

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Recovery Alliance, Inc.

FINAL DECISION

Complainant

Docket #FIC 85-89

against

Mayor of the City and Town of Milford;
Milford Department of Community Development;
The Milford Transit District; The Milford
Transit Review Committee and the City of Milford

Respondents

August 13, 1986

The above captioned matter was scheduled for hearing on August 6, 1985 at which time the parties appeared and presented evidence on the complaint. It was then scheduled for further hearing on September 27, 1985 at which time the hearing was cancelled due to a hurricane. It was then rescheduled to October 28, 1985 at which time the parties appeared and presented additional evidence and argument on the complaint.

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

1. The named respondents are public agencies within the meaning of §1-18a(a), G.S.
2. By complaint filed with the Commission March 28, 1985 the complainant alleged numerous violations of the FOIA by the named respondents.
3. The complaint contained thirteen counts; however, at hearing count seven was withdrawn.

COUNTS ONE THROUGH SIX

4. Counts one through six of the complaint allege that the respondent Milford Transit District Review Committee held meetings on October 24, 1984 and December 20, 1984 for which there were provided neither notices, agendas, nor minutes.

5. The Milford Transit District Review Committee is a committee of the respondent Milford Transit District (MTD, hereinafter).

6. The respondent MTD claims that the FOIC has no jurisdiction over the complaint because it was not filed within thirty days of the alleged violation.

7. §1-21i(b), G.S. provides in relevant part that:

a notice of appeal shall be filed within thirty days after such denial except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed within thirty days after the person filing the appeal receives notice in fact that such meeting was held.

8. It is found that the complainant did receive oral notice that the meetings of October and December were being held from employees of the MTD prior to such meetings and that the members of the complainant did attend both meetings.

9. It is concluded that the complainant had notice in fact of the October and December meetings which were held without proper notice and agendas and that therefore counts one, two, four, and five of the complaint which concern these alleged violations are dismissed because not timely filed.

10. The respondent MTD has filed no minutes of the October and December committee meetings.

11. It is found that the failure to file minutes is a continuing violation, and that the respondent MTD is required to produce minutes by §1-19(a) and §1-21, G.S.

COUNT EIGHT

12. The complainant alleged that the respondent MTD violated §1-15, G.S. when it failed to provide it with a memo and attachment which had been sent to Wade Pierce and Tom Wilson, dated February 21, 1985 from the respondent MTD.

13. The complainant made its request for the memo on February 27, 1985.

14. The respondent MTD provided the memo to the complainant on March 8, 1985 after consultations with the town attorney.

15. §1-15, G.S. provides in relevant part that "any person applying in writing shall receive promptly upon request a plain or certified copy of any public record."

16. It is found that the respondent MTD did not provide the requested record promptly as required by §1-15, G.S.

COUNTS NINE AND TEN

17. The complainant alleged that the respondent director of community development either illegally destroyed copies of records sent to him from the manager of the MTD or denied the complainant an opportunity to inspect the records on March 12, 1984.

18. On March 12, 1984 the director of community development stated "we have no correspondence from the Milford Transit District in our files."

19. It is found that the evidence produced at hearing was insufficient to provide a basis for a conclusion that the requested record had been illegally destroyed by the respondent Director of Community Development.

20. It is further found that the evidence did not show that the respondent director of community development had conducted a search for the requested records.

COUNT ELEVEN

21. The complainant alleges that the respondent mayor of Milford denied it access to certain records requested by it in a written request for records dated March 18, 1985.

22. The request stated:

The Recovery Alliance, Inc. requests the opportunity to view and make copies as deemed necessary and advisable of any and all correspondence which references the Freedom of Information laws between the Milford Transit District and the office of the Mayor of the City of Milford, regardless of the direction of the flow of such correspondence, between the dates of October 3, 1977 and March 18, 1985 inclusive. For the purpose of this request, the term "correspondence" shall mean all letters, memos, records of telephone conversations, notes, and the like, whether they be handwritten or typed.

23. The Mayor responded to the complainant's request by giving it access to inspect the file in her office which was labeled "Milford Transit District."

24. Representatives of the complainant inspected the file and paid for copies of several documents contained in it.

25. Not included in the file was a memo directed in September 1985 to the chairmen of all boards in Milford concerning the FOIA.

26. A copy of the memo was obtained later by the complainant.

27. It is found that the respondent mayor substantially complied with the request for records made by the complainant on March 18, 1985 and the failure to provide the complainant with access to the September 1985 FOI memorandum was unintended.

COUNT TWELVE

28. The complainant alleges that the respondent MTD violated §1-15, G.S. when it provided it on February 26, 1985 with records requested on February 15, 1985.

29. The request for records which was made on February 15, 1985, required production of copies of all applications for and correspondence regarding funding since the respondent MTD was created in 1977.

30. The request included about half the files of the respondent MTD.

31. It is found because of the number of records requested and because the complainant communicated no reason to the respondent MTD for needing the materials immediately, that production of the requested records was prompt and did not violate the requirements of §1-15, G.S.

COUNT THIRTEEN

32. Complainant alleges violation of the requirements of §1-15, G.S. by the failure of the MTD to respond completely to a request for certain records which was filed with the respondent on March 18, 1985, until March 26, 1985.

33. The request for inspection and copies which was made by the complainant on March 18, 1985 had two parts, designated item 1 and item 2.

34. Item 2 was satisfied on March 19, 1985.

35. Item 1, which remained outstanding, was a request to view and copy as necessary all correspondence between the respondent MTD and any governmental office concerning the Freedom of Information Laws between October 3, 1977 and March 18, 1985.

36. Item 1 was provided on March 26, 1985.

37. It is found because of the broad scope of the complainant's request and because the complainant communicated no reason for requiring the requested records immediately, that the respondent MTD did not violate the requirement of §1-15, G.S. that records be produced promptly.

THE REQUEST FOR A CIVIL PENALTY

38. The complainant has requested that the Commission order a show cause hearing be held so that the respondents MTD, city of Milford, and David White should demonstrate why a civil penalty ought not to be imposed pursuant to sl-21i(b), G.S.

39. It is found that under the facts of this case, it is not appropriate to order such a show cause hearing.

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

1. Counts one, two, four and five are dismissed for lack of jurisdiction.

2. With respect to counts three and six the respondent MTD is ordered to produce minutes for meetings of the Milford Transit Review Committee which were held October 24, 1984 and December 20, 1984.

3. With respect to count eight the respondent MDT is ordered to comply henceforth with the requirements of §1-15, G.S.

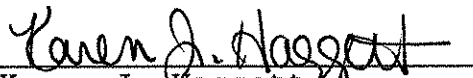
4. With respect to counts nine and ten the respondent director of community development is ordered:

A. To, within two weeks of the time this decision of the Commission is final, search diligently to determine whether he may have in his possession the records requested by the complainant, and to provide the records to the complainant if they are found

B. To provide the Commission with an affidavit stating that he has conducted the required search within two weeks after this decision of the Commission is final.

5. Counts eleven, twelve, and thirteen are dismissed.

Approved by order of the Freedom of Information Commission at its regular meeting of August 13, 1986.


Karen J. Haggatt
Clerk of the Commission