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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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Craig Fishbein,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-245

Executive Director, Wallingford Center, Inc.; and  
Wallingford Center, Inc.,  
Respondent(s)

March 12, 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, April 8, 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 March 27, 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 March 27, 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 **fourteen (14) copies** be filed **ON OR BEFORE March 27, 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: Craig Fishbein  
Richard Gee, Esq.

2015-03-12/FIC# 2014-245/Trans/wrbp/PSP//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Craig Fishbein,

Complainant

Docket # FIC 2014-245

against

Executive Director,  
Wallingford Center, Inc.; and  
Wallingford Center, Inc.,

Respondents

March 9, 2015

The above-captioned matter was heard as a contested case on January 16, 2015, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After the hearing on this matter, the respondents moved to admit one after-filed exhibit. Such motion was granted, over the complainant's objection, and marked as: Respondents' Exhibit D, Letter from Wallingford Corporation Counsel to Complainant (dated November 24, 2014). In addition, complainant's Exhibit 15, a DVD labelled FIC 2014-245, which was marked for identification purposes, only, at the hearing, was admitted into the record as a full exhibit over the respondents' objection.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that at the April 23, 2013 meeting of the Town of Wallingford Town Council, the complainant, who is a member of the Town Council, orally requested that the respondents provide him with copies of minutes for the meetings of Wallingford Center, Inc. ("WCI") for the prior three years. It is found that the respondents orally acknowledged his request.

2. It is found that, a year later, at the April 24, 2014 meeting of the Wallingford Town Council, the complainant inquired about his April 23, 2013 request, described in paragraph 1, above, and was informed by the respondents that they did not believe that they had to comply with his request on the grounds that the WCI is not a public agency subject to the Freedom of Information ("FOI") Act.

3. By letter dated April 28, 2014, the complainant alleged that the respondents violated

the FOI Act by refusing to provide him with copies of WCI's meeting minutes and by failing to post their meeting agendas and make their meetings open to the public. In addition, the complainant requested, among other remedies, that the Commission award the complainant attorney's fees and costs for having to bring this complaint before the Commission. The FOI Act does not provide for the award of attorney's fees to a complainant, and therefore, such request shall not be further addressed herein.

4. The respondents contend that WCI is not a "public agency" within the meaning of §1-200(1), G.S., and that therefore it is not subject to the FOI Act.

5. Section 1-200(1), G.S., defines "public agency" to mean:

(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, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services; (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.

6. With respect to whether the respondents are deemed to be the "functional equivalent" of a public agency within the meaning of §1-200(1)(B), G.S., the Supreme Court has adopted a "functional equivalent" test to determine whether an entity is a public agency. See Board of Trustees of Woodstock Academy v. FOI Commission, 181 Conn. 544, 554 (1980) ("Woodstock"). Such test consists of the following four criteria: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government.

7. Subsequently, in Connecticut Humane Society v. FOI Commission, 281 Conn. 757, 761 (1991), 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."

8. With respect to whether the respondents perform a governmental function, the complainant contends that WCI has taken over certain activities that were previously performed by the Town of Wallingford's Holidays and Celebrations Committee and which are traditional governmental functions. The complainant argues that such activities include purchasing wreaths

and Christmas lights for the Town; directing merchants to contribute to uniform holiday decorations; as well as organizing and funding the annual Wallingford Celebrations Day event. In addition, the complainant contends that WCI performs a key governmental role for the Town in that it serves to bridge the community with the local government through, among others, its downtown revitalization programs, including improvements to parking areas and sidewalks, which is a traditional governmental role. The respondents, however, maintain that WCI does not perform a governmental function and that the complainant has failed to offer credible evidence to prove otherwise.

9. It is found that the respondent WCI, as stated in its certificate of incorporation, was organized “[t]o provide a forum and structure for the development and revitalization of the Wallingford downtown area, all for the public purpose, and for no other purposes....” WCI’s mission statement further provides that the organization was “formed to stimulate cooperation between public and private entities to enhance the restoration, preservation, beautification, revitalization and utilization of the town’s center.” The WCI’s mission statement also states that “[i]ts purpose is to increase community pride in its historic heritage making the downtown area a focal point and center of community activity, all for the welfare, satisfaction and convenience of the general public.” In addition, the mission statement provides that WCI “fosters economic development in smaller communities within the context of historic preservation.” It is also found that WCI has indicated on tax returns that “[a]ll of [WCI’s] programs and services are to support Wallingford Center’s purpose of beautification of the Town of Wallingford and the promotion of public relations in the town.”

10. It is found that WCI purchases flags, wreaths, Christmas lights and plants for the Town; organizes the Gardener’s Market, Holiday Stroll, Restaurant Hop and “Buy a Brick” events; and organizes and funds Celebrate Wallingford, an annual event which was created by WCI, among other functions.

