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FREEDOM OF INFORMATION



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Robert Cushman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-337

Co-Ed Softball League, Town of Simsbury; and
Town of Simsbury,
Respondent(s)

May 1, 2013

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 22, 2013**. 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 10, 2013**. 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 10, 2013**. **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 10, 2013**, 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: Robert Cushman
Robert M. DeCrescenzo, Esq.

5/1/13/FIC# 2012-337/Trans/wrbp/VDH/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Robert Cushman,

Complainant

against

Docket #FIC 2012-337

Co-Ed Softball League,
Town of Simsbury; and
Town of Simsbury,

Respondents

May 1, 2013

The above-captioned matter was heard as a contested case on March 12, 2013, 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 Town of Simsbury is a public agency within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated June 14, 2012, the complainant requested that the "Town of Simsbury Co-Ed Softball League" through the Town of Simsbury's Director of Communications and the Treasurer provide him with a copy of the following records: "any and all records, reports, correspondence, notices and agendas of meetings, minutes of meetings regarding the Simsbury Slo-Pitch Co-Ed Softball as they relate to the banning of the Crackerbarrel Pub/Connecticut Party Rental team from the league and any and all records, reports, notices and agendas of meetings, minutes of meetings as they relate to all budgets, income, expenses and financial accounts for the last twenty years."
3. By letter dated June 22, 2012 and filed June 25, 2012, the complainant appealed to this Commission, alleging that the "Town of Simsbury Co-Ed Softball League" violated the Freedom of Information ("FOI") Act by denying his request for records described in paragraph 2, above.
4. By notice dated August 9, 2012, the Commission notified the complainant that it would not be scheduling a hearing in this case because it had no jurisdiction over the Softball League. The Commission informed the complainant that, pursuant to the FOI Act, it only had jurisdiction over regional, state and municipal public agencies within Connecticut.

5. By letter dated August 23, 2012 and filed August 28, 2012, the complainant responded to the Commission's August 9, 2012 notice, contending that "the Town of Simsbury Co-Ed Softbal League is a public agency within Connecticut under C.G.S. §1-200(1)(A)"; that "the Town of Simsbury Co-Ed Softball League is additionally the 'functional equivalent' of the Town of Simsbury Culture, Parks and Recreation Commission"; and that "[t]he Town of Simsbury Co-Ed Softball League is also an 'implementing agency' under C.G.S. §1-200(1)(C)."

6. 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.

7. Section 1-200(1), G.S., defines a "public agency" or "agency" as follows:

- (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official. . . . ;
- (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or
- (C) Any "implementing agency", as defined in section 32-222.

8. Counsel for the Town of Simsbury appeared at the contested case hearing and contended that the Softball League is not a public agency.

9. With respect to the definition of public agency set forth in §1-200(1)(A), G.S., it is found that the Softball League is not an "executive, administrative or legislative office" of the Town of Simsbury, or of any other public agency of the state. It is further found that the Softball League is not a "department, institution, bureau, board, commission, authority or official" of the Town of Simsbury, or of any other public agency of the state. It is further found that the Softball League is not a "committee" of the Town of Simsbury, or of any other public agency of the state. Accordingly, it is concluded that the Softball League is not a public agency pursuant to the provisions of §1-200(1)(A), G.S.

10. With regard to the definition of public agency set forth in §1-200(1)(B), G.S. in Board of Trustees of Woodstock Academy v. FOI Commission, 181 Conn. 544, 554 (1980) ("Woodstock"), the Supreme Court adopted the "functional equivalent" test to determine whether an agency is a public agency within the meaning of §1-200(1), G.S.. The test for functional equivalence to a public agency consists of the following four criteria: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of governmental involvement or regulation; and (4) whether the entity was created by government.

11. Subsequently, in Connecticut Humane Society v. FOI Commission, 218 Conn. 757, 761 (1991) ("Humane Society"), the Supreme Court elaborated that all four factors set forth in Woodstock are not necessary for a finding of functional equivalence, but rather that "all relevant factors are to be considered cumulatively, with no single factor being essential or conclusive."

12. In 1998, the Appellate Court, in Domestic Violence Services of Greater New Haven, Inc. v. FOI Commission, 47 Conn. App. 466, 475-78 (1998) ("Domestic Violence"), added the following to the analysis:

[t]he key to determining whether an entity is a government agency or merely a contractor with the government is whether the government is really involved in the core of the program. . . [the exercise of] direct, pervasive or continuous regulatory control. . . . [and] government's control of the detailed physical performance. . . .

13. At the hearing on this matter, Gerard Toner, the Director of the Simsbury Department of Culture, Parks and Recreation, testified. It is found that the only interaction between the Town of Simsbury and the Softball League is that the town permits the Softball League to play games on land owned by the town. It is found that this permission is in the form of a donation, whereby the town does not charge the Softball League, and other entities, to use town fields to play amateur sports.

14. It is further found that the Town did not create the Softball League pursuant to the town's charter, code of ordinances, or by any other method. It is found that the town does not fund or regulate the Softball League in any manner. In fact, it is found that the Softball League and other private groups defray the town's maintenance costs by contributing funds for the upkeep of the town fields, and for other related expenses, such as the improvement of score boards. It is further found that the town does not supervise the activities of the Softball League, or provide or issue job descriptions for the members of the Softball League.

15. The complainant contends that, because "playing softball" is in accord with the Department of Culture, Parks and Recreation's mission of "providing quality leisure opportunities," the Softball League should be considered the functional equivalent to a public agency. However, it is found that the Softball League is a private organization, not formally connected to the Town's Department of Culture, Parks and Recreation. While there is some evidence in the record that shows that the Softball Leagues does, from time-to-time, communicate with Mr. Toner and copy him on certain correspondence, it is found that the

League is under no *obligation* to communicate with Mr. Toner. It is found that the forwarding of communications by the Softball League to Mr. Toner is done out of courtesy. It is further found that, under the line of cases cited above, a private sports organization cannot become a public agency by virtue of self-designation. It is concluded that the Softball League is not a public agency pursuant to the provisions of §1-200(1)(B), G.S.

16. Finally, the complainant contends that, “[a]lthough there was no testimony regarding the creation of the Town League, the Town League can be considered an ‘implementing agency’ under C.G.S. §1-200(1)(C) because it is designated and authorized to undertake the project of developing, organizing, and administrating the Town of Simsbury’s softball league.”

17. Section 32-222 (K), G.S., defines an “implementing agency” as follows:

‘Implementing agency’ means one of the following agencies designated by a municipality under section 32-223: (1) An economic development commission, redevelopment agency; sewer authority or sewer commission; public works commission; water authority or water commission; port authority or port commission or harbor authority or harbor commission; parking authority or parking commission; (2) a nonprofit development corporation; or (3) any other agency designated and authorized by a municipality to undertake a project and approved by the commissioner.

18. It is found that there was no evidence presented at the contested hearing to establish that the Softball League is an implementing agency pursuant to any of the provisions of §32-222 (K), G.S. It is therefore concluded that the Softball League is not a public agency pursuant to the provisions of §1-200(1)(C), G.S.

19. Finally, despite the fact that the Softball League is not a public agency, it is found that the Town of Simsbury provided the complainant with all records which were in any way related to the Softball League.

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.



Valicia Dee Harmon
as Hearing Officer