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Daniel Drew
Complainant(s)

against

Sebastian Giuliano, as member, City Council, City of Middletown; Mary Bartolotta, as member, City Council, City of Middletown; and City of Middletown
Respondent(s)

Notice of Meeting

Docket #FIC 2018-0598

August 27, 2019

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, lst floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, September 11, 2019.** 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 September 3, 2019.*** 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 September 3, 2019.*** **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 September 3, 2019*** 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Daniel Drew
Attorney Michael C. Harrington
Attorney Mark J. Sommaruga

FIC# 2018-0598/ITRA/VDH//TAH/WRBP/2019-08-27

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Daniel Drew,

Complainant

against

Sebastian Giuliano, as Member, City Council, City of Middletown; Mary Bartolotta, as Member, City Council, City of Middletown; and City of Middletown,

Respondents

Report of Hearing Officer

Docket #FIC 2018-0598

August 26, 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.

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, at the time of the contested case hearing, the complainant was the mayor of the City of Middletown.

3. It is found that the Common Council is the City of Middletown's legislative body, which is comprised of twelve members.

4. It is found that, in December 2017, a city employee complained that the mayor had unlawfully harassed her. It is further found that, around the same time, the city also received a complaint letter from a union representing city employees alleging that the mayor had been improperly soliciting campaign contributions from city employees.

5. It is found that, in response to these complaints, the Common Council passed a resolution authorizing the hiring of an outside law firm to assist it in conducting an investigation into both the harassment complaint and the union complaint.

6. It is found that, in the wake of the allegations referenced in paragraph 4, above, the Common Council created a special investigation subcommittee (the

"subcommittee"). It is found that the subcommittee is comprised of the following three members: Councilwoman Mary Bartolotta, Councilman Sebastian Giuliano, and Councilman Thomas Serra.

7. It is found that the Common Council chose to interview only attorneys to assist it with the investigation and ultimately hired the law firm of LeClairRyan. Attorney Margaret Mason of LeClairRyan served as lead counsel on the investigation. The engagement letter between the Common Council and LeClairRyan has been submitted into evidence in this case.

8. It is found that, by email dated August 7, 2018, the complainant sent the following request for copies of public records to the respondents:

a. I am requesting copies of any and all emails, text messages, calendars, written communications in any form, unredacted legal bills, and cellular telephone logs pertaining to this investigation between members of the subcommittee, any employee/associate/partner of LeClairRyan, and any staff of the City of Middletown; and

b. I have also searched for the notice of the subcommittee meeting that Councilwoman Bartolotta mentioned during Monday evening's meeting; she has stated that the meeting had been publicly noticed. However, I have been unable to find any record of the meeting ever having been noticed and, therefore, I am also requesting a copy of that notice, agenda, and minutes.

9. It is found that, by email dated August 7, 2018, the respondents acknowledged the request.

10. It is found that, by email dated October 5, 2018, the complainant (as mayor) instructed the clerk of the respondent council to disclose the requested records to outside counsel for the City of Middletown so that the records could be reviewed for exempt material and then be disclosed to him.

11. It is found that, by email dated October 10, 2018, some members of the respondent council urged the clerk not to follow the complainant's instruction.

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, above.

13. In the complaint, the complainant also alleged that a subcommittee of the respondent council (or the "Common Council," as it is generally referred to) held an

unnoticed meeting sometime in the summer of 2018. In addition, the complainant alleged that, on October 18, 2018, the Common Council held an improper meeting because there was less than a quorum of the members present when such meeting took place.

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

> [A]ny 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. . . .

15. Section 1-225(a), G.S., provides, in relevant part, that "[t]he meetings of all public agencies . . . shall be open to the public."

16. Finally, §1-206(b)(1), G.S., provides, in relevant part, as follows:

> Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. . . . (Emphasis supplied).

