

NO. CV 095014970S : SUPERIOR COURT  
: :  
KIMBERLY ALBRIGHT-LAZZARI, ET AL. : :  
: JUDICIAL DISTRICT OF  
: :  
v. : NEW BRITAIN  
: :  
COLLEEN MURPHY, CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION : APRIL 21, 2011

**MEMORANDUM OF DECISION**

The plaintiffs, Kimberly Albright-Lazzari and Anthony Lazzari, appeal from an October 14, 2009 final decision of the freedom of information commission (FOIC). The final decision of the FOIC dismissed, without a hearing, the department of children and families (DCF) from a complaint brought by the plaintiffs to the FOIC against DCF and several municipal entities.<sup>1</sup>

The plaintiffs submitted their complaint to the FOIC in a letter dated June 8, 2009. On August 10, 2009, the DCF moved to dismiss the complaint before a hearing had been scheduled. The basis of the motion was as follows: The plaintiffs had requested records from the DCF pertaining to matters in juvenile court proceedings; General Statutes § 17a-28 controlled the release of such records; and § 1-210 (a) (disclose records except as

1

The plaintiffs are aggrieved by the dismissal of their complaint for the purposes of § 4-183 (a).

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2011 APR 21 P 2:10  
SUPERIOR COURT

otherwise provided by state statute) and the § 1-210 (b) (10) exemption for state statutes in the Freedom of Information Act (FOIA) removed FOIC jurisdiction. (Return of Record, ROR, pp. 14-17).

The plaintiffs responded to the motion on August 18, 2009. Thereafter on October 14, 2009, the FOIC dismissed the complaint. In the final decision, the FOIC agreed with the DCF, finding that § 17a-28 provided a state statutory exemption to FOIA. It relied on two court cases (1) *Marlow v. Freedom of Information Commission*, Superior Court, judicial district of New Britain, Docket No. CV 99 0493141 (October 12, 1999, *McWeeny, J.*) recognizing the FOIA exemption and further pointing out that § 17a-28 (m) allowed limited access by parents to records, but only by following established DCF procedure and (2) *Groton Police Dept. v. Freedom of Information Commission*, 104 Conn. App. 150 (2007) (a mother was denied access to records under FOIA concerning her own minor child based on § 1-210 (a)). (ROR, pp. 67-68).

In addition, the FOIC stated in Finding 14: “[A]fter examining the complaint and pleadings in this matter and construing all allegations most favorably to the complainant [the plaintiffs], it is found that the DCF respondents have not violated the FOI Act, because the requested records, as described in the complaint, pertain to the DCF respondents’ child protection activities.” The complaint was ordered “dismissed without a hearing pursuant to § 1-206 (b) (4) (A)” as to the DCF only. (ROR, pp. 68-69).

The plaintiffs disagree with the interpretation given by the FOIC of the scope of § 17a-28 and this statute's relation to FOIA. They also challenge the authority of the FOIC to dismiss their complaint without a hearing. The plaintiffs' claims are reviewed under the following standard: "Our review of these claims is guided by well established principles. Judicial review of the commissioner's action is governed by the Uniform Administrative Procedure Act . . . and the scope of that review is very restricted . . . . 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. . . . Cases that present pure questions of law, however, traditionally invoke a broader standard of review. . . . We have determined, therefore, that we will defer to an agency's interpretation of a statutory term only when that interpretation of the statute previously has been subjected to judicial scrutiny or to a governmental agency's time-tested interpretation and is reasonable." (Brackets omitted; citations omitted; internal quotation marks omitted.) *Board of Selectmen v. Freedom of Information Commission*, 294 Conn. 438, 446, 984 A.2d 748 (2010).

The plaintiffs claim that the FOIC wrongly dismissed their complaint because they have the right to compel the access to their records provided in § 17a-28 (m) through a FOIA request. It is true that § 17a-28 (m) allows for access for to one's own records "in addition to the right of access provided in section 1-210." On the other hand, the FOIC

relied on two court cases that deny FOIC jurisdiction. In *Marlowe*, moreover, Judge McWeeny specifically considered the reference to the FOIA in § 17a-28 (m). In addition, at least eight FOIC final decisions have interpreted § 17a-28 (m) in this manner. See, e.g. *Dutkiewicz v. Dept. of Children and Families*, Docket # FIC 2002-268 (December 11, 2002), also dismissing without a hearing a complaint similar to the plaintiffs. The court, in deciding between the plaintiffs' interpretation and the alternate FOIC interpretation, defers to the FOIC's interpretation as time-tested and reasonable.<sup>2</sup>

The plaintiffs further urge this court to declare § 1-206 (b) (4) (A)<sup>3</sup> unconstitutional as the FOIC employed the section to deny them a hearing on their complaint. The plaintiffs' argument on the constitutional right to access to a full FOIC review fails, however. The FOIC is not similar to a court that must provide access.

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2

The court also concludes that the FOIC construction gives effect to the apparent intent of the legislature regarding disclosure of records maintained by DCF. See *Fairchild Heights, Inc. v. Amaro*, 293 Conn. 1, 8-9, 976 A.2d 668 (2009). The result is effective and workable. See *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 157, 788 A.2d 1158 (2002). "The law favors a rational statutory construction and we presume that the legislature intended a sensible result." *Wiele v. Board of Assessment Appeals*, 119 Conn. App. 544, 551-52, 988 A.2d 889 (2010).

3

(4) "Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant that (A) the agency has not violated the Freedom of Information Act."

Rather, the FOIC is "entirely a creature of statute" and operates under the terms of its act. See *Dept. of Public Safety v. Freedom of Information Commission*, 103 Conn. App. 571, 577, 930 A.2d 739 (2007). Legitimate restrictions may be placed on access to an agency hearing. *Jarmon v. Commissioner of Social Services*, 47 Conn. Sup. 492, 807 A.2d 1109 (2002).

The FOIC was given the authority by the legislature to decide in some instances that a complaint may be dismissed prior to a hearing. The court will not overturn the discretion exercised by the FOIC in this matter on either statutory or constitutional grounds.

The administrative appeal is dismissed.



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Henry S. Cohn, Judge