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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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Mark Weber Esq.,  
Complainant(s)  
against

Notice of Meeting  
Docket #FIC 2011-357

President, Sherman Library Association; and  
Sherman Library Association, Town of  
Sherman,

Respondent(s) May 2, 2012

### 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 23, 2012**. 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 11, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE May 11, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE May 11, 2012**, 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: Mark Weber  
Priya S. Morganstern, Esq.

5/2/12/FIC# 2011-357/Trans/wrbp/LFS/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Mark Weber,

Complainant

against

Docket #FIC 2011-357

President, Sherman Library Association;  
and Sherman Library Association, Town  
of Sherman,

Respondents

May 2, 2012

The above-captioned matter was heard as a contested case on February 9, 2012, 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. On June 17, 2011, the complainant requested copies of certain records of the respondent Sherman Library Association.
2. By letter filed July 11, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the access to meetings requirements of the FOI Act and by failing to provide him with the records he requested.
3. The respondents claim that they are a private organization not subject to the FOI Act.
4. It is found that the first issue before the Commission is whether the respondents are public agencies, within the meaning of §1-200(1)(B), G.S.
5. Section §1-200(1)(B), G.S., provides, in relevant part:

"Public agency" or "agency" means: ... Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law..."
6. The test for determining whether an entity such as either of the respondents is the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S., is set forth in

Board of Trustees of Woodstock Academy v. FOI Commission, 181 Conn. 544 (1980), and consists of the following four criteria:

- a. whether the entity performs a governmental function;
- b. the level of government funding;
- c. the extent of government involvement or regulation; and
- d. whether the entity was created by government.

7. The Supreme Court in Connecticut Humane Society v. FOI Commission, 218 Conn. 757, 761 (1991), advocated a case-by-case application of the Woodstock criteria, and established that all four of the foregoing criteria are not necessary for a finding of “functional equivalence.” Rather “[a]ll relevant factors are to be considered cumulatively, with no single factor being essential or conclusive.”

8. It is found that the Sherman Library Association (“SLA”) operates a free public library in the town of Sherman.

9. With respect to whether the SLA performs a governmental function, §7-148(c), G.S., provides, in relevant part:

Any municipality shall have the power to do any of the following, in addition to all powers granted to municipalities under the Constitution and general statutes:

... Make appropriations to military organizations, hospitals, health care facilities, public health nursing organizations, nonprofit museums and libraries, organizations providing drug abuse and dependency programs and any other private organization performing a public function [.] (Emphasis added.)

10. It is found that governments have operated public libraries since about 300BC, when King Ptolemy I (305-282BC) established the Great Library of Alexandria, a public library open to all with the proper qualifications. Survivor: The History of the Library, *History Magazine*, March 2007; <http://www.history-magazine.com/libraries.html>, accessed February 10, 2012. Later, emperors of Ancient Rome appropriated funds to operate public libraries, some of which were located in the imperial baths until the third century. Id. Throughout the 1600s and 1700s, national, state-supported libraries began to appear throughout Europe. Id.

11. In the United States, Congress in 1815 appropriated \$23,950 to purchase Thomas Jefferson’s library to serve as the foundation for a national library for the use of Congress. When the Library of Congress building opened its doors to the public in November 1897, “it was hailed as a glorious national monument.” Library of Congress>About the Library>History; <http://www.loc.gov/about/history.html>, accessed February 10, 2012.

12. Local libraries became commonplace in nineteenth century America with the surge in immigration and the philosophy of universal education. Op Cit. Providing public education has been determined to be a basic governmental function. Board of Trustees of Woodstock Academy v. Freedom of Information Commission, 181 Conn. 544, 554 (1980).

