

NO. CV 105015156S : SUPERIOR COURT
BRADSHAW SMITH : JUDICIAL DISTRICT OF
v. : NEW BRITAIN
FREEDOM OF INFORMATION :
COMMISSION, ET AL. : DECEMBER 28, 2011

MEMORANDUM OF DECISION

The plaintiff Bradshaw Smith appeals¹ from three August 25, 2010 final decisions of the defendant freedom of information commission (FOIC) finding that he was not entitled to relief against the defendant town of Windsor (the town) regarding a request for documents.

The FOIC conducted a hearing on each complaint, and a hearing officer rendered proposed final decisions. The final decisions as approved by the FOIC read in part as follows:

Decision #1- FIC 2009-537

* * *

2. It is found that, by letter dated September 7, 2009, the complainant requested that the respondent mayor provide him with a copy of all documents used on such date in the

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As the plaintiff, complainant to the defendant freedom of information commission (FOIC), was denied relief by the FOIC, he is aggrieved for purposes of General Statutes § 4-183 (a).

2011 DEC 28 P 12:15
SUPERIOR COURT

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evaluation of the town manager conducted by the town council.

3. By letter of complaint dated September 12, 2009, and filed September 15, 2009, the complainant appealed to this Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act by failing to respond to the request described in paragraph 2, above. The complainant requested the imposition of a civil penalty in this matter.

* * *

6. It is found that, to the extent the respondent maintains the records requested by the complainant, such records are public records within the meaning of §§ 1-200(5) and 1-210(a), G.S., and must be disclosed, unless they are exempt from disclosure.
7. It is found that the request letter described in paragraph 2, above, listed the address of the respondent mayor as 275 Broad Street, which is Windsor Town Hall. However, it is found that such letter was not received at Windsor Town Hall prior to the filing of the complaint in this matter.
8. It is found that the complainant subsequently sent a letter, dated October 5, 2009, to the respondent mayor, to the deputy mayor, and to the minority leader of the town council, and requested that they provide him with a copy of all documents used on such date in the evaluation of the town manager conducted by the town council.
9. It is found that the request letter described in paragraph 8, above, listed the address of the persons described in paragraph 8, above, as 275 Broad Street, which is Windsor Town Hall. However, it is found that such letter was not mailed to Windsor Town Hall. Rather, it is found that such letter was mailed to the residences of the mayor, the deputy

mayor, and the minority leader.

10. At the hearing in this matter, the minority leader testified that he received the letter described in paragraph 8, above, at his residence, and, because the letter indicates it was sent to Town Hall, assumed that such letter was mailed, appropriately, to Town Hall, and that what he received at his residence was a courtesy copy. The Commission finds the testimony of the minority leader to be credible, and further finds that the minority leader's assumption was quite reasonable.
11. It is found that the town manager of Windsor is responsible for fulfilling the day-to-day public records requests made of the mayor's office and the town council's office. It is found that, in mid-October 2009, as soon as the town manager became aware of the requests described in paragraph 2 and 8, above, he provided the complainant with the requested copies.
12. Based on the facts and circumstances of this case, it is concluded that the respondent did not violate the FOI Act, as alleged in the complaint.

The FOIC order was that the complaint is "hereby dismissed." (ROR, pp. 205-209).

Decision #2- FIC 2009-609

* * *

2. It is found that, by letter dated October 6, 2009, the complainant requested that the respondents provide the complainant with a copy of their "latest organizational chart – with names – for your agency." It is found that the respondents received such request on October 8, 2009.
3. By letter of complaint dated October 13, 2009, and filed October 14, 2009, the complainant appealed to this Commission, alleging that the respondents violated the

Freedom of Information ("FOI") Act by failing to respond to the request described in paragraph 2, above. The complainant requested a civil penalty against the respondent chief.

* * *

6. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record."
7. It is concluded that, to the extent that the respondents maintain or keep on file the record described in paragraph 2, above, they must disclose such record upon request as set forth in §§ 1-210(a) and 1-212(a), G.S., unless such record is exempt from mandatory disclosure.
8. It is found that, upon receiving the request described in paragraph 2, above, the respondent chief determined that the respondents did not have a record responsive to such request. Rather, the respondents kept on file a copy of a chart, dated February 21, 2008, and headed "Proposed Changes in Decision Packages," that lists certain positions in the police department, but which chart is inaccurate, does not contain any names, and has never been adopted.
9. It is found that the respondent chief, in an effort to provide the complainant with the information he sought, sent to the complainant a copy of the respondent department's roster, which listed, by name, rank, and badge number, each member of the department.
10. It is found that the respondent chief sent the record described in paragraph 9, above, to the complainant under cover letter dated October 13, 2009. It is found that such letter was not postmarked until October 19, 2009, due to the fact that the respondents' mail must be processed at Windsor Town Hall.

