

<b>DOCKET NO. HHB-CV-21-6069278</b>	:	<b>SUPERIOR COURT</b>
	:	
<b>JASON MCCOY</b>	:	<b>JUDICIAL DISTRICT</b>
	:	<b>OF NEW BRITAIN</b>
<b>VS.</b>	:	<b>ADMINISTRATIVE APPEALS</b>
	:	
<b>FREEDOM OF INFORMATION</b>	:	
<b>COMMISSION, ET AL</b>	:	<b>AUGUST 26, 2022</b>

**MEMORANDUM OF DECISION**

**INTRODUCTION:**

This matter is an administrative appeal by the plaintiff, Jason McCoy, of an August 25, 2021 final decision of the Freedom of Information Commission (FOIC) in the agency's docket FIC 2019-0449 (Final Decision). The City of Bridgeport and its clerk (collectively referred to as Bridgeport) are also the defendants in this appeal, having received and dealt with the plaintiff's Freedom of Information Act (FOIA) request.

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 SUPERIOR COURT  
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 JUDICIAL DISTRICT OF  
 NEW BRITAIN

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**FACTS AND PROCEDURAL HISTORY:**

The following facts are relevant to a decision in this appeal and are contained within the record. Through a January 4, 2019<sup>1</sup> letter, the plaintiff requested that Bridgeport allow him to inspect and obtain copies of the following records:

- (a) . . . any communications and or documents related to any contract licensing agreement, request for proposal (“RFP”), proposal and/or bid involving and/or in any way related to Webster Bank Arena (formerly The Arena at Harbor Yard) and Ticketmaster, and/or Live Nation, and/or Harbor Yard Sports and/or Entertainment and/or Webster Bank;<sup>2</sup>
- (b) . . . any contract involving Webster Bank Arena . . . with Ticketmaster, and/or Live Nation, and/or Harbor Yard Sports and/or Entertainment and/or Webster Bank;
- (c) . . . any licensing documents involving Webster Bank Arena . . . with Ticketmaster, and/or Live Nation, and/or Harbor Yard Sports and/or Entertainment and/or Webster Bank;

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<sup>1</sup> The parties agreed that the original FOIA request had a mistaken date on it, and that the correct date was January 4, 2019.

<sup>2</sup> The court notes the use of the terms “in any way related to”, “involving” and the serial use of “and/or” make these requests very broad, materially imprecise and vague. The request was not limited in time and was not directed to any particular city department.

- (d) . . . any Request for Proposal (“RFP”) related to Webster Bank Arena . . . sent to Ticketmaster, and/or Live Nation, and/or Harbor Yard Sports and/or Entertainment and/or Webster Bank;
- (e) . . . any proposal from Ticketmaster, and/or Live Nation, and/or Harbor Yard Sports and/or Entertainment and/or Webster Bank related in any way . . . to the Webster Bank Arena . . .
- (f) . . . any Request for Proposal (“RFP”) involving or referring to the Webster Bank Arena . . .

Upon receipt of the request, Bridgeport gave the request a tracking number, entered the request into its automated response system, and sent the plaintiff an acknowledgment indicating that he would be contacted when the requested records were ready for disclosure. On April 2, 2019, Bridgeport notified the plaintiff by email that its attorneys were still in the process of obtaining and reviewing responsive records.

By a letter dated July 21, 2019, filed with FOIC on July 29, 2019, the plaintiff complained to the FOIC, alleging that Bridgeport had violated FOIA by failing to timely provide him with access to the requested records. While the plaintiff had received some records responsive to his request, he contended that the respondents should maintain additional responsive records. The FOIC held contested case hearings on the plaintiff’s complaint on March 6, 2020 and September 17, 2020.

William John Coleman, Deputy Director of the Office of Planning and Economic Development, testified, at the hearing, concerning the requested records, and Bridgeport's efforts in locating the requested records and reviewing them to make exemption and disclosure determinations. The FOIC found that the requested records were public records subject to FOIA. The FOIC further found that Bridgeport owns the Webster Bank Arena and operates the facility through an operating agreement with Harbor Yards Sports & Entertainment LLC (Harbor Yards). The imprecision and broad language used in the requests inhibited Bridgeport's efforts concerning its search for the records because the requests were imprecise and subject to different reasonable interpretations. This imprecision caused the necessity of further dialog between Bridgeport and the plaintiff in coming to an understanding of his requests.

As to the requests in subparagraphs a, d, e, and f, the FOIC found that Bridgeport did not maintain records that met those requests after clarification of the meaning of the requests with the plaintiff. Accordingly, FOIC found that Bridgeport did not violate FOIA with regard to the foregoing requests.

With regard to the request in subparagraph c, Bridgeport located one responsive record, a sixteen pages Naming Rights Agreement that attaches twenty-five pages of exhibits. Bridgeport asserted that this record was exempt pursuant to General Statutes § 1-210 (b) (5) (B), which exempts from disclosure "[c]ommercial or financial information given in confidence, not required by statute." After in camera inspection, the FOIC concluded that this record was exempt

from disclosure under FOIA. With regard to the request in subparagraph b, the FOIC found that Bridgeport maintained only one responsive record, an operating agreement, which it disclosed to the plaintiff. The FOIC also found that the operating agreement was provided promptly.

