

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by Report of Hearing Officer
Alan DiCara

 Complainant Docket #FIC 84-27

 against

Connecticut Student Loan Foundation

 Respondent July 26, 1985

The above captioned matter was heard as a contested case on April 27, 1984 at which time it was continued to May 22, 1984. On that date, the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint. On January 21, 1985, the Hearing Officer requested the submission of additional documentary evidence by the respondent Student Loan Foundation. This submission was received by the Commission February 4, 1985.

After consideration of the entire record the following facts are found:

1. On January 27, 1984 the complainant requested that the respondent Connecticut Student Loan Foundation (CSLF) provide him with records showing the names and addresses of former students who have defaulted on loans guaranteed by it.
2. On February 6, 1984 the respondent CSLF refused to provide the complainant with the requested records.
3. On February 2, 1984 the complainant filed a complaint with the Freedom of Information Commission.
4. The respondent CSLF claims that the Commission lacks jurisdiction over the complaint because it is not a public agency within the meaning of §1-18a(a), G.S.
5. In Board of Trustees of Woodstock Academy v. Freedom of Information Commission, et al, 181 Conn. 544, 553 (1980) the Supreme Court set forth certain criteria which bear upon the question whether a non-profit corporation is the functional equivalent of a public agency and therefore a public agency within the meaning of §1-18a(a), G.S.
6. The first criterion examined in Board of Trustees, supra, is whether the corporation was created by government.

7. It is found that the CSLF was created by §10a-201 et seq., G.S. as a non-profit corporation the purpose of which was to improve educational opportunities by lending funds, or guaranteeing loans for higher education and to provide various services with respect to those loans.

8. The respondent CSLF is to continue into existence until terminated by law, §10a-211, G.S.

9. Another criterion examined in Board of Trustees, supra, is the extent of governmental involvement and government regulation of the corporation.

10. It is found that the respondent CSLF is regulated by numerous state statutes:

(a) Its board of directors is appointed by the governor, the speaker of the house of representatives and the president pro tempore of the senate, §10a-203, G.S.

(b) It is required to file annual reports to the general assembly, the governor, and the board of governors of higher education, §10a-210, G.S.

(c) The powers of the board of directors are determined by statute, §10a-204, G.S.

(d) The maximum rate of interest which may be charged on any loan guaranteed or made by the corporation is set at "a rate not in excess of seven percent per annum or such higher rate as shall conform to applicable federal laws and regulations", §10-205(a), G.S.

(e) The financial structure of the corporation is established by state statute, §10a-213, so that it is required to maintain three separate funds with distinct functions and restrictions, i.e., the operating fund, the guarantee reserve fund, and the contribution fund.

(f) The terms and conditions of any loan made or guaranteed by CSLF are controlled by state statute, §10a-206, G.S., and §10a-207, G.S. and by federal law.

(g) The state bond commission is authorized to issue bonds not in excess of the aggregate of five million dollars in any one biennium to provide funds to the guarantee reserve fund of the CSLF (the fund which pays principal and interest on loans which are in default), §10a-214, G.S.

(h) Investment of the money in the guarantee reserve fund of the CSLF can only occur in accordance with the enumeration of investments at §3-31a, G.S., the statute which lists investments authorized for the state treasurer.

(i) If necessary the guaranty reserve fund of the CSLF may borrow from the general fund of the State of Connecticut.

(j) Upon dissolution the monies and property of the CSLF shall be vested in the general fund of the state, except gifts, grants, requests, devises, and contributions shall go to scholarship funds maintained by institutions of higher education, §10a-211, G.S.

11. Another criterion examined in Board of Trustees, supra, is the extent of government funding:

(a) When the student loan program was created by the legislature in 1965 the legislature appropriated one million dollars for interest payment and for advancing reserve funds.

(b) For the period from July 1, 1983 to June 30, 1984 when total revenues were \$25,397,256. the CSLF received approximately 18.3 million dollars (72.2% of revenues) from the federal government; approximately sixteen and three quarter million of this amount was for the guarantee reserve fund, while the remainder was for the operating fund.

(c) The CSLF contracts with the federal government pursuant to §428(c) of the Higher Education Act of 1965 for reimbursement for 80% of losses incurred by CSLF which result from the default of borrowers receiving student loans insured by CSLF.