17. With regard to the allegations that the subcommittee of the Common Council held an illegal meeting, it is found that the complainant alleged in the instant complaint that the subcommittee members acknowledged during an August 2018 regular meeting of the Common Council that they had engaged in a meeting early in the summer of 2018. It is found that this summer meeting is the meeting that the complainant contends was illegal. See Compl. at 3, ¶ 3 ("The sub-committee, which was made up of the official leadership of the Common Council, held a secret meeting with Attorney Mason sometime in or around the summer of 2018. This has been acknowledged by the subcommittee members and Attorney Mason during a public meeting of the Common Council in

August 2018.")

18. Therefore, it is found that the complainant had actual notice in August 2018 that an alleged illegal meeting may have occurred earlier during the summer of 2018. Accordingly, any complaint regarding this meeting would have had to have been filed with the Commission within thirty days of the August 2018 public acknowledgement.

19. Because the complaint in this case was filed on October 23, 2018, the Commission has no jurisdiction over this portion of the complaint.

20. With regard to the allegation that the Common Council held an improper meeting on October 18, 2018 because less than a quorum of the members attended such meeting, it found that the Common Council's meeting on October 18th was a formal, public meeting, during which certain matters were discussed, but no votes were taken.

21. While the respondent city's rules and/or regulations governing the Common Council may address the need for a quorum of the council's members to be present in order for it to conduct a public meeting, the FOI Act does not. It is concluded that the fact that the Common Council held a public meeting at which less than a quorum of its members were present is not a violation of the FOI Act.

22. 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.

23. 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.

24. 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."

25. 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.

26. It is found that the records requested in paragraph 2.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.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.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.

29. It is found that the underlying request for records in this matter was sent by the complainant to the Common Council (amongst others). It is further found that the fact that the complainant did not receive the requested records from a particular member of the Common Council is not a violation of the FOI Act.

30. Accordingly, with regard to the request set forth in paragraph 2.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.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.

32. In response, the respondent Common Council contended that the records that have been withheld or partially redacted are exempt from public disclosure pursuant to §1-210(b)(2), G.S., (invasion of personal privacy); or §1-210(b)(10), G.S., (attorney-client privilege).

33. At the conclusion of the contested case hearing, the hearing officer ordered the respondents to submit all of the records at issue to the Commission for an in camera inspection. On January 15, 2019, the respondents submitted such records to the Commission. The investigation and communication records shall be referred to as IC-2018-0598-1 through IC-2018-0598-414, while the legal invoices concerning the legal services performed by LeClairRyan attorneys for the Common Council will be referred to as IC-2018-0598-1-Invoice through IC-2018-0598-18-Invoice.[1]

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 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.

35. Second, the respondents contended that the following in camera records "may" be exempt, in part, pursuant to §1-210(b)(2), G.S., because they reveal the names of city employees who were witnesses during the investigation as well as the names of complainants, and because disclosure of these names will reveal who was contacted by or who contacted Attorney Mason: IC-2018-0598-7 through IC-2018-0598-11; IC-2018-0598-24 through IC-2018-0598-28; IC-2018-0598-45 through IC-2018-0598-85; IC-2018-0598-96 through IC-2018-0598-108; IC-2018-0598-118 through IC-2018-0598-147; IC-2018-0598-149 through IC-2018-0598-172; IC-2018-0598-174 through IC-2018-0598-194; IC-2018-0598-196 through IC-2018-0598-198; IC-2018-0598-212 through IC-2018-0598-222; IC-2018-0598-225[2] through IC-2018-0598-227; IC-2018-0598-252 through IC-2018-0598-254; IC-2018-0598-259 and IC-2018-0598-260; IC-2018-0598-263 through IC-2018-0598-281; IC-2018-0598-288 through IC-2018-0598-292; IC-2018-

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[1] The Commission notes that the in camera records referred to in paragraph 33, above, are comprised of multiple documents. The respondents failed to number sequentially each of the pages comprising these documents. So that the Commission may consider the exemptions claimed on a page-by-page basis, it was necessary to number each page of each document. Accordingly, the hearing officer penciled in a page number on each of the in camera records contained in the submission. (See §1-21j-37(f)(2), Reg. of State Agencies).

