

DOCKET NO: HHBCV195026923S

SUPERIOR COURT

TORLAI, JAMES
V.
FREEDOM OF INFORMATION
COMMISSION Et Al

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

10/14/2020

ORDER

The following order is entered in the above matter:

ORDER:

Disposition: JDGACTD - JUDGMENT AFTER COMPLETED TRIAL TO THE COURT FOR THE DEFENDANT(S)

The plaintiff appeals the final decision of the Freedom of Information Commission (FOIC), dated November 13, 2019, dismissing his complaint against the defendants. For the following reasons, the Commission's decision is AFFIRMED.

I. BACKGROUND

On November 17, 2018 the plaintiff requested that the West Hartford Police Department provide copies of all records relating to the following allegations described in the request: "a few days before Christmas in 2015, the victim left a bar while intoxicated, she encountered a Connecticut State Trooper, instead of helping the woman the Connecticut State Trooper took her to his car and coerced [her] into having non-consensual sex with him, when the victim attempted to resist the State Trooper used physical force to restrain her and then raped her.

The Department searched for records consistent with these allegations, but did not find any. The Department sought more specific information from the plaintiff, but none was forthcoming.

On December 3, 2018, the plaintiff filed a complaint with the FOIC, alleging that the Department had violated the Freedom of Information Act by failing to produce documents in response to his request. Even after the complaint was filed, the Department continued to communicate with the plaintiff in an effort to obtain more specific information that might help them find responsive public records.

The plaintiff's FOIA complaint was heard as a contested case on October 11, 2019. During the hearing the plaintiff was asked whether he had more specific information about the alleged arrest at issue. He declined to provide any more details. However, a week after the hearing concluded, but before the hearing officer issued a proposed decision, the plaintiff submitted to the FOIC two docket sheets and a Hartford Courant article describing in detail the event for which he sought public records. That event was different from the allegations of the event described in his original request. Records pertaining to the Hartford Courant article / docket sheet event had been erased by law and, thus, were not public records.

The FOIC issued a final decision on November 13, 2019. The FOIC made the following critical finding, which the plaintiff contests in this appeal: "Based on the credible testimony of the respondents [the Commission] found that the respondents did not maintain any records to the complainant's November 17, 2018 request." Accordingly, the FOIC dismissed the complaint.

II. DISCUSSION

The plaintiff challenges the FOIC's finding that no responsive records to his November 17, 2018 request

exist. The court must affirm this finding as long as it is supported by substantial evidence. General Statutes section 4-183(j). The court, having reviewed the administrative record, determines that substantial evidence supports the finding.

In his argument to this court, the plaintiff contends that the Department should have produced the erased records that related to the event described in the Hartford Courant article and two docket sheets. That event, however, is not the event apparently described in the plaintiff's November 17, 2018 request. And even if it was, erased records are not public records under the Freedom of Information Act.

For the foregoing reasons, the final decision of the FOIC dated November 13, 2019 is AFFIRMED.

This court has the inherent authority to sanction a party for a course of dilatory, bad faith and harassing litigation conduct. See *Hirschfeld v. Machinist*, 27 A.3d 395, 131 Conn. App. 364 (2011). Based on the administrative record and the record of proceedings in this court, the court seriously questions whether the plaintiff has acted in bad faith by pursuing this administrative appeal, particularly after he learned that the records of the events described in the Hartford Courant article and two docket sheets had been erased.

Wherefore, the plaintiff shall appear at a remote hearing on November 10, 2020 at 12:00 p.m. and show cause why the court should not sanction the plaintiff for engaging in a course of dilatory, bad faith and harassing litigation.

Judicial Notice (JDNO) was sent regarding this order.

439604

Judge: DANIEL JOSHUA KLAU

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.