

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Katherine Betlej,

Complainant

against

Docket #FIC 2020-0430

Town Clerk, City of Derby;
and City of Derby,

Respondents

January 26, 2022

The above-captioned matter was scheduled for hearing as a contested case on October 26, 2021, at which time both the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 on August 5, 2020, the complainant made a request through MuckRock.com¹, to the respondents for the following:

[a] A list of members and contact information (contact information meaning a current phone number and email address) for all elected officials on all board and committees, including all members of the Board of Aldermen and Alderwoman, Democratic Town Committee (including leadership positions), Republican Town Committee (including leadership positions), Board of Education, Board of Apportionment and Taxation, and any other elected officials not listed here.

¹ The Commission notes that on its website, MuckRock.com is described as a non-profit, collaborative news site that offers tools to file, track and share public records requests, among other services. <https://www.muckrock.com/>

[b] A list of all members of the following committees, commissions, and boards, regardless of whether they are appointed or elected: the Board of Aldermen and Alderwoman (including the following subcommittees: community relations, operations and procedures, Road Bond, VARCA Building Future Use Ad-Hoc, Blight, and any others existing under the Board of Aldermen and Alderwoman), Democratic Town Committee (including leadership positions), Republican Town Committee (including leadership positions), Board of Education (including Athletic Complex Building Committee, Field House Committee, Baseball Field Committee, and School Regionalization Committee, Finance Subcommittee, Negotiations and Personnel Subcommittee, School/Community Relations and Policy Subcommittee, Student Health and Safety Subcommittee, Plant and Facility Subcommittee, Academic and Curriculum Subcommittee, Athletic Subcommittee), Board of Apportionment and Taxation (including Tax Incentive Committee), Infrastructure Committee, Ethics Board, Shared Services Committee, Parks and Recreation Commission, Pension Board, Planning and Zoning, Water Pollution Control Authority Board, Zoning Board of Appeals, Cultural Commission (including Capital Planning Commission), Cultural Commission Events, Commission for the Elderly, Police Commission, Inland Wetlands Agency, and the Charter Revision Commission. (“August 5th request”) (emphasis added).

It is found that the August 5th request was addressed to the respondent Town Clerk.

3. It is found that on August 7, 2020, the respondents acknowledged through MuckRock.com, the complainant’s August 5th request.

4. It is found that on August 17, 2020, the complainant followed-up with the respondents through MuckRock.com, regarding her August 5th request.

5. It is found that by two separate emails dated August 21, 2020, the respondents provided the complainant with records that contained some of the information sought in the August 5th request.

6. By letter of complaint filed on September 10, 2020,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with her August 5th request.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

7. At the time of the request, section 1-200(5), G.S., provided:

‘[p]ublic 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.³

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

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

9. 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.”

10. It is found that the requested records, to the extent they are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

11. It is found that on October 25, 2021, the respondents provided the complainant with additional records that contained some of the information sought in the August 5th request.

12. It is found that the records provided to the complainant on August 21, 2020, and October 25, 2021, were not maintained by the respondent Town Clerk. It is found that the respondents, working through counsel, gathered such records from other public agencies of the City of Derby. It is found that such records contained the information sought by the complainant in her August 5th request, except for email addresses. It is found that the respondent Town Clerk to whom the request was made did not have a duty to make available records of another public agency. See Lash, et. al. v. FOIC, et. al., 300 Conn. 511, 521-522 (2001).

13. It is found that the complainant’s August 5th request was specifically for “lists”.

14. It is found that the respondent Town Clerk is not responsible for compiling and maintaining lists that are responsive to the August 5th request.

15. It is concluded that the FOI Act does not require public agencies to create records in

³ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

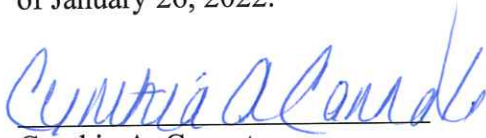
response to a request.

16. It is concluded, therefore, that the respondents did not violate the disclosure provisions of the FOI Act 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 complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 26, 2022.



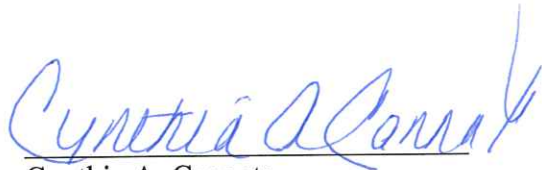
Cynthia A. Cannata
Acting Clerk of the Commission

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:

KATHERINE BETLEJ, 55 Pleasant View Road, Derby, CT 06418

TOWN CLERK, CITY OF DERBY; AND CITY OF DERBY, c/o Attorney Barbara M. Schellenberg, Attorney Dennis J. Kokenos and Attorney John P. Marini, Marino, Zabel & Schellenberg, PLLC, 657 Orange Center Road, Orange, CT 06477



Cynthia A. Cannata
Acting Clerk of the Commission