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DOCKET NO. MMX-CV23-5016232-S : SUPERIOR COURT
 :
 : Judicial District of Middlesex
CONNECTICUT STATE POLICE UNION, INC. : State of Connecticut J. D. OF MIDDLESEX
 :
V. : AT MIDDLETOWN
 :
CONNECTICUT DEPARTMENT OF EMERGENCY :
SERVICES AND PUBLIC PROTECTION, AND :
UNIVERSITY OF CONNECTICUT INSTITUTE OF :
MUNICIPAL AND REGIONAL POLICY : SEPTEMBER 7, 2023

MEMORANDUM OF DECISION

The plaintiff Connecticut State Police Union, Inc. (State Police Union) seeks to enjoin the defendants, Connecticut Department of Emergency Services and Public Protection (DESPP) and the Connecticut Institute of Municipal and Regional Policy (IMRP), from disclosing the names of Connecticut State Troopers in connection with an audit report conducted by IMRP. Before the court can reach the substance of the merits of the underlying matter, it must address the immediate question of the court’s subject matter jurisdiction. After consideration, and a remote hearing on September 5, 2023, the court dismisses the present action for the reasons provided herein.

I
BACKGROUND

In November of 2022, IMRP undertook an investigatory project coined the “Connecticut Racial Profiling Prohibition Project” (CTRP3), wherein the members of IMRP discovered discrepancies arising from the racial profiling data reported by the Connecticut State Police. The IMRP is a University of Connecticut-based organization that is tasked with the collection of traffic stop racial profiling data, and to ensure compliance with Number 99-198 of the 1999 Public Acts. Around June 30th, 2023, CTRP3 issued a draft version of an audit that they conducted regarding the statistical analysis of overreported and underreported racial profiling

traffic stop data by the Connecticut State Police that covered an eight-year period from 2014 to 2021. The audit report was seventy-four pages in length and purported to show that about one hundred and thirty (130) state troopers were alleged to have “tripped” the data metrics that were “both false and inaccurate.” See Entry No. 101, CT State Police Audit report.

On July 26, 2023, the State of Connecticut Judiciary and Public Safety Committees held a joint informational session regarding the allegations by CTRP3 that certain state police troopers had falsified the racial profiling traffic stop data. The information forum was to notify the members of the committees in regard to the nature of the project by CTRP3. During the course of the investigative inquiry into the matter, it was revealed that either through the Connecticut State Police, Commissioner Rovella, or members of CTRP3, the names of the state police troopers would be publicly disseminated pursuant to a request through the Freedom of Information Act (FOIA). Members of the state police had expressed concern to the State Police Union regarding the accuracy of the audit by CTRP3, the potential for reputations tarnished as a result of publicly disseminated misinformation of the troopers, and the threat to the safety and security of the named state troopers who may be exonerated through the course of internal investigations by the state police and external investigations by the Department of Justice.

In connection with these concerns, the plaintiff filed an ex parte motion for temporary injunction to enjoin the defendants from disclosing the names of the alleged troopers on August 9, 2023. The court denied the motion and entered an order for the parties to file legal briefs. On August 23, 2023, the Freedom of Information Commission (commission) filed a motion to intervene in the case, which the court granted on August 28, 2023. Similarly, on August 25, 2023, the Connecticut Mirror, its reporter David Altimari, and The Day Publishing Company (collectively, the media defendants) also filed a motion to intervene, which the court granted. See

Rosado v. Bridgeport Roman Catholic Diocesan Corp., 276 Conn. 168, 225 n.64, 884 A.2d 981 (2005) (finding “intervention is the proper procedural device for a nonparty” where newspaper seeks access to public records). In their motion, the media defendants challenged the court’s subject matter jurisdiction to consider issuing a temporary injunction or stay in favor of the plaintiffs. The media defendants also disclosed that, on July 20, 2023, Altimari submitted a FOIA request to DESPP seeking all state police badge numbers and the names of the employees that they were assigned to from 2014 to the present. Since DESPP responded to the request stating it would not release the records due to this pending injunction action, the Connecticut Mirror submitted an appeal to the commission.

On August 28, 2023, the court ordered the parties to file briefs concerning the limited issue of the court’s subject matter jurisdiction.

II LEGAL STANDARD

“[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). “The grounds which may be asserted in [a motion to dismiss] are: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; and (5) insufficiency of service of process.” *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985); see Practice Book § 10-30 (a).

III ANALYSIS

The State Police Union has come to this court seeking an injunction preventing the release of trooper names in connection with a study that uncovered potential falsified racial profiling traffic stop data. It has concerns regarding the troopers' safety and argues that this court has equitable powers to issue an injunction or a stay under General Statutes § 4-183 until the commission has issued a decision on the release of the names. In arguing for the court to utilize its equitable powers, the plaintiff relies on the Freedom of Information Act, General Statutes § 1-210 et seq. The State Police Union seeks an injunction based on its interpretation of FOIA and its exceptions. It contends that DESPP, in its denial of the disclosure based solely on this pending action, failed to cite that the denial of disclosure requests would also fall under the clear safety risk exemptions under §§ 1-210 (b) (19), 1-210 (b) (3), and 1-210 (b) (3) (D), as there have been threats to life and limb, the report sought is a preliminary draft report, and the information disclosed would likely be used in a prospective law enforcement action.