Based on the facts and circumstances of this case, including the complexity of the request itself and the extensive search for records undertaken in this case, the FOIC found that Bridgeport conducted a thorough search for records and disclosed the non-exempt records to the complainant in a timely fashion. Accordingly, the FOIC determined that Bridgeport did not violate FOIA in connection with the plaintiff's request. The hearing officer's proposed decision was unanimously adopted by the FOIC.

The plaintiff is aggrieved because he appeals an adverse Final Decision of the FOIC, finding that Bridgeport had properly completed its obligations to the plaintiff in connection with his FOIA request, that Bridgeport had not violated FOIA in connection with the plaintiff's request, and upholding Bridgeport's assertion of exemption from disclosure for the Naming Rights Agreement.

**STANDARD OF REVIEW:**

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183.<sup>3</sup> Judicial review of an administrative decision in an appeal under the UAPA is limited. *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). “[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 [the Supreme 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.” (Internal quotation marks omitted.) *Id.*

Although the courts ordinarily afford deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute’s purposes, “[c]ases that

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<sup>3</sup> General Statutes § 4-183 (j) provides in relevant part: “The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. . . .”

present pure questions of law . . . invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion.” (Internal quotation marks omitted.) *Dept. of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

#### **ANALYSIS:**

The plaintiff presents three issues in this appeal. First, the plaintiff contests the thoroughness of the search conducted by Bridgeport in locating records responsive to the plaintiff’s request. As a subset of the foregoing challenge, the plaintiff further asserts that he was not able to fully cross examine witnesses at the hearing and probe the thoroughness of the search. The second issue asserted by the plaintiff is the promptness of Bridgeport’s response to the plaintiff’s request. The last issue asserted by the plaintiff challenges the § 1-210 (b) (5) (B) exemption from disclosure for the Naming Rights Agreement.

#### **A. Promptness**

The FOIC found, and there appears to be no argument, that the requested records, to the extent that they exist and are maintained by Bridgeport, are public records subject to FOIA disclosure unless an exemption applies. General Statutes §§ 1-210 (a) and 1-212 (a) both require that the public is “promptly” provided with access to inspect and/or copy public records. The word “promptly” in the FOIA statute means quickly and without undue delay, taking into

account all of the factors presented by a particular request, including the volume of records requested and required to be searched, the number of personnel and time necessary and available to comply with the request, the time by which the requestor needs the records, the importance of the records to the requestor, and the importance to the public in completing other agency work that is competing with the completion of the request. In addition to the foregoing, promptness must also take into account the precision with which the request is drafted and the necessity to seek clarification from the requestor. Accordingly, the determination of whether or not an agency acted promptly in responding to any particular request is primarily a question of fact, where the finder of fact needs to make factual determinations of the foregoing factors in the particular case at hand, and then weigh and compare those found facts to what would be quickly and without undue delay in the particular case at hand.

The plaintiff's request is dated January 4, 2019. The plaintiff complained to the FOIC on July 29, 2019. Bridgeport provided responsive documents on September 19, 2019. The request in this matter is both extensive and imprecise. As is not surprising to the court, the request required clarification from the plaintiff. This clarification added time and inefficiency to Bridgeport's efforts. Ultimately issues such as clarity and exemptions needed to be worked out at the hearing and decided by the hearing officer. Accordingly, at least some of the delay incurred was the plaintiff's fault. The Bridgeport department that dealt with the request was the Office of Planning and Economic Development (OEPD). The hearing officer found that, at the time of the request,



OEPD was working on thirty active real estate development projects and was working with reduced staff levels. The hearing officer also found that the plaintiff did not specify a time frame that was necessary for his request and did not elaborate on the importance of the request and timing of the response to him. Ultimately, the hearing officer weighed the facts that he found concerning the promptness of Bridgeport's response and determined that the response was prompt. The standard of review requires that the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The determination of promptness here is based upon facts found and the weighing of evidence. The facts found by the hearing officer concerning promptness are amply supported in the record, primarily in the testimony of Coleman, and a review of the request itself. In view of the foregoing, the court finds that the FOIC's determination of promptness is supported by substantial evidence in the record, and the conclusion drawn is reasonable in view of the applicable law.

B. Thoroughness of the Search

The thoroughness of the search conducted by Bridgeport in this particular matter is a question of fact to be determined by the hearing officer. The hearing officer found that Colman met with Bridgeport staff, both within and without OEPD, to discuss the plaintiff's FOIA request and the needed search for records. The hearing officer further found that Coleman and OEPD staff searched for responsive records dating back to July 2000, including conducting searches of computer drives, email and hardcopy documents. Bridgeport staff also searched for responsive

records in the city's Purchasing Department and in the Office of Corporation Counsel. Further, Bridgeport IT professionals conducted an independent search for electronic records. The hearing officer found, in sum, that Bridgeport conducted "extensive" searches in response to the plaintiff's request and that the search was thorough. Accordingly, the FOIC found that Bridgeport's search was consistent with, and did not violate, its obligations under FOIA. This court finds that the foregoing conclusion is supported by substantial evidence in the record and is reasonable.

