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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
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Victor Katz,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-434

William Leverage, Controller, Town of Brookfield; and
Town of Brookfield,
Respondent(s)

April 6, 2015

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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 13, 2015**. 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 May 1, 2015**. 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 May 1, 2015**. **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 May 1, 2015**, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Victor Katz
Thomas W. Beecher, Esq.

2015-04-06/FIC# 2014-434/Trans/wrbp/VRP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Victor Katz,

Complainant,

against

Docket #FIC 2014-434

William Leverage, Controller, Town of
Brookfield; and Town of Brookfield,

Respondents

April 1, 2015

The above-captioned matter was heard as a contested case on March 24, 2015, 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. By letter of complaint filed July 7, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for a certain email. The complainant requested the imposition of a civil penalty.
3. It is found that the complainant made a June 25, 2014¹ request to the Brookfield Town Clerk for the following records:

Copies of ALL communications including, but not limited to, correspondence, emails, tele-facsimiles, memoranda or notes in the possession of Town Controller Mr. William Leverage dated June 18th, 2014, June 19th 2014, and June 20th, 2014.

4. It is found that the Town Clerk acknowledged the request the same day, and forwarded it to the respondent Controller at 10:42 a.m. the same day.
5. It is found that the respondent Controller provided all the responsive emails he had to the complainant an hour later.

¹ The request is dated July 1, 2014, but is stamped received by the Brookfield Town Clerk’s office June 25, 2014.

6. It is found that the complainant was searching for a single specific email in which the respondent Leverence had himself forwarded an email he had received from a Glenn Rooney. The complainant considered that the Rooney emailed disparaged the complainant as a member of the Brookfield Board of Education, and that the respondent Leverence had furthered the disparagement by forwarding it to others.

7. It is found that the respondents provided a copy of the Rooney email that had been sent to the Controller, but not the email from the Controller that forwarded it.

8. It is found that the forwarding email from the Controller contained the text: "Please support Mr. Rooney (see below). It's our town and our tax \$\$\$. The Board of Education meets the 3rd Wednesday of every month. Next meeting is July 16. Thank you!"

9. It is found that the respondent Leverence, within a day of when he forwarded the Rooney email, deleted his forwarding email from his "sent" email box, although he retained the Rooney email and subsequently provided it to the complainant.

10. It is found that the respondent Leverence deleted the forwarding email because he considered it transitory.

11. It is found that the respondent Leverence is meticulous about deleting emails that he believes he is not required to retain.

12. It is found that, although the respondent Leverence deleted the forwarding email, the complainant was able to obtain it from another source.

13. Section 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.

14. 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. (Emphasis supplied).

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

16. It is found that both the records provided to the complainant, and the deleted email, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

17. The respondents maintain that they were not required to retain the forwarding email because it was transitory, citing Municipal Records Retention Schedule M1-125, which provides, as to electronic mail messages, that there is no requirement to retain “Transitory messages (i.e., non-record material such as junk mail, publications, notices, reviews, announcements, employee activities, routine business activities, casual and routine communications similar to telephone conversations.)”

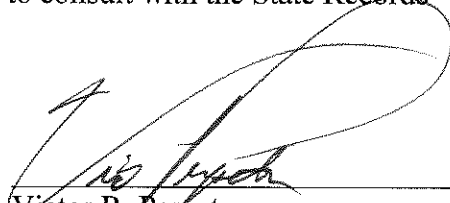
18. It is found, based on the testimony of the respondent Leverage, that he forwarded the Rooney email as part of his duties as Controller.

19. The Commission lacks jurisdiction to decide whether the respondents were required to retain the forwarding email. The Commission encourages the respondents to consult with the State Records Administrator about this issue, as the forwarding email was very possibly in the category of “M1-050 Communications/Public Relations (includes speeches, press releases, remarks)” that must be retained for two years; or “M1-080 [Routine] Correspondence (in electronic or paper format)” that also must be retained for two years.

17. Since only the records retention practices of the respondent Controller are at issue, it is concluded that the respondents did not violate the FOI Act as alleged.

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.
2. The respondent Controller is encouraged to consult with the State Records Administrator.


Victor R. Perpetua
as Hearing Officer