[2] The Commission notes that the respondents submitted two copies of IC-2018-0598-225, both pages were numbered "IC-2018-0598-225."

0598-300 through IC-2018-0598-305; IC-2018-0598-356; and IC-2018-0598-363.

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.

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.

38. Finally, the respondents contended that the following records are exempt in their entirety pursuant to the attorney-client privilege: IC-2018-0598-1 through IC-2018-0598-19; IC-2018-0598-24 through IC-2018-0598-86; IC-2018-0598-96 through IC-2018-0598-112; IC-2018-0598-118 through IC-2018-0598-194; IC-2018-0598-196 through IC-2018-0598-202; IC-2018-0598-209 through IC-2018-0598-222; IC-2018-0598-225 through IC-2018-0598-227; IC-2018-0598-241 through IC-2018-0598-245; IC-2018-0598-247 through IC-2018-0598-250; IC-2018-0598-252 through IC-2018-0598-254; IC-2018-0598-257 through IC-2018-0598-283; IC-2018-0598-288 through IC-2018-0598-359; IC-2018-0598-363; IC-2018-0598-370 through IC-2018-0598-378; and IC-2018-0598-396 through IC-2018-0598-414.

39. The complainant contended that none of these records can be deemed attorney-client privileged communications because the Common Council only had authority to hire an investigator, not to seek legal advice.

40. Based on the testimony of Councilman Giuliano, it is found that the Common Council specifically hired an investigator who was an attorney because it wanted legal advice. It is further found that Attorney Mason clearly understood that the Common Council was hiring her to investigate the complaints and to provide legal advice. It is further found that the retainer agreement between the Common Council and LeClairRyan specifically notes that the Common Council and the attorneys at LeClairRyan, and specifically Attorney Mason, were entering into an attorney-client relationship. See Ex. C at 2 ("The attorney-client relationship contemplated by this agreement will be considered terminated when we have completed the services that you have retained us to perform"). Furthermore, it is found that the retainer agreement itself is labeled as privileged. See Ex. C, at 1. ("CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED ASSERTED"). The fact that the Common Council may have exceeded its authority in engaging counsel in order to receive legal advice does not nullify the attorney-client privilege once legal requirements to satisfy such privilege have been met.

41. In this regard, §1-210(b)(10), G.S., permits the nondisclosure of "communications privileged by the attorney-client relationship...."

42. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for

communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

43. Section 52-146r(2), G.S., defines "confidential communications" as:

> all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

44. The Supreme Court has stated that "both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney." Maxwell, supra. at 149.

45. In Shew v. FOI Comm'n, 245 Conn. 149, 157-58 (1998), the Supreme Court described the boundaries of the attorney-client privilege as follows:

> The privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him [or her] to give sound and informed advice. . . . We note, however, that since the privilege has the effect of withholding relevant information from the factfinder, it applies only where necessary to achieve its purpose. Accordingly it protects only those disclosures—necessary to obtain informed legal advice—which might not have been made absent the privilege. . . . (Internal citations and quotation marks omitted).

46. It is further found that the records, or portions thereof, identified in paragraph 47, below, contain the legal advice that the respondents sought and/or received from their attorneys. It is further found that the respondents were acting within the scope of their duties with regard to current agency business when they sought and/or received this advice. It is further found that the communications were made in confidence. It is further found that the respondents did not waive their attorney-client privilege.

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-2018-0598-171 (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-2018-0598-225[3] 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.

49. It is concluded, therefore, that other than the records or portions thereof specifically identified in paragraph 47, above, the remainder of the records are not exempt from disclosure pursuant to the attorney client privilege. Accordingly, with regard to such records, the respondents violated the disclosure provision of §§1-210(a) and 1-212(a), G.S., 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 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.

Valicia Dee Harmon

Valicia Dee Harmon
as Hearing Officer

2018-0598/HOR/VDH/08/26/2019

[3] The Commission notes that two copies of IC-2018-0598-225 were submitted in camera.