

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

President, Woodridge Lake Sewer
District; and Woodridge Lake Sewer
District,

Complainants

against

Docket #FIC 2016-0856

President, Torrington Water Company;
and Torrington Water Company,

Respondents

August 23, 2017

The above-captioned matter was heard as a contested case on March 15, 2017, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that, on November 11, 2016, the complainants requested copies of many records in the respondents' possession.

2. It is found that, on November 23, 2016, the respondents denied the complainants' request because "the Torrington Water Company is not a public agency."

3. By letter filed December 9, 2016, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the records they requested.

4. Following the hearing in this matter, the respondents challenged the complainants' standing to bring this appeal. The respondents claimed that the complainant Woodridge Lake Sewer District is not a "person" within the meaning of §1-206(b)(1), G.S.

5. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom

of Information Commission, by filing a notice of appeal with said commission. (Emphasis added.)

6. "Person" is defined in §1-200(4), G.S., as a "natural person, partnership, corporation, limited liability company, association or society."

7. "Natural person" means "a human being as distinguished in law from an artificial or juristic person" such as a corporation or other entity. Webster's Third New International Dictionary, Unabridged, (1993).

8. The respondents claim that neither the Woodridge Lake Sewer District nor the District's president, who appealed to the Commission in his official capacity, qualify as a person within the meaning of §1-200(4), G.S., and, therefore, neither has the right to appeal to the FOI Commission pursuant to §1-206(b)(1), G.S.

9. It is found that the complainant Woodridge Lake Sewer District is a municipal authority and, therefore, not a person within the definition set forth in §1-200(4), G.S. It is therefore concluded that the District lacks standing to appeal to the FOI Commission.

10. It is found, however, that the request for records was made by the Sewer District's attorney, and that the same attorney filed the appeal with the FOI Commission on behalf of the District and its named president. It is found that the president is a natural person within the meaning of §1-200(4), G.S.¹

11. It is concluded, therefore, that the president of the District has standing to file an appeal with the FOI Commission.

12. It is concluded that the Commission has subject matter jurisdiction to adjudicate the appeal by the President of the Woodridge Lake Sewer Commission.

13. With respect to the respondents' claim that they are not a public agency, §1-200(1), G.S., provides:

"Public agency" or "agency" means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of,

¹ See also, §1-212(d)(4), G.S., which requires a public agency to waive any fees for copies of records in certain instances where the request is made by a public official in his or her official capacity. It is concluded that in the event that an agency fails to waive the fees as required, the legislature intended to give such public official standing to bring an appeal to the Commission pursuant to §1-206(b), G.S.

or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or (C) Any "implementing agency", as defined in section 32-222.

14. The complainants assert that because the Torrington Water Company ("TWC") was created by an act of the Connecticut General Assembly, it is a public agency within the meaning of §1-200(1)(A), G.S. The complainants cite Winton Park Association, Inc. v. FOI Commission, judicial district of New Britain at New Britain, Docket No. CV08-4019339-S (October 7, 2009), in which a taxing district was found to be a public agency because it was a "body politic" and as such, a political subdivision of the state.

15. In Winton Park, the Court concluded that as a body politic, the community association had the "right to raise taxes through annual assessments, to regulate the use and right of easements, to build and maintain all necessary main sewers and drains, to appoint special police to act with the same powers and duties that constables have in towns, to make reasonable health regulations, and to approve the construction and appearance of any structure within the association." In affirming the FOI Commission's finding that the association was a "district or other political subdivision of the state, within the meaning of §1-200(1)(A), G.S., the Court considered the fact that the association was created by the legislature to be less important than the powers delegated to it.

16. It is found that the TWC was not created as "body politic," but, instead, as a private stockholder corporation. Moreover, it is found that the legislature did not grant the TWC any of the fundamental powers of government held by the Winton Park association, described in paragraph 15, above.