(d) The state of Connecticut provided \$200,000.00 to the CSLF in the period from July 1, 1983 to June 30, 1984 for forgiveness funds (interest rebates).

(e) The remainder of the income of CSLF as shown on its statement for the period July 1, 1983 to June 30, 1984, is derived from servicing fees, guarantee fees, student collections, investment income and miscellaneous sources.

(f) The CSLF is tax exempt pursuant to §310a-209, G.S.

12. The fourth criterion of Board of Trustees, supra, is whether CSLF performs a governmental function.

13. It is found that the respondent CSLF performs a governmental function because it was created by state statute, because it is uniquely and extensively regulated by the state, because the State of Connecticut appropriated one million dollars initially for its interest and reserve fund, because it can borrow from the general fund, because it can raise money through state bonds and because substantial revenues, more than 70%, come from the federal government pursuant to contract.

14. The respondent CSLF argues that it is not a state agency because:

(a) unlike state agencies it must acquire exemption certificates from the IRS;

(b) creation by state statute does not necessarily imply that it is a state agency, i.e., many entities such as the Red Cross and Boy Scouts of America were created by statute;

(c) it is not controlled by any state officer or agency;

(d) it is not represented by the Attorney General;

(e) it is not required to comply with state statutes which pertain to personnel;

(f) it may accept monies from any source and not give an accounting to the state general fund;

(g) unlike state agencies it is required to register as a lobbyist with the State's Attorney.

15. The respondent CSLF argues additionally that, if it is a public agency, that it is a federal agency and therefore not within the meaning of the term "public agency" at §1-18a(a), G.S.

16. It is found that state involvement with CSLF is substantial because of its creation and its unique regulation by the state; because its board of directors is appointed by state officials; because it has a close financial relationship with state government through appropriations, bonding provisions, tax exemption, and because it has the potential to borrow from the general fund.

17. It is concluded, therefore, that the CSLF is the functional equivalent of a state agency and a public agency within the meaning of §1-18a(a), G.S.

18. The respondent argues that even if it is a public agency within the meaning of §1-18a(a), G.S. the records sought by the complainant are exempt from disclosure under §36-243a et seq. and the regulations promulgated thereunder, at §36-243c-1 et seq. in particular §36-243c-4(b) of the Regulations of Connecticut State Agencies.

19. §1-19(a), G.S. provides in relevant part that "[e]xcept as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency...shall be public records."

20. §1-19(a), G.S. was amended and clarified by P.A. 84-112 to include this sentence: "Any agency rule or regulation or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void."

21. It is found based both upon the original language of §1-19(a), G.S. and the clarification provided by P.A. 84-112 that while state statutes may exempt records from disclosure, regulations which provide specific exemptions from disclosure are superseded by the open records requirement at §1-19(a), G.S.

22. It is concluded that, to the extent the regulations relied upon by the respondent state exceptions to disclosure, they are void.

23. §36-243b, G.S., upon which the respondent relies, provides that "no creditor shall use any abusive, harassing, fraudulent, or misleading representation, device or practice to collect or attempt to collect any debt."

24. It is found that disclosure of the names and addresses requested by the complainant is not a representation, device, or practice to collect a debt and, therefore, that it is not prohibited by §36-243b, G.S.

25. The respondent relies also on Title 15 U.S.C. §692c(b) as a bar to the disclosure of the names and addresses requested by the complainant.

26. Title 15 U.S.C. §1692c(b) provides:

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

27. It is found that since the respondent failed to prove that it is a debt collector as defined at Title 15 U.S.C. §1692a(b), G.S., it has not proved the applicability of Title 15 U.S.C. §1692a(b), G.S. to it.

28. It is further found, assuming arguendo that the respondent is a debt collector within the meaning of Title 15 U.S.C. §1692a(b), G.S., that the disclosure of the names and addresses sought by the complainant is not communication in connection with the collection of any debt which is prohibited under Title 15 U.S.C. §1692c(b).

29. It is concluded that the complainant is entitled to receive copies of the requested records.

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

1. The respondent CSLF shall provide the complainant with copies of records showing names and addresses of former students who have defaulted on loans which were guaranteed by it.


Commissioner Robert Leeney
as Hearing Officer