The plaintiff complains that he was not able to fully cross examine Coleman concerning the thoroughness of the search. Coleman was present at the September 17, 2020 hearing and was subject to cross-examination. It appears from a review of the record that the primary limitations placed upon the plaintiff's cross-examination of Coleman<sup>4</sup> arose from a need to constrain the plaintiff's cross-examination to the scope of the direct examination and to areas of relevance. Evidentiary rulings by the hearing officer are reviewed on an abuse of discretion standard. The plaintiff has not established on appeal that he properly preserved any material evidentiary objection and that the hearing officer's decision on any preserved evidentiary objection amounted to an abuse of discretion. Further, if the plaintiff desired to elicit testimony from

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<sup>4</sup> It must be noted that Coleman was Bridgeport's witness and that the plaintiff neither subpoenaed Coleman to the hearing nor offered Coleman as a witness in his case.

Attorney Klein<sup>5</sup>, it was the plaintiff's obligation to subpoena Attorney Klein to the hearing. The record contains no evidence that the plaintiff subpoenaed Attorney Klein to testify at the hearing, or that he requested a continuance to do so. Accordingly, the court finds that the plaintiff's evidentiary arguments on appeal are ineffectual.

C. Section 1-210 (b) (5) (B) FOIA Disclosure Exemption for the Naming Agreement

In responding to the plaintiff's FOIA request, Bridgeport asserted that the Naming Rights Agreement was responsive to the plaintiff's request, but that disclosure of the foregoing document was exempt pursuant to § 1-210 (b) (5) (B). The provisions of § 1-210 (b) (5) are meant to provide protection to legitimately confidential commercial and financial information. Section 1-210 (b) (5) (B) exempts from FOIA disclosure "[c]ommercial or financial information given in confidence, not required by statute". Accordingly, this disclosure exemption has three elements that must be met: (i) that the record contains commercial or financial information, (ii) that such information has been provided to the public agency in confidence, and (iii) that the provision of such record is not required by statute.<sup>6</sup>

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<sup>5</sup> Attorney Klein was not a witness, and did not testify, at the hearing.

<sup>6</sup> The foregoing interpretation of this statutory provision has been employed by the FOIC for an extended period of time and is apparent from the plain meaning of the words of the statute, which is clear on its face. Commercial

As to the first element, the FOIC found<sup>7</sup> that the Naming Rights Agreement was a commercial or financial record. See Finding of Fact 34. This conclusion is reasonably supported by the document itself which can be aptly described as a commercial instrument with a private party because it establishes and describes a commercial relationship between the parties and contains specific financial information.<sup>8</sup> The FOIC also found that the Naming Rights Agreement was provided in confidence because the agreement itself, as well as the related Operating Agreement, had express confidentiality provisions which prohibited disclosure without the consent of the other parties which consent had not been provided.<sup>9</sup> See Findings of Fact 35-37. Here again, the express confidentiality provision of the agreement itself reasonably satisfies the provided in confidence element.<sup>10</sup> Lastly, the FOIC determined that the Naming

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information refers to records that reveal basic commercial operations such as sales, profits, inventories, or relate to the income producing aspects of a business.

<sup>7</sup> The Naming Rights Agreement was reviewed in camera.

<sup>8</sup> The record also contains evidence that breaching the confidentiality of the agreement and disclosing it would cause competitive damage to the private parties involved.

<sup>9</sup> See section 7.6 of the Operating Agreement. See also section 12(e) of the Naming Rights Agreement which was reviewed in camera.

<sup>10</sup> Given in confidence requires an intent to maintain the confidential nature of the information provided. This intent can be found in an express or implied assurance of confidentiality where such information is not available to the public from any other source, or where the information is such that it would not customarily be disclosed by the person who provided it. See *Allco Renewable Energy Ltd. v. Freedom of Information Commission*, 205 Conn. App. 144, 168, 257 A.3d 324 (2021). Accordingly, the hearing officer's findings concerning confidentiality are primarily findings of fact which are supported here by substantial evidence in the record as noted above.

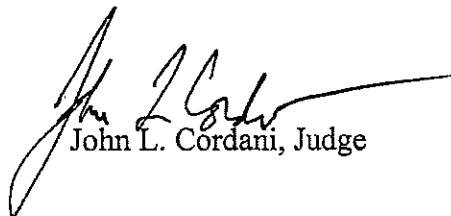
Rights Agreement was not required to be provided by any statute. See Finding of Fact 38. In this regard, the plaintiff had not pointed to any statute that requires the provision of this document. In view of the statutory exemption and the foregoing findings, the FOIC found that the FOIA exempted the Naming Rights Agreement from disclosure. The court finds that this conclusion is consistent with the applicable law, and that the factual underpinnings are supported by substantial evidence in the record.

D. Conclusion

In view of the foregoing, the court finds that on appeal the plaintiff has failed to establish that the FOIC's Final Decision was (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the court must respectfully dismiss this appeal.

**ORDER:**

The appeal is dismissed.

  
John L. Cordani, Judge