17. It is found that the respondents are not a public agency within the meaning of subsection (A) of §1-200(1), G.S.

18. The complainants assert, in the alternative, that TWC is the functional equivalent of a public agency, within the meaning of §1-200(1)(B), G.S.

19. With respect to whether TWC is the "functional equivalent" of a public agency, pursuant to §1-200(1)(B), G.S., four factors must be considered: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government. See Board of Trustees of Woodstock Academy v. Freedom of Information Commission, 181 Conn. 544, 554 (1980). "All relevant factors are to be considered cumulatively, with no single factor being essential or conclusive." Connecticut Humane Society v. Freedom of Information Commission, 281 Conn. 757, 761 (1991).

20. With respect to whether TWC performs a governmental function, it is found that approximately one-half of Connecticut's residents supply their own water through private wells or by non-governmental entities such as the respondents, and the remainder receive water from governmental entities. It is found that supplying water is not a governmental function for purposes of determining whether a private water company is the functional equivalent of a public agency.

21. With respect to the level of government funding, it is found that TWC is privately funded, as it is a private stock corporation. It is found that TWC receives some funding from the sale of water, and approximately one-fifth of such revenue is from the City of Torrington. It is also found that TWC received a grant of \$6 million from the State of Connecticut to remedy a superfund site located in TWC's service territory. It is found, however, that the funds from the sale of water and from the State for remediation are consideration for providing services as set forth in contracts and grants. Therefore, the second prong is not met. Domestic Violence Services of Greater New Haven, Inc. v. FOI Commission, 47 Conn.App. 466, 475-76 (1998).

22. With respect to the extent of government involvement or regulation, it is found, as set forth in the respondents' testimony and summarized in their post-hearing brief: "TWC's board, which is elected by its shareholders, and its management make the day-to-day and long-term investment and operating decision in the running of the company." It is found that although "the Public Utilities Regulatory Authority ("PURA") oversees the activities of TWC as an investor-owned and non-governmental water company, primarily in the area of rates," PURA is not involved in the day-to-day supervision of TWC. It is found that TWC's Board of Directors is chosen by the company's private shareholders, and neither the board nor the employees are government employees. It is found that the third prong is not met.

23. With respect to whether the entity was created by government, it is found that TWC was created by a special act of the legislature in 1873 that authorized the incorporation of the Wolcottville Water Company (predecessor in name only to TWC) and the issuance of private stock to individuals, "which stock shall be deemed personal property." House Joint Resolution No. 104, §2 (Complainant's Exhibit D). The Connecticut Humane Society was chartered similarly by the General Assembly in 1881; however, as the Connecticut Supreme Court recognized, "at that time, it was common practice for the General Assembly to incorporate private institutions... The mere presence of a government charter, therefore, does not compel the conclusion that the society is a public agency." (Citations omitted.) Connecticut Humane Society, supra, 281 Conn. 763. Cf. Section 1.1 of the charter of the Metropolitan District Commission ("MDC") establishes the MDC as "a body politic and corporate."

24. Taking all four of the relevant factors into consideration, and based upon the totality of all of the evidence presented in this case, it is concluded that TWC is not the "functional equivalent" of a public agency, within the meaning of §1-200(1)(B), G.S.

25. It is concluded that the respondents did not violate the FOI Act, as alleged.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 23, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

PRESIDENT, WOODRIDGE LAKE SEWER DISTRICT, AND WOODRIDGE LAKE SEWER DISTRICT, c/o Attorney Amber N. Sarno, Shipman and Goodwin LLP, One Constitution Plaza, Hartford, CT 06103 and Attorney Henry J. Zaccardi, Shipman and Goodwin, LLP, One Constitution Plaza, Hartford, CT 06103

PRESIDENT, TORRINGTON WATER COMPANY; AND TORRINGTON WATER COMPANY, c/o Attorney Frederic Lee Klein, Pullman & Comley, LLC, 90 State House Square, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission