactions contained in the following in camera records: IC-2018-0598-20 through IC-2018-0598-23; IC-2018-0598-87 [and] **THROUGH** IC-2018-0598-95; IC-2018-0598-113 through IC-2018-059-117; IC-2018-0598-195; IC-2018-0598-203 through IC-2018-0598-208; IC-2018-0598-223 and IC-2018-0598-224; IC-2018-0598-228 through IC-2018-0598-240; IC-2018-0598-246; IC-2018-0598-251; IC-2018-0598-255 and IC-2018-0598-256; IC-2018-0598-284 through IC-2018-0598-287; IC-2018-0598-360 through IC-2018-0598-362; IC-2018-0598-364 through IC-2018-0598-369; IC-2018-0598-379 through IC-2018-0598-395; and IC-2018-0598-1-Invoice through IC-2018-0598-18-Invoice.

36. However, in his closing remarks, the complainant indicated that he has no objection to the respondents redacting the names of current city employees from any of the records ordered disclosed in this case. **AT THE COMMISSION MEETING, THE COMPLAINANT INDICATED THAT HE HAS NO OBJECTION TO THE RESPONDENTS REDACTING THE JOB TITLES OF CURRENT CITY EMPLOYEES FROM ANY OF THE RECORDS ORDERED DISCLOSED IN THIS CASE.**

37. Accordingly, the Commission need not address the claim that the names of city employees and the names of the complainants (who are also city employees) are exempt pursuant to §1-210(b)(2), G.S.³

3 Although the Commission does not address §1-210(b)(2), G.S., if it had the records at issue would not constitute “personnel” or “similar” files within the meaning of said statute.

47. Based on the above legal principles and after a careful in camera inspection of the records, it is found that the following records are exempt from disclosure pursuant to the attorney-client privilege: IC-2018-0598-14; IC-2018-0598-17 and IC-2018-0598-18; IC-2018-0598-24; IC-2018-0598-26; IC-2018-0598-29 (first 26 lines); IC-2018-0598-30; IC-2018-0598-31 (first 25 lines); IC-2018-0598-33 and IC-2018-0598-34; IC-2018-0598-36 through IC-2018-0598-38; IC-2018-0598-41 through IC-2018-0598-43; IC-2018-0598-68 (first 15 lines); IC-2018-0598-78 (lines 19 through 32); IC-2018-0598-96 and IC-2018-0598-97; IC-2018-0598-98 (from line 23 to the bottom of the page); IC-2018-0598-99; IC-2018-0598-104 (first 16 lines); IC-2018-0598-105 (lines 21 through 33); IC-2018-0598-107 (lines 22 through 34); IC-2018-0598-118 (line 14 to the bottom of the page); IC-2018-0598-120 (line 23 to the bottom of the page); IC-2018-0598-121; IC-2018-0598-123 (line 20 to the bottom of the page); IC-2018-0598-124; IC-2018-0598-139 (line 22 to the bottom of the page); IC-2018-0598-149; IC-2018-0598-156; IC-2018-0598-160; IC-2018-0598-161 (line 19 to the bottom of the page); IC-2018-0598-162 (first 17 lines); IC-2018-0598-164 (line 20 to the bottom of the page); IC-2018-0598-165; IC-2018-0598-166 (first 24 lines); **IC-2018-0598-168 AND IC-2018-0598-169**; IC-2018-0598-171 (line 22 to the bottom of the page); IC-2018-0598-172 (first seven lines); IC-2018-0598-181 and IC-2018-0598-182; IC-2018-0598-183 (first nine lines); IC-2018-0598-186 (first 7 lines); IC-2018-0598-187 through IC-2018-0598-194; IC-2018-0598-248; IC-2018-0598-252 (first 8 lines); IC-2018-0598-254; IC-2018-0598-257 through IC-2018-0598-260; IC-2018-0598-261 (from line 8 to the bottom of the page); IC-2018-0598-262; IC-2018-0598-263 (line 21 to the bottom of the page); IC-2018-0598-264; IC-2018-0598-265 (line 20 to the bottom of the page); IC-2018-0598-266; IC-2018-0598-267 (last five lines); IC-2018-0598-268; IC-2018-0598-270 (line 19 to the bottom of the page); IC-2018-0598-271; IC-2018-0598-273 (last 9 lines); IC-2018-0598-274; IC-2018-0598-279 (first 16 lines); IC-2018-0598-288 (first 8 lines); IC-2018-0598-290 (lines 20 through 26); IC-2018-0598-294; IC-2018-0598-298 and IC-2018-0598-299; IC-2018-0598-300; IC-2018-0598-301 (first 16 lines); IC-2018-0598-303 (line 19 to the bottom of the page); IC-2018-0598-304 (lines 13 through 34); IC-2018-0598-313; IC-2018-0598-314 (line 20 to the bottom of the page); IC-2018-0598-315; IC-2018-0598-316 through IC-2018-0598-319; IC-2018-0598-320 (line 21 to the bottom of the page); IC-2018-0598-321 through IC-2018-0598-323; IC-2018-0598-325 (line 8 to the bottom of the page); IC-2018-0598-326 through IC-2018-0598-328; IC-2018-0598-330 (line 20 to the bottom of the page); IC-2018-0598-331 through IC-2018-0598-333; IC-2018-0598-336 (line 16 to the bottom of the page); IC-2018-0598-337 through IC-2018-0598-339; IC-2018-0598-341 (line 25 to the bottom of the page); IC-2018-0598-342 through IC-2018-0598-344; IC-2018-0598-346 (line 29 to the bottom of the page); IC-2018-0598-347 through IC-2018-0598-349; IC-2018-0598-352 (line 29 to the bottom of the page); IC-2018-0598-353 through IC-2018-0598-355; IC-2018-0598-357 through IC-2018-0598-359; IC-2018-0598-363; IC-2018-0598-400; IC-2018-0598-401 (line 21 through the bottom of the page); IC-2018-0598-402 (first 7 lines); IC-2018-0598-406; IC-2018-0598-407 (first 12 lines); and IC-2018-0598-412 through IC-2018-0598-414.

48. However, with regard to the following records, it is found that no legal advice is being sought by a client or is provided by an attorney: IC-2018-0598-1 through IC-2018-0598-13; IC-2018-0598-15 and IC-2018-0598-16; IC-2018-0598-19; IC-2018-0598-25; IC-2018-0598-27 and IC-2018-0598-28; IC-2018-0598-32; IC-2018-0598-35; IC-2018-0598-39 and IC-2018-0598-40; IC-2018-0598-44 through IC-2018-0598-67; IC-2018-0598-69 through IC-2018-0598-77; IC-2018-0598-79 through IC-2018-0598-86; IC-2018-0598-100 through IC-2018-0598-103; IC-2018-0598-106; IC-2018-0598-108 through IC-2018-0598-112; IC-2018-0598-119; IC-2018-0598-122; IC-2018-0598-125 through IC-2018-0598-138; IC-2018-0598-140 through IC-2018-0598-148; IC-2018-0598-150 through IC-2018-0598-155; IC-2018-0598-157 through IC-2018-0598-159; IC-2018-0598-163; IC-2018-0598-167 [through] ; IC-2018-0598-170; IC-2018-0598-173; IC-2018-0598-174; IC-2018-0598-184 and IC-2018-0598-185; IC-2018-0598-196 through IC-2018-0598-202; IC-2018-0598-209 through IC-2018-0598-222; IC-2018-0598-225¹ through IC-2018-0598-227; IC-2018-0598-241 through IC-2018-0598-245; IC-2018-0598-247; IC-2018-0598-249 and IC-2018-0598-250; IC-2018-0598-253; IC-2018-0598-269; IC-2018-0598-272; IC-2018-0598-275 through IC-2018-0598-278; IC-2018-0598-280 through IC-2018-0598-283; IC-2018-0598-289; IC-2018-0598-291 and IC-2018-0598-293; IC-2018-0598-295 through IC-2018-0598-297; IC-2018-0598-302; IC-2018-0598-305 through IC-2018-0598-312; IC-2018-0598-324; IC-2018-0598-329; IC-2018-0598-334 and IC-2018-0598-335; IC-2018-0598-340; IC-2018-0598-345; IC-2018-0598-350 and IC-2018-0598-351; IC-2018-0598-356; IC-2018-0598-370 through IC-2018-0598-378; IC-2018-0598-396 through IC-2018-0598-399; IC-2018-0598-403 through IC-2018-0598-405; and IC-2018-0598-408 through IC-2018-0598-411.

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

1. The respondents shall forthwith provide the complainant, free of charge, with a copy of the records identified in paragraph 48, of the findings, above.

2. In complying with this order, the respondents may redact from such records the names of any current city employees,⁵ **AS WELL AS SUCH EMPLOYEES' JOB TITLES.**

⁵ FOR PURPOSES OF THIS CASE, THE PHRASE "CURRENT CITY EMPLOYEES" MEANS THOSE INDIVIDUALS WHO WERE EMPLOYED BY THE CITY OF MIDDLETOWN AT THE TIME THE REQUEST FOR RECORDS IN THIS CASE WAS MADE.

[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

The Hearing Officer's Report is amended as follows:

13. By letter dated and filed October 23, 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] **8**, above.

18. It is found that the records requested in paragraph [2] **8** above, are the invoices for legal services submitted to the Common Council by LeClairRyan.

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

1. The respondents shall forthwith provide the complainant with a copy of the legal invoices. In complying with this order, the respondents may redact from such records the names of any **CURRENT city EMPLOYEES² OR SUCH EMPLOYEES' TITLES**, with the exception of the name of the Clerk of the Common Council, to the extent such name appears in the invoices.

2. HENCEFORTH, THE RESPONDENTS SHALL STRICTLY COMPLY WITH THE DISCLOSURE REQUIREMENTS OF §§1-210(A) AND 1-212(A), G.S.

² FOR PURPOSES OF THIS CASE, THE PHRASE "CURRENT CITY EMPLOYEES" MEANS THOSE INDIVIDUALS WHO WERE EMPLOYED BY THE CITY OF MIDDLETOWN AT THE TIME THE REQUEST FOR RECORDS IN THIS CASE WAS MADE.

[Docket #FIC 2019-0032](#)

Alexander Wood, Matthew Knox, Doreen Guarino,
Kimberly Phillips and Journal Inquirer v. Chairman,
Police Commission, Town of Suffield; Police
Commission, Town of Suffield; and Town of Suffield

The Hearing Officer's Report is amended as follows:

THE ENTIRE REPORT IS STRICKEN AND THE FOLLOWING IS INSERTED:

The above-captioned matter was heard as a contested case on April 9, 2019, at which time the complainants and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

A proposed decision was issued by the hearing officer on August 23, 2019. By email dated August 30, 2019, the complainants informed the Commission that they had agreed to withdraw their complaint. The Commission takes administrative of that withdrawal.

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.