11. At the hearing in this matter, the complainant did not contend that the provision of the record described in paragraph 8, above, was inaccurate or incomplete. Rather, the complainant was clear in that his only contention in this matter is that the respondents violated the promptness provisions of §§ 1-210(a) and 1-212(a), G.S., by delaying postmarking the envelope containing the record described in paragraph 9, above, for six days.
12. Based upon the facts and circumstances of this case, it is found that the respondents do not maintain or keep on file the record described in paragraph 2, above, and that the respondents did not maintain or keep on file such record at the time of the request at issue. It is also found that the respondents nevertheless attempted to provide the complainant with the information he sought to the best of their ability.
13. It is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

The FOIC order was that the complaint is "hereby dismissed." (ROR, pp. 215-217).

Decision #3- FIC 2009-610

* * *

2. It is found that, by letter dated October 5, 2009, the complainant requested that the respondents provide him with a copy of their response to a communication dated July 27, 2009 from the Wilson Deerfield Advisory Committee.
3. By letter of complaint dated October 13, 2009, and filed October 14, 2009, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to respond

to the request described in paragraph 2, above. The complainant requested civil penalties in this matter.

* * *

6. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record.”
7. It is found that the request letter described in paragraph 2, above, listed the address of the respondents as 275 Broad Street, which is Windsor Town Hall. However, it is found that such letter was not received at Windsor Town Hall prior to the filing of the complaint in this matter.
8. It is found that the letter described in paragraph 2, above, was sent to the residences of the named respondents.
9. It is found that the town manager of Windsor is responsible for fulfilling the day-to-day public records requests made of the mayor’s office and the town council’s office. It is found that, on October 19, 2009, as soon as the town manager became aware of the request described in paragraph 2, above, he undertook to discover if any records responsive to the request exist.
10. It is found that the respondents do not maintain any records responsive to the request described in paragraph 2, above. It is further found that the respondents informed the complainant of this fact by letter dated October 21, 2009.
11. Based on the facts and circumstances of this case, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

The FOIC order was that the complaint is “hereby dismissed.” (ROR, pp. 210-214).

This appeal followed. The court's review of the plaintiff's claims is guided by well established principles as set forth by our Supreme Court. "[J]udicial review of the [commission's] action is governed by the Uniform Administrative Procedure Act [(UAPA), General Statutes §§ 4-166 through 4-189], and the scope of that review is very restricted. . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion.

"Cases that present pure questions of law, however, traditionally invoke a broader standard of review than ordinarily is involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . We have determined, therefore, that we will defer to an agency's interpretation of a statutory term only when that interpretation of the statute previously has been subjected to judicial scrutiny or to a governmental agency's time-tested interpretation and is reasonable." (Citations omitted; internal quotation marks omitted.)

Board of Selectmen v. Freedom of Information Commission, 294 Conn. 438, 446, 984

A.2d 748 (2010)

The plaintiff first contends that he made his requests properly under the freedom of information act. He made two requests for documents from the mayor of the town, and these are the first and third final decisions set forth above. As the FOIC found, these requests were sent to the mayor's home (ROR, p. 51). The town produced evidence that the mailings were received as courtesy copies, and not official demands made at the office of the mayor or other town officials. (ROR, p. 175). The plaintiff did not rebut this evidence by introducing any evidence to show that the mayor also received official communications at his residence.

Therefore there is support in the record for the FOIC's conclusion that the plaintiff did not request the documents from the mayor in his official capacity. See § 1-200 (1), definitions" of public agency as "[a]ny executive . . . office of . . . any town" and (5) "public records" as "any . . . information . . . owned, used, received or retained by a public agency"

The second ground of appeal is that the request to the police chief of the town (final decision #2) did not respond to the plaintiff's request for a chart showing the administrative structure of the police department. The record shows that the police chief instead replied to the plaintiff by sending him a roster of all of the police officers. He

further informed the plaintiff that the requested chart was out of date, but he would send it as soon as it was up-dated. (ROR, p. 58).

The plaintiff also claims that the response from the chief took two weeks and could have been accomplished sooner. The FOIC concluded that the reply was reasonable under the factual circumstances. The court will not overturn the factual conclusions of the FOIC.

The appeal is therefore dismissed as to all three final decisions of the FOIC from which the plaintiff appealed.



Henry S. Cohn, Judge