

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gerry Daley,

Complainant

against

Docket #FIC 2018-0714

Chairperson, Subcommittee,
Common Council, City of Middletown; and
Subcommittee, Common Council,
City of Middletown,

Respondents

October 23, 2019

The above-captioned matter was heard as a contested case on September 20, 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 all relevant times to this appeal, the complainant was a member of the Common Council.
3. It is found that the Common Council created a subcommittee comprised of the following three members: Councilwoman Mary Bartolotta, Councilman Sebastian Giuliano, and Councilman Thomas Serra.¹
4. It is found that, by letter dated September 7, 2018, the complainant made a request for public records (such records are not at issue in this matter) to the clerk of the Common Council. It is found that the complainant received copies of the requested records on November 15, 2018. The complainant contended that, at that time, he “received constructive notice that an Executive Session meeting of a Common Council subcommittee was held on June 19, 2018 . . .”
5. It is also found that, by letter dated December 10, 2018, the complainant made a request to the Town Clerk to inspect or obtain a copy of the “notice of agenda and minutes of an ‘Executive Session meeting’ which I have recently learned occurred on or

¹ At the time of the contested case hearing Mr. Serra was deceased.

about June 19, 2018” (such records are not at issue in this matter). It is found that the complainant received copies of the requested records on December 10, 2018.

6. By letter dated and filed December 14, 2018, the complainant appealed to the Commission, alleging that the respondents² violated the Freedom of Information Act (“FOI” Act) by denying him the right to attend the June 19, 2018 meeting of the subcommittee of the Common Council by holding an unnoticed meeting. The complainant also alleged that the respondents violated the FOI Act by failing to timely file and post an agenda for the June 19, 2018 meeting of the subcommittee of the Common Council, failing to timely make available a record of votes taken at the June 19, 2018 meeting of the subcommittee of the Common Council, failing to take a vote prior to entering an executive session at the June 19, 2018 meeting of the subcommittee of the Common Council, and failing to timely file minutes for the June 19, 2018 special meeting of the subcommittee of the Common Council.

7. Section 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. . . .

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

9. Section 1-225(d), G.S. provides, in relevant part, that:

Notice of each special meeting of every public agency . . . shall be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency’s Internet web site, if available, and given not less than twenty-four hours prior to the time of such meeting by filing a notice of the time and place thereof in the office of the . . . clerk of such subdivision for any public agency of a political subdivision of the state. . . .

10. During the hearing, the respondents contended that the complainant’s appeal was not timely filed. The respondents further contended that, even if the Commission

² The complainant named the following as respondents to the complaint: City of Middletown; Ashley Flynn, City and Town Clerk; Linda S.K. Reed, Clerk of the Common Council; Councilwoman Mary Bartolotta; and Councilman Sebastian N. Giuliano. However, based on the allegations in the complaint, the Commission, in accordance with § 1-21j-30 of the Regulations of Connecticut State Agencies, has designated the appeal as against the Chairperson and Subcommittee of the Common Council.

finds that the complaint was filed timely, the respondents made a good faith effort to comply with the FOI Act.

11. On complaint and during the hearing, the complainant contended that he did not know the precise date of the alleged unnoticed meeting until he received “constructive notice” of the June 19, 2018 executive session of the subcommittee of the Common Council on November 15, 2018 when he received copies of billing documents he had requested, and therefore, his complaint is timely and the Commission should address the allegations contained therein. Thus, it is necessary to first address whether the Commission has jurisdiction to adjudicate the complaint.

12. Section 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).

13. It is found that on June 19, 2018, the subcommittee of the Common Council convened a special meeting during which the members in attendance met in executive session with an attorney. It is found that the Clerk of the Common Council prepared and submitted a notice and agenda for the June 19, 2018 special meeting to the Town Clerk well in advance of the special meeting.

14. It is found that on August 6, 2018, the Common Council convened a special meeting, and the complainant, as a member of the Common Council, attended. It is further found that during the August 6, 2018 special meeting of the Common Council, in the presence of the complainant, a discussion ensued that a meeting of the subcommittee had occurred. (See Respondents’ Exh. 1, p. 6 ¶ 10 “Councilman Daley states that he wants to address the gossip and so [on] and so forth . . . he will say that he is appalled that the subcommittee held a meeting and posted it and did not feel it should advise the rest of the Common Council.”) At the hearing in this matter, the complainant confirmed that he learned during the August 6, 2018 special meeting of the Common Council that the subcommittee had convened, though he did not know the specific date in which the meeting convened.

15. It is found that, following the August 6, 2018 special meeting of the Common Council, the complainant inquired with the Town Clerk’s office about whether any notice, agenda or minutes of the special meeting of the subcommittee of the Common

Council had been filed and posted. It is further found that the complainant could find no such record of the meeting on file with the Town Clerk.

16. It is further found that during an August 13, 2018 special meeting of the Common Council, the complainant, as a member of the Common Council, reported that he went to the Town Clerk's office in search of a notice, agenda, and minutes pertaining to the special meeting of the subcommittee of the Common Council, and that there was no record in the Town Clerk's office of said notice, agenda, and minutes.

17. It is further found that, upon learning that there was no record in the Town Clerk's office of the notice and agenda that she had previously submitted regarding the June 19, 2018 subcommittee meeting, as described in paragraph 13, above, the Clerk of the Common Council prepared and filed minutes with the Town Clerk on August 13, 2018, and refiled the notice and agenda with the Town Clerk on August 14, 2018.

18. It is found that the June 19, 2018 special meeting of the respondents was unnoticed within the meaning of §1-206(b)(1), G.S.

19. It is found that the complainant, as a member of the Common Council in attendance at the August 6 and 13, 2018 meetings, had actual notice³ in August 2018 that an unnoticed meeting may have occurred and for which the respondents may have failed to timely file and post a notice or agenda, make available a record of votes, vote to enter an executive session, and timely file and post minutes.

20. Furthermore, it is found that the general public, including the complainant, had constructive notice of the June 19, 2018 special meeting of the subcommittee of the Common Council when the Clerk of the Common Council prepared and filed minutes with the Town Clerk on August 13, 2018.

21. Consequently, the complainant should have filed his complaint regarding the June 19, 2018 special meeting within thirty days of the August 13, 2018 filing of the minutes.

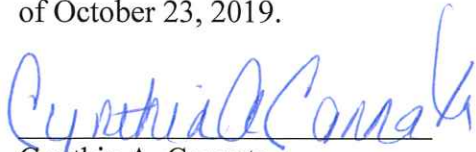
22. Because the complaint in this case was filed on December 14, 2018, the Commission lacks jurisdiction to adjudicate the violations alleged therein.

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.

³ The respondents contended that Councilman Daley had actual notice as early as July 2018 that an unnoticed meeting may have occurred. However, Councilman Daley disputed that he had any knowledge as of July 2018.

Approved by Order of the Freedom of Information Commission at its regular meeting
of October 23, 2019.



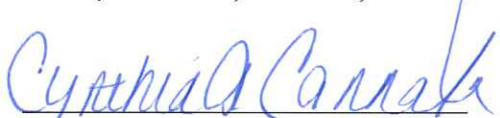
Cynthia A. Cannata
Acting Clerk of the Commission

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:

GERRY DALEY, 70 Autumn Lane, Middletown, CT 06457-4787

CHAIRPERSON, SUBCOMMITTEE, COMMON COUNCIL, CITY OF MIDDLETOWN; AND SUBCOMMITTEE, COMMON COUNCIL, CITY OF MIDDLETOWN, c/o Attorney Michael Harrington, FordHarrison, LLP, 185 Asylum Street, Suite 610, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission