

**FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT**

In the Matter of a Complaint by

FINAL DECISION

Robert Devine,

Complainants

against

Docket #FIC 1998-373

Assesor, City of Middletown;
and City of Middletown,

Respondents

June 30, 1999

The above-captioned matter was heard as a contested case on April 22 and May 7, 1999, at which times 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), (formerly § 1-18a(a)), G.S.

2. By letter dated November 17, 1998, the complainant requested that the respondents provide him with "copies of each document used to calculate and/or formulate [the revaluation notice for 55 Laureate Drive, Middletown, CT], as well as each work sheet, together with the method used to arrive at said revaluation."

3. By letter dated November 23, 1998, the respondents provided "copies of documents that were used by Cole-Layer-Trumble, the Revaluation Company, to arrive at your assessment."

4. By letter dated November 30, 1998, and filed with the Commission on December 3, 1998, the complainant appealed to the Commission alleging that the respondents violated the Freedom of Information Act ("FOIA") by providing "no information [in the November 23, 1998 letter] as to how said values ... were used to arrive at the final reassessed value".

5. It is found that Cole-Layer-Trumble is a revaluation company operating on a nationwide basis (in all fifty states). Approximately fifty ongoing projects are active at any given time in only the Connecticut regional office in Tolland, Connecticut. It is also found that Cole-Layer-Trumble was an independent contractor to the respondents at all times relevant herein, operating pursuant to a written agreement dated April 21, 1997.

6. It is found that the contract with Cole-Layer-Trumble included a license for the respondents to operate the Univers PC based CAMA package, a software for computer assisted mass appraisal, which was installed on the network in respondents' offices at all times following April 1997. However, the license for the software prohibits the respondents from providing it to a third party for installation.

7. It is found that the November 23, 1998 letter from the respondents provided the complainant with all the information specific to his property that was used in the revaluation process by Cole-Layer-Trumble.

8. It is also found that, following the opening of the hearing in this matter on April 22, 1999, the respondents by letter dated April 26, 1999 furnished the complainant with an additional seventy-six pages of

information, which included in table form "the elements considered to determine the value of all residential property within the City of Middletown."

9. It is found that, at the May 7, 1999 hearing, the complainant maintained that his November 17, 1998 request for records had still not been satisfied, in that he could not determine the meaning of the tables provided with the letter dated April 26, 1999. The complainant also maintained at the hearing that Cole-Layer-Trumble was the functional equivalent of a public agency for purposes of the FOIA.

10. It is found that the licensed software of Cole-Layer-Trumble would provide the operational meaning in the revaluation process of the tables provided to the complainant on April 26, 1999.

11. It is also found that the complainant did not make any follow-up inquiries after receiving the November 23, 1998 letter (see paragraph 3, above) and did not attend various sessions that the respondents scheduled with Cole-Layer-Trumble in order to respond to questions from members of the public.

12. In determining whether Cole-Layer-Trumble is the functional equivalent of a "public agency" pursuant to § 1-200 (formerly § 1-18a), G.S., the Commission must consider: (1) whether Cole-Layer-Trumble performs a governmental function; (2) the level of Cole-Layer-Trumble's governmental funding; (3) the extent of government involvement and regulation with Cole-Layer-Trumble; and (4) whether Cole-Layer-Trumble was created by the government. Connecticut Humane Society v. FOI Commission, 218 Conn. 757, 760 (1991). These factors must be considered cumulatively, with no single factor being essential or conclusive.

13. It is concluded that Cole-Layer-Trumble was merely making a recommendation to the respondents concerning property revaluation, that the second prong stated at paragraph 12, above, was not satisfied because the government funds were provided pursuant to contract, that Cole-Layer-Trumble is not subject to extensive government involvement and regulation, and was not created by government. Therefore, it is concluded that Cole-Layer-Trumble is not the functional equivalent of a public agency.

14. It is also therefore concluded that the complainant does not have an FOIA right to have the Univers PC based CAMA software package, which is the private property of a for profit corporation, Cole-Layer-Trumble.

15. It is concluded that, in light of the findings at paragraphs 7 and 9, above, the November 23, 1998 letter provided the complainant with a reasonable and prompt response to his November 17, 1998 request for records, pursuant to the requirements of § 1-210 (formerly § 1-19) and § 1-212 (formerly § 1-15), G.S.

16. With the provision of the April 26, 1999 records, which the complainant admitted did not add much to his understanding of how his property was revalued (see paragraph 9, above), the complainant has received all public records to which he is entitled.

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 special meeting of
June 30, 1999.

Melanie R. Balfour

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:

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Assesor, City of Middletown;

And

City of Middletown
c/o Atty. Trina A. Solecki
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Melanie R. Balfour

Acting Clerk of the Commission