11. It is found that WCI, in fact, performs some of the same or similar activities that were performed by the Town’s Celebrations Committee.

12. It is found that fostering economic revitalization and development are governmental functions and the respondents are performing those functions.

13. With respect to the level of government funding the respondents receive, it is found that, in recent years, the WCI’s current operating and program budget has exceeded \$100,000.00. It is found that WCI derives some revenue from several WCI sponsored fundraising projects. It is found, however, that WCI receives approximately three-quarters of its funding from the Town of Wallingford. It is found, for example, that in the 2009-2010 budget, the Town appropriated \$71,665.00 to WCI; in the 2012-2013 budget, the Town appropriated \$78,650.00 to WCI; and, in the 2013-2014 budget, the Town appropriated \$85,950.00 to WCI. In addition, it is found that for the 2014-2015 fiscal year, WCI requested and the Mayor approved \$84,650.00 from the Town to cover its operations and program costs.

14. It is further found that the Town of Wallingford routinely contributes services

(without reimbursement) to WCI, such as the installation and removal of flags and wreaths; transportation and storage of holiday, seasonal and festival decorations on Town owned property; the installation, maintenance and replacement of planters; installation and repair of bricks and benches; and disposal of and replacement of trash bags for the Celebrate Wallingford festival. It is also found that police department and public works employees are routinely available to provide services to WCI. It is further found that such services are requested by the respondent Executive Director, and that the Director directs some of such town government services provided by town employees.

15. It is found that the level of government funding to the respondents is substantial.

16. With respect to the extent of government involvement or regulation, the complainant contends that WCI is financially and physically controlled by the Town. The respondents, however, maintain that neither the Town of Wallingford nor any agency thereof controls or regulates the conduct of WCI. The respondents further maintain that there is no evidence that the Town Council has ever restricted WCI in the use of appropriated funds nor is there any evidence that government has attempted to control, regulate or supervise WCI on its use of public funds.

17. It is found that WCI operates with an executive director, a Board of Directors and, occasionally, during the summer months, paid staff. It is found that the respondent Executive Director reports to, and is directed by, WCI's Board of Directors. It is found that no government official or agency gives orders to or supervises the respondent Executive Director.

18. It is found that there is no evidence that the Town Council, that has routinely approved funding for the WCI, has restricted the use or directed the ways in which such funds must be used.

19. It is found that although the WCI works collaboratively with the Town's Public Celebrations Committee, such as donating a photo booth to such committee's "Seasons of Celebration" or Halloween events, there is no evidence that the WCI directs or supervises such committee.

20. It is found that members of the Town Council have also served on WCI's Board of Directors, but there is no evidence that such members have exerted any influence on Town Council decisions regarding funding allocated to WCI and its programs or projects.

21. It is found, however, that, on at least one occasion, WCI appeared before the Town Council seeking approval to proceed with one of its projects. Specifically, it is found that in 1994, WCI sought approval from the Town Council to investigate the feasibility of proceeding with Phase III of its on-going revitalization and restoration project of the downtown area. WCI wanted to bring the project to the Town's engineering department to study the feasibility and costs involved with such project. It is further found that the Town is routinely involved in the operations of WCI, as described in paragraph 14, above.

22. It is found that the extent of government involvement with, and regulation of, the

respondents is significant.

23. With respect to whether the respondents were created by government, it is found that WCI was incorporated in March 1988 as a private, non-profit corporation by a group of private citizens, and reclassified as a Section 501(c)(4) organization by the IRS in 1989. In addition, the complainant, in his post-hearing brief, admits that there is no evidence before the Commission that WCI was created by government. Accordingly, it is found that WCI was not created by government.

24. Based on the totality of the factors considered, it is concluded that WCI is the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S., and is therefore, subject to the FOI Act.

25. Section 1-200(5), G.S., defines “public records or files” as:

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.

26. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

28. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

29. Section 1-225(a), G.S., provides that:

The meetings of all public agencies...shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which

taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection.... Each public agency shall make, keep and maintain a record of the proceedings of its meetings.


30. Sections 1-225(c) and 1-225(d), G.S., further provide that:

The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer.... Notice of each special meeting of every public agency, except for the General Assembly, either house thereof or any committee thereof, shall be posted not less than twenty-four hours before the meeting to which such notice refers....”

31. It is found that the respondents did not provide the complainant with copies of their meeting minutes, nor did they post and make available to the public their meeting agendas and minutes. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-225, G.S., when they failed to provide the complainant with copies of the requested minutes, and failed to notice and post minutes of their meetings.

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

1. Forthwith, the respondents shall provide the complainant with copies of the minutes requested in findings 1 and 2, above, free of charge.
2. Henceforth, the respondents shall comply with the disclosure and meetings provisions of the FOI Act.

  
Paula S. Pearlman  
as Hearing Officer