13. It is found that the SLA performs a governmental function by operating the Sherman public library.

14. With respect to the level of government funding, it is found that the town of Sherman funds approximately half of the SLA's operating budget. It is found that the town's Board of Selectmen creates an itemized budget for the SLA, as it does for other nonprofit organizations, based on pre-budget presentations to the Board of Selectmen. It is found that town's allotment of funds to the SLA is not based on a contract for specific services rendered by the library or the SLA. Cf. Envirotest Systems Corp. v. FOI Commission, supra, 59 Conn. App. 759 (finding no functional equivalence where "the amount of money received by the [organization] reflects the amount of business that is done pursuant to the contract and not an allotment of government funds.")

15. It is found that the SLA is negotiating with the town for a \$1 million grant-in-aid to facilitate the expansion of the library building. It is found that the grant is to be financed by the proceeds of a tax-exempt bond that will be repaid by taxpayers. It is found that the SLA has also received over \$1 million in construction grants from the state.

16. It is found that the level of government funding is high.

17. With respect to the extent of government involvement or regulation, it is found that the town of Sherman has no representative on the SLA's Board of Trustees. It is found, however, that the town does have a non-voting representative on the SLA Board's Building Committee. It is found that, despite its contribution of half of the SLA's annual budget, the town is not involved in the day-to-day decision-making or operation of the SLA or the library, nor does the town have dominant, or even any, control of the SLA. It is found that the government is not involved in the core of the SLA administration or programs. Cf., Yantic Volunteer Fire Com. V. FOI Commission, 44 Conn. Supp. 230, 234 (1995); affirmed, 42 Conn. App. 519 (1996) (finding functional equivalence where volunteer fire department receives substantial government funding and administrative record reveals "powerful testimony concerning ... control [by] the holder of the purse strings.")

18. It is found that the SLA's single full-time employee participates in the town's health care plan and §403(b) retirement savings plan, but the SLA pays the premium for the director's healthcare coverage and provides the employer contribution to the §403(b) plan. It is found that the town does not provide to the library director's plan the same matching contribution that it provides for its employees.

19. It is found that the extent of government involvement or regulation is small.

20. With respect to whether the SLA was created by government, the parties stipulate, and it is found, that no government entity played any role in the association's creation or incorporation.

21. It is concluded, based on the cumulative consideration of all relevant factors, that the respondents are the functional equivalents of public agencies within the meaning of §1-200(1)(B), G.S.

22. Consequently, it is concluded that the respondents are bound by the provisions of the FOI Act.

23. With respect to the complainant's allegation that the respondents failed to post notice of their Board of Trustee meetings with the town clerk and failed to permit him to attend their meetings, §1-225(a), G.S., provides, in relevant part: "The meetings of all public agencies ... shall be open to the public."

24. Section 1-225(c), G.S., provides, in relevant part: "The agenda of the *regular* meetings of every public agency ... shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer, (1) in such agency's regular office or place of business, and (2) ... in the office of the clerk of such subdivision for any public agency of a political subdivision of the state ..."

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

26. It is found that the respondents did not permit the complainant to attend their Board of Trustee meetings. It is also found that the respondents did not file notice of their meetings with the town clerk.

27. It is concluded that the respondents violated §1-225, G.S.

28. With respect to the complainant's request for copies of records, §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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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 ... receive a copy of such records in accordance with the provisions of section 1-212.

30. 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."

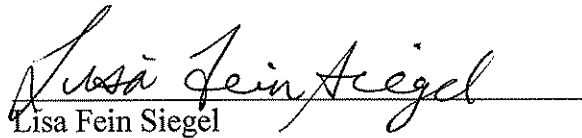
31. The complainant requested copies of minutes and copies of "documents (as of June 17, 2011) provided to the Trustees containing itemized cost estimates to build the addition (to the library); [and] ...to operate the library once the addition is completed."

32. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

33. It is found that the respondents did not provide copies of such records to the complainant; and it is concluded that the respondents violated the FOI Act by failing to disclose them to the complainant.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall strictly comply with the FOI Act.
2. Forthwith, the respondents shall provide the complainant with copies of the records he requested, described in paragraph 31 of the findings of fact, above.

  
Lisa Fein Siegel  
as Hearing Officer