The defendants and intervening defendants contend that the court has no authority to enter the injunction or stay that the State Police Union seeks. As all the parties to this controversy have noted, the case law on this issue is sparse. Although instructive, there are only two Superior Court cases that lend persuasive support to the defendants' and intervening defendants' challenge to the court's jurisdiction. See Entry No. 111, Ex. C; *State v. Laird*, Superior Court, judicial district of New Britain, Docket No. CR-17-0286775-T (October 20, 2017, *Alexander, J.*); *State v. Cruz*, Superior Court, judicial district of New Britain, Docket No. CR- 17-0286774-T (October 20, 2017, *Alexander, J.*) (vacating criminal protective order regarding certain police records and finding that the court lacked authority to issue injunction against Freedom of Information

Commission over a pending complaint); see also *Chemmarappally v. State*, Superior Court, judicial district of Hartford, Docket No. CV-17-6075204-S (July 17, 2017, *Robaina, J.*).

Thus, this court begins with the salient law at issue here. FOIA provides, in relevant part, “all records maintained or kept on file by any public agency” are “public records” that may be inspected or copied by any person. See General Statutes § 1-210 (a). FOIA “expresses a strong legislative policy in favor of the open conduct of government and free public access to government records.” *Wilson v. Freedom of Information Commission*, 181 Conn. 324, 328, 435 A.2d 353 (1980). “[T]he FOIA’s general policy favoring public access has strong federal constitutional underpinnings. As the United States Supreme Court has made clear, the first amendment to the federal constitution is not limited to protection of free expression but also embodies the right to receive and gain access to information and ideas . . . [A]n arbitrary interference with access to important information is an abridgement of the freedoms of speech and of the press protected by the First Amendment.” (Citations omitted; internal quotation marks omitted.) *Lieberman v. State Board of Labor Relations*, 216 Conn. 253, 267, 579 A.2d 505 (1990).

FOIA instills in the commission primary jurisdiction for interpreting the provisions of FOIA. The legislature was clear when it enacted this law and the framework for its enforcement. General Statutes § 1-205 (d) provides, in relevant part that “The commission shall, subject to the provisions of the Freedom of Information Act promptly review the alleged violation of said Freedom of Information Act and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said Freedom of Information Act and may for the purpose of investigating any violation hold a hearing, administer oaths, examine witnesses, receive oral and documentary evidence, have the power to subpoena witnesses under procedural rules adopted by the commission to compel attendance and to require the production

for examination of any books and papers which the commission deems relevant in any matter under investigation or in question. . . .”

FOIA further provides for the commission to receive notice of any court action filed by a party concerning the provisions of FOIA and for the commission to intervene. See General Statutes § 1-242. Our state Supreme Court has recognized that the commission “will play a central role in resolving disputes administratively under the [FOIA].” (Internal quotation marks omitted.) *Board of Education v. Freedom of Information Commission*, 208 Conn. 442, 453-54, 545 A.2d 1064 (1998). Thus, the proper forum for adjudicating the release of trooper names should be the commission in the first instance.

Although the plaintiff belatedly relies on a provision under § 4-183 (b) concerning the ability to appeal preliminary decisions to advocate for an injunction or stay—that argument is misplaced.¹ The present matter is not an administrative appeal and to argue that this matter could be seen as one is disingenuous. The plaintiff’s suit in this court precipitated any actions before the commission and the decision by DESPP to prevent the release of the names. Moreover, the authorities cited by the plaintiff for any equitable powers this court may have based on this section are distinguishable. Each of those cases involved actual administrative appeals after the administrative process was complete. See *Weld v. Indian Spring Land Co.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-12-6014308-S (November 20, 2012, *Mottolese, J.T.R.*); *Mozzochi v. Freedom of Information Commission*, Superior Court, judicial district of Hartford, Docket Nos. CV-93-0530875-S, CV-93-0525360-S, CV-93-0526450-S, CV-

¹ General Statutes § 4-183 (b) provides: “A person may appeal a preliminary, procedural or intermediate agency action or ruling to the Superior Court if (1) it appears likely that the person will otherwise qualify under the chapter to appeal from the final agency action or ruling and (2) postponement of the appeal would result in an inadequate remedy.”

93-0526784-S, CV-93-0528104-S (September 5, 1995, *Freed, J.*); see also *McCarthy v. Freedom of Information Commission*, 35 Conn. Supp. 186, 193, 402 A.2d 1197 (1979). Here, the process has been thwarted.

The plaintiff may still bring an action following a final decision from the commission. “Any party aggrieved by the decision of [the freedom of information] commission may appeal therefrom, in accordance with the provisions of section 4–183.” General Statutes § 1–206 (d). Further, “A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section” General Statutes § 4–183 (a). [T]he function of [the] court in reviewing the commission’s decision is not to reach its own conclusions upon the subordinate facts, but rather to determine whether the commission acted illegally, arbitrarily or in abuse of discretion and whether the commission’s decision was supported by the evidence in the record. *Lebanon v. Wayland*, 39 Conn. Supp. 56, 58-59, 467 A.2d 1267 (1983).

Although the State Police Union has concerns for the safety of its members, this court is not the proper forum at present. The media defendants have a pending complaint with the commission, where the commission is properly charged with enforcement of the provisions of FOIA. See General Statutes § 1-205 (d); see also *Hartford v. Freedom of Information Commission*, 41 Conn. App. 67, 72, 674 A.2d 462 (1996) (“[a]lthough the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given [a] statute by the agency charged with its enforcement”). Until the commission acts, the court cannot consider the propriety of the disclosure or non-disclosure of a public record. See General Statutes § 1-206 (d); see also *Heslin*

v. *Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510, 527, 461 A.2d 938

(1983) (“Judicial restraint counsels us to await that event”).

IV
CONCLUSION

For all the reasons provided herein, the court dismisses the present matter for lack of subject matter jurisdiction.

So ordered.

BY THE COURT,



Shah, J.

JIMM CAMPBELL 9/